

## IN THE COURT OF APPEAL OF SEYCHELLES

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### **Reportable**

[2021] SCCA 19 13 May 2021  
SCCA 44/2020  
(Appeal from MA No. 156/2020 and  
MC No. 69/2020)

In the matter between

**PRIYA CHETTY**  
(*rep. by Mr Frank Elizabeth*)

**Appellant**

and

**EMMANUEL ESTHER**  
(*rep. by Miss Manuella Parmantier*)

**Respondent**

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**Neutral Citation:** Chetty v Esther (SCA 44/2020) [2021] SCCA 19 13 May 2021

**Before:** Fernando President, Twomey, Robinson JJA

**Summary:** Court of Appeal of Seychelles – Seychelles Court of Appeal Rules, 2005, (S. I. 13 of 2005) as amended – Notice of grounds of appeal – Rule 18 – Vague grounds of appeal – Notice of appeal not sufficient notice of the grounds of appeal – Court of Appeal of Seychelles strikes out notice of appeal by its motion – Appeal dismissed in its entirety – No order as to costs

**Heard:** 7 April 2021

**Delivered:** 13 May 2021

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### **ORDER**

- (1) The notice of appeal is struck out.
  - (2) The appeal is dismissed in its entirety.
  - (3) The order of the learned appellate Judge dismissing MA No. 156/2020 and MC No. 69/2020 is upheld.
  - (4) No order as to costs.
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### **JUDGMENT**

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**ROBINSON JA (FERNANDO PRESIDENT concurring)**

1. This is an appeal against a ruling of a learned appellate Judge, dated 14 October 2020,

dismissing two applications: MA No. 156/2020 and MC No. 69/2020, hereinafter collectively referred to as the "*Applications*".

2. The Respondent and the Appellant were lessor and lessee, respectively, of a building on parcel PR5380, Praslin, which the Appellant operated as a shop.
3. The Respondent applied to the Rent Board (RB 40/2019), appointed under the Control of Rent and Tenancy Agreements Act [CAP 47], to evict the Appellant from the building, which she operated as a shop.
4. The Rent Board heard the application and delivered an order on the 27 March 2020 in favour of the Respondent, hereinafter referred to as the "*Order*". The Order is in the following terms —

*"1. Application for the eviction of the Respondent - [the Appellant] from the leased premises is granted.*

*2. The Respondent is hereby given six months in which to vacate the leased premises. The Respondent is to resume her rental payments with immediate effect and shall continue to pay her monthly rent until she vacates.*

*3. All outstanding arrears owed to the Applicant [the Respondent] since November 2018 shall be cleared and paid to the Applicant by the time she vacates the premises.*

*4. Any claim in respect of expenses incurred by the Respondent on the leased premises must be claimed against the Applicant before another Court as the Board has no jurisdiction to entertain such claims".*

5. The MC No. 69/2020 filed by the Appellant's legal aid Counsel, Miss Lucy Pool, on the 9 September 2020, concerned an appeal out of time. The MA No. 156/2020, also filed by Miss Pool on the 18 September 2020, concerned a stay of execution of the ruling.
6. When the Applications were called for argument on the 14 October 2020, no personal appearance was made on the Appellant's behalf by her Counsel of record, Miss Pool. The Appellant, who was present, informed the learned appellate Judge that she was being

represented by Counsel of her choice, Mr Elizabeth, who was before a Commission.

7. The learned appellate Judge dismissed the Applications after hearing the Appellant from the bar. The learned appellate Judge noted that there were restrictions imposed because of the Covid-19 pandemic. However, she refused to exercise her discretion as she believed the Appellant had not acted expeditiously and not proved her affidavits.
8. The Appellant filed two grounds of appeal against the dismissal of MA No. 156/2020 and MC No. 69/2020 as follows —

"GROUND 1

*The presiding Judge erred when she dismissed the Appellant's application for stay of execution and notice of appeal.*

GROUND 2

*The presiding Judge erred when she dismissed the Appellant's case as she failed to take into account the relevant facts and matters before coming to the decision that she did."*

9. The grounds of appeal are not without their challenges. It is reasonably plain that they are vague. I also observe that the Appellant's heads of argument have combined the two vague grounds of appeal: see *Freslon v Patel (SCA 20/2018) [2020] SCCA 43* (delivered on the 18 December 2020), in which the Court of Appeal made some remarks on the combination of grounds of appeal.
10. Moreover, the heads of argument had subsumed the two vague grounds of appeal under two contentions. The first contention is that the Appellant had been denied the right to counsel of choice. The second contention is that the learned appellate Judge was wrong not to condone his [Mr Elizabeth's] absence as he was before a Commission. In furtherance of that second contention, the heads of argument pointed out that Mr Elizabeth had informed the Registrar of the Supreme Court of his incapability to attend the Supreme Court on the 14 October 2020. I have to mention that Counsel for the Appellant was not the Appellant's Counsel of record on the 14 October 2020, when the Applications were dismissed. Overall, in support of these two contentions, the heads of

argument have alluded to "*six relevant facts*", which they contended the learned appellate Judge had failed to consider.

11. At the appeal, I brought to the attention of Counsel for the Appellant that the grounds of appeal are vague and cannot be entertained as they amount to no grounds of appeal, under rule 18(3) and (7) of the Seychelles Court of Appeal Rules, 2005, (S. I. 13 of 2005), as amended<sup>1</sup>. Obviously, the vague grounds do not come within the savings. Counsel for the Appellant responded by stating that the Respondent had not raised any preliminary objection in law. I pause there to say that the Appellant and the Respondent were permitted to argue their respective case.
12. The Appellant was aware that the grounds of Appeal were not without their challenges. On the 19 November 2020, she applied to amend her notice of appeal. Ground 2 of the proposed amended notice of appeal read —

"Ground 2

*The presiding Judge erred when she dismissed the Appellant's case as she failed to take into account the relevant facts and matters before coming to the decision that she did as —*

**1. Her Attorney Mr Frank Elizabeth has informed the Registrar that he would be attending the Commission of Inquiry on the same date.<sup>2</sup>**

At the hearing of the application to amend on the 16 December 2020, Counsel for the Appellant informed Fernando, President: "[...], *I think the Notice of Appeal is fine. Just, I*

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<sup>1</sup> The Seychelles Court of Appeal Rules, 2005, (S. I. 13 of 2005), as amended, is hereinafter referred to as the "*Seychelles Court of Appeal Rules*". Rule 18(3) and (7) of the Seychelles Court of Appeal Rules stipulates —

*"18(3) Such grounds of appeal shall set forth in separate numbered paragraphs the findings of fact and conclusions of law to which the appellant is objecting and shall also state the particular respect in which the variation of the judgment or order is sought.*

[...].

***(7) No ground of appeal which is vague or general in terms shall be entertained, save the general ground that the verdict is unsafe or that the decision is unreasonable or cannot be supported by the evidence.***". Emphasis supplied

<sup>2</sup> See the proposed amendment to ground 2 of the original notice of appeal in bold.

*believe the date was incorrect".*

13. As mentioned above, it is reasonably plain that the notice of appeal is not sufficient notice of the grounds of appeal. Thus, it is unquestionable that I am duty-bound to refuse to entertain the notice of appeal under rule 18 (3) and (7) of the Seychelles Court of Appeal Rules.
14. Fundamentally, if I were to condone such vague grounds of appeal, I would be allowing the Appellant to introduce issues that have not been raised in the insufficient notice of appeal or covered in the vague grounds of appeal outside the time limit for raising new issues, without leave of the Court of Appeal and the proper procedures having been followed under the Seychelles Court of Appeal Rules. Also, heads of argument should neither raise issues not envisaged in a ground of appeal nor raise a new ground of appeal.
15. This is also the view held by the Court of Appeal in *Cedric Petit v Marquita Bonte SCA Civil Appeal No. 11 of 2003* (delivered on the 20 May 2005). In **Cedric Petit**, *supra*, the Court of Appeal considered the old rule 54 of the Seychelles Court of Appeal Rules, 2000, as amended, which dealt with a notice of appeal. Rule 54(3) and (6) of the Seychelles Court of Appeal Rules, 2000, as amended, stipulated —

"54 [...].

*(3) Every notice of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of the appeal, specifying the points of law or fact which are alleged to have been wrongly decided together with particulars of such errors, such grounds to be numbered consecutively and to state the exact nature of relief sought and the precise form of the order which the appellant proposes to the Court to make ...*

[...].

**6) No ground of appeal which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence and any ground of appeal or part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on the application by the respondent ...".** Emphasis supplied

16. In **Cedric Petit**, *supra*, Mr Elizabeth, Counsel for the respondent, raised a preliminary

objection in law to the effect that the ground of appeal advanced by the appellant did not amount to a ground of appeal in law. Mr Georges, for the appellant, conceded the point. The Court of Appeal held that: "**sub-rules (3) and (6) are of a mandatory nature**". Emphasis is mine. The Court of Appeal went on to state —

*"It is important to note that Rules of Court are made in order to be complied with. Without complying with and should the Court allow that to happen, then it is both sending wrong signals and establishing precedent, which may eventually lead to flouting and abuse of the whole court process. That should not be allowed to happen. This Court had an opportunity, recently, to re-emphasise this point (see Central Stores vs Minister William Herminie and Another, judgment dated 25 February 2005; Harry Berlouis and Francis Gill, SCA No. 13 of 2003)".*

17. Turning to this appeal, having failed to comply with rule 18 of the Seychelles Court of Appeal Rules, I am duty-bound to strike out the notice of appeal.
18. Consequently, I dismiss this appeal in its entirety. I uphold the order of the learned appellate Judge dismissing the Applications: MA No. 156/2020 and MC No. 69/2020.
19. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 13 May 2021.

Robinson JA

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I concur

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Fernando President