**IN THE COURT OF APPEAL OF SEYCHELLES**

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**Reportable**

[2024] (3 May 2024)

SCA 26/2023

(Arising in CA 02 of 2023 out of RB 14/2022)

In the matter Between

**Tony Lablache**

**Philina Lablache** **Appellants**

*(rep. by Mr. F Elizabeth)*

And

**Josianne Vital** **Respondent**

*(rep. by Mr. D Sabino)*

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**Neutral Citation:** *Tony Lablache & Anor v Josianne Vital* SCA 26/2023 Arising in CA 02 of 2023 out of RB 14/2022)

**Before:** **Andre, Gunesh-Balaghee De Silva JJA**

**Summary:** **Can a party appeal from the Supreme Court to the Court of Appeal from a judgment emanating from the Rent Board - Article 1338 of the Civil Code of Seychelles Act, 2020 – Definition of '*lease*,' *lessee*, *'lessor'* and '*rent*'- Section 2 of the Control of Rent and Tenancy Agreements Act (Cap 47).**

**Heard:** 17 April 2024

**Delivered:** 3 May 2024

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ORDER

The appeal is set aside with costs.

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## JUDGMENT

**GUNESH-BALAGHEE JA**

(J. De Silva JA, concurring)

1. This is an appeal against a judgment of the Supreme Court which itself emanates from an appeal from a decision of the Rent Board.

2. Learned Counsel for the respondent raised a preliminary objection to the hearing of this appeal. He relied on the case of **Adrienne v Shelly Beach Properties Ltd (SCA 10 of 1999)[1999] SCCA 7** to argue that this Court has no jurisdiction to entertain an appeal from a decision of the Supreme Court in its capacity as an appellate court from the Rent Board ("the Board").

3. In the case of **Adrienne** where the same point was raised, it was argued that section 22(1) of the Control of Rent Tenancy Agreements Act ("the CRTA Act") expressly excludes a right of appeal, and that such exclusion has been permitted by Article 120(2) of the Constitution wherein the right of appeal to the Court of Appeal from a decision of the Supreme Court is made subject to other provisions of the Constitution or an Act.

4. Section 22(1) of the CRTA Act is set out below -

   **"*22. Appeal to the Supreme Court***

   *(1)Any person aggrieved by any decision or order of the Board may appeal to the Supreme Court on a question of law or of fact or of mixed law and fact, and the Supreme* Court *may affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Board with the directions of the Court thereon, and may make any orders as to costs and all such orders shall be final and conclusive on all parties."*

5. The Court of Appeal stated the following with regard to the final and conclusive clause:

"*That the "final and conclusive" clause bars any right of appeal is now a well established principle of law, in our opinion. The effect of such clause has been succinctly put in Halsbury's Laws of England (4 thEd) Vol.1 paragraph 22 thus:-*

*"A provision that an act or order shall be 'final' bars any right of appeal but does not exclude the supervisory jurisdiction of the courts."*

*Also in Basu, Administrative Law (3 rd Ed. 1993) p.442, the learned author said:-*

*"Evidently, such provisions preclude an appeal against the decision, for a right of appeal can be created only by an express statutory provision."*

*In Leperre v Coopoosamy 1975 SLR 156, Sauzier. J at p.161 said:*

*"It is now settled that when a statute stipulate that the decision of a statutory tribunal is final and conclusive, that only means 'without appeal'*."

6. The Court of Appeal explained that *"[w]here, as in this case, the jurisdiction of the Supreme Court that was invoked was its appellate jurisdiction under the Act, in the absence of a right of appeal from the decision of the Supreme Court, this Court has no jurisdiction to review that decision. In any case, this Court does not exercise and is not vested with original powers to exercise supervisory jurisdiction over the Supreme Court or over any body or authority*."

7. The Court of Appeal thus concluded that the effect of section 22(1) of the CRTA Act is to preclude further appeal to the Court of Appeal from a decision of the Supreme Court, given in its appellate jurisdiction, upon an appeal from a decision of the Board.

8. In the present case, learned Counsel for the appellants argued in a nutshell that Article 120(2) of the Constitution provides for a right of appeal to the Court of Appeal from any judgment direction, decision, declaration, decree, writ or order of the Supreme Court and as such the appellants should be able to appeal to the Court of Appeal. Interpreting section

22(1) of the CRTA Act as taking away this right would be unconstitutional. He also relied on section 12(1) of the Courts Act to buttress his contention that the appellants can appeal to this Court.

9. I have duly considered the submissions of both Counsel.

10. At the very outset, I must point out that there is no inherent right of appeal. Some statutory basis for a right of appeal must be demonstrated (See: **Cono Cono & Company Ltd v Veerasamy & Ors 2015 PRV 71**).

11. In the present case, it is the appellants' contention that Article 120(2) of the Constitution and section 12(1) of the Court Act provide such statutory basis.

12. Article 120(2) provides as follows-

> "Except as this Constitution or an Act otherwise provides, there shall be a right of appeal to the Court of Appeal from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court."

13. It is amply clear from a reading of Article 120(2) that, while Article 120(2) confers a right of appeal to the Court of Appeal from any judgment, direction, decision, declaration, decree, writ or order of the Supreme Court, this right may be taken away in cases where the Constitution itself so provides or **where an Act so provides**.

14. I shall first consider section 12(1) of the Courts Act which is set out below for ease of reference -

> " *Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction.*",

15. Section 12(1) specifically provides that the right of appeal to the Court of Appeal from a judgment of the Supreme Court may be removed either by the Courts Act itself **or any other law**.

16. What has to be determined is whether section 22(1) of the CRTA Act can be interpreted as having taken away the right of appeal of the appellants to the Court of Appeal. For section 22(1) to take away the right of appeal to the Court of Appeal, the CRTA Act must either qualify as an "Act" under the Constitution or as "any other law" under the Courts Act.

17. I shall therefore first proceed to determine whether section 22(1) of the CRTA Act can interpreted as being "any other law" under the Courts Act or as being an "Act" under the Constitution before considering the question as to whether section 22(1) should in fact be interpreted as taking away the right of appeal to the Court of Appeal.

18. The question as to whether the CRTA Act is a law can be easily disposed of. It would obviously be preposterous to even suggest that the CRTA Act is not law; both parties to the present case have in fact staked their respective claims on the basis of this law before the Board and the Supreme Court. In the circumstances, I am of the view that section 12(1) cannot be of any aid to the appellants as it cannot be argued that CRTA Act is not a law which can provide that there should be no appeal from the decision of the Supreme Court to the Court of Appeal.

19. The next question that arises is the following. Does the CRTA Act qualify as an Act under the Constitution?

20. Under Schedule 2 of the Constitution, "Act" is defined as follows-
"Act" means a law made pursuant to article 86.

21. Article 86, in turn provides as follows-

> "***86. Exercise of legislative power***
>
> *(1)The legislative power vested in the National Assembly shall be exercised by Bills passed by the Assembly and assented to or deemed to have been assented to by the President.*

*(1)(A)Unless it is otherwise provided in this Constitution, a Bill is passed by the Assembly if it is supported at all the stages at which it is as a whole put to the vote of the Assembly by a majority of the members present and voting.*

*(2)Subject to article 87, where a Bill is presented to the President for assent, the President shall, within fourteen days of the presentation of the Bill, assent, or, in accordance with this Part, withhold assent, to the Bill.*

*(3)The President shall, as soon as practicable, cause a Bill which has been passed and assented or deemed to have been assented to in accordance with this Constitution to be published in the Gazette whereupon it shall become law.*

*(4)A Bill passed by the National Assembly and assented to or deemed to have been assented to by the President shall be styled an "Act" and the words of enactment shall be "Enacted by the President and the National Assembly*".

22. The date of commencement of the CRTA Act is 15 April 1959. It would appear from the above that for a piece of legislation to qualify as an Act under the Constitution, it must have been made pursuant to Article 86 and must emanate from a Bill assented to by the National Assembly and be assented to or be deemed to have been assented to by the President.

23. In the light of the above, it could be argued that the CRTA Act does not therefore qualify as an Act for the purposes of Article 120(2) of the Constitution. Should Article 86 be interpreted in such a way that an Act enacted before the coming into force of the Constitution although termed as such would not qualify as an Act under the Constitution?

24. I do not believe that this is the purport of the definition of “Act” and it is obvious that interpreting “Act” as excluding Acts other than those enacted by the procedure set out under Article 86, as would have been the case for all Acts, including the CRTA Act, enacted prior to the coming into force of the Constitution, would lead to an absurd result.

25. In this respect it is relevant to refer to Article 170 of the Constitution which provides for transitional provisions. It reads as follows-

> "*The Transitional provisions specified in Schedule 7 shall have effect notwithstanding anything to the contrary in this Constitution or in the Constitution of Seychelles (Preparation and Promulgation) Act 1992.*"

26. Paragraph 2 of Schedule 7 which is entitled Existing Laws reads as follows-

> "*2. Existing laws*
>
> *(1) Except where it is otherwise inconsistent with this Constitution and subject to subparagraph (2),* ***an existing law shall continue in force on or after the date of coming into force of this Constitution***.
>
> (2) *The Termination of Pregnancy Act, 1981 shall, unless sooner repealed, cease to have effect twelve months after the date of coming into force of this Constitution.*
>
> *(3) Where any matter that falls to be prescribed or otherwise provided for under or for the purposes of this Constitution by or under a written law is prescribed or provided for by or under an existing law, the prescription or provision has, as from the date of coming into force of this Constitution, effect as if it has been prescribed or provided for under or for the purposes of this Constitution by or under a written law enacted pursuant to this Constitution.*
>
> *(4) The President may, by order made at any time before 31st December, 1995, make such amendments to any existing law as may appear to the President to be necessary or expedient for bringing that law into conformity with this Constitution or otherwise for giving effect or enabling effect to be given to this Constitution.*
>
> (5) *The State shall, within twelve months of the coming to force of this Constitution, bring the Seychelles Broadcasting Corporation Act, 1992 into conformity with article 168.(6)An existing law which prescribes any matter required to be prescribed under article 3 or any law enacted for this purpose shall reflect national unity and the spirit of the Preamble of this Constitution.*

(6) *Where any matter that falls to be prescribed or otherwise provided for under or for the purposes of this Constitution by or under a written law is prescribed under article 3 or any law enacted for this purpose shall reflect national unity and the spirit of the Preamble of this Constitution.*"

27. It can be gleaned from paragraph 2 that where it was intended that a piece of legislation was not to apply in the Seychelles, this was specifically spelt out. For example, paragraph 3 made it clear that the Termination of Pregnancy Act 1981 was no longer to be applied. In addition, where provisions of existing laws were considered as repugnant to the provisions of the Constitution, the President was given the express power to amend the said laws to bring them in line with the Constitution. Further, and more importantly, the drafters of the Constitution provided in very clear terms that **existing laws shall continue into force after the coming into force of the Constitution**.

28. It cannot be disputed that the CRTA Act was an existing law at the time of coming into force of the Constitution. Furthermore, it was not amended nor repealed as a result of the coming into force of the Constitution but continued to operate as an Act showing that it was intended that it should continue to exist as such. In the circumstances, being part of the existing law and, above all, being an Act, the CRTA Act must necessarily qualify as an Act under Article 120(2) of the Constitution.

29. In the light of the above, I am of the considered view that the word "Act" in Article 86 of the Constitution must be interpreted as including any Act which was in force prior to the date of the coming into force of the Constitution and that any other interpretation would lead to incongruous results. Therefore, since the CRTA Act qualifies as an Act under the Constitution, its provisions must be given full effect.

30. The next question that needs to be answered is what is the interpretation of the clause "final and conclusive" in section 22(1). It is apposite at this stage to again set out section 22(1). It reads as follows-

*"(1)Any person aggrieved by any decision or order of the Board may appeal to the Supreme Court on a question of law or of fact or of mixed law and fact, and the*

*Supreme may affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Board with the directions of the Court thereon, and may make any orders as to costs and* ***all such orders shall be final and conclusive on all parties****."* [emphasis added]

31. In interpreting any piece of legislation, one should bear in mind that, in line with the doctrine of separation of powers, the role of the courts is to give effect to the intention of the Legislature. The words used in section 22(1) are clear and suffer from no ambiguity so much so that they should be read and interpreted literally; section 22(1) clearly provides that the decision of the Supreme Court in the case of an appeal from the Board is final and conclusive.

32. In this regard, I find it relevant to refer extensively to the old case of **Mayor, & C., of Westminster *v.* Gordon Hotels, Limited [1907] 1 KB** which was an appeal from the decision of a Divisional Court to the Court of Appeal.

33. The section in issue was section 33(2) (s. 33, sub-s. 2) of the Public Health (London) Act, 1891 which provided as follows:

" *If any dispute or difference of opinion arises between the owner or occupier and the sanitary authority as to what is to be considered as trade refuse, a petty sessional Court, on complaint made by either party, may by order determine whether the subject-matter of dispute is or is not trade refuse, and the* ***decision of that Court shall be final***." [emphasis added]

34. In that case, the question for the decision of the Divisional Court was raised by a case stated by one of the magistrates of the Bow Street Police Court, the point being whether the ordinary refuse of a hotel was " house refuse " within the meaning of s. 80 of the Public Health (London) Act, 1891, which the Westminster Corporation, as the sanitary authority, was bound to remove without payment, or " trade refuse," for the removal of which, under s. 33, sub-s. 1, the occupier would be required to pay.

35. In April, 1905, a summons had been taken out by the hotel company against the sanitary authority under s. 80 of the Public Health (London) Act, 1891, for failing to remove the house refuse at the Hotel Metropole ; and a cross-summons had been issued at the instance of the sanitary authority against the hotel company to answer a complaint that a dispute or difference of opinion within the meaning of s. 33, sub-s. 2, of the Public Health (London) Act, 1891, had arisen between the owners and occupiers of the Hotel Metropole and the corporation, as the sanitary authority, as to what was to be considered as trade refuse.

36. The magistrate decided that the refuse in question was " house refuse " which the sanitary authority had failed to remove without reasonable cause, and he convicted and fined them under s. 30, sub-s. 2. On the cross-summons he decided that the subject-matter of dispute was not trade refuse; the sanitary authority being dissatisfied with this decision as being erroneous in point of law, applied for a special case, and a case was accordingly stated for the opinion of the Divisional Court.

37. The Divisional Court (consisting of Lord Alverstone C.J Darling and Bray JJ.) affirmed the finding of the magistrate, but gave leave to appeal on the cross-summons, in order that this question might receive the further consideration of the Court of Appeal.

38. Counsel for the respondents, took the preliminary objection that no appeal would lie either to the Divisional Court or the Appeal Court under the express words of s.33, sub-s.2(1). It was argued that the wording of s.33,sub-s.2, is clear and precise that the decision of the magistrate on this question " shall be final": there was therefore no right of appeal even to the Divisional Court, and the Divisional Court consequently could not give leave to appeal under the Judicature Act, 1894, s. 1, sub-s. 5, for it never had any jurisdiction over this matter… A similar question arose in *Reg.* v. *Hunt* (1) under 7 & 8 Viet. c. 101, where s. 39 makes the decision of the auditor " final " on a bill of costs in certain cases, and the Court held that the words were too clear and too strong for them to allow an appeal by certiorari. A new code is introduced by s. 33, sub-s. 2, which imposes on the magistrate the statutory duty of deciding whether refuse is " trade refuse " or not, and the statute provides that this decision, whether on law or fact, is to be final.

39. The Court of Appeal stated that the question for its decision was whether any appeal lies. The following extracts of the judgments of the Cozens-Hardy Master of the Rolls and Vaughan Williams LJ are of interest-

> " COZENS-HARDY M.R….
>
> …
>
> *After some hesitation I have come to the conclusion that no appeal lies, and that this preliminary objection must prevail.* ***The language of s. 33, sub-s. 2, is so strong that I do not see my way to get out of it****. I will read it. [Having read the sub-section his Lordship continued:—]* ***It is scarcely possible to imagine words more strong, or which apparently more completely negative the right of any tribunal to review a decision of the magistrate.***
>
> …It does certainly seem rather hard that a question of this nature, upon which we are told magistrates have taken different views, and which undoubtedly is one of importance, should not be capable of being brought up for the decision of the High Court or of the Court of Appeal. That, however, is a question of policy which it is not for us to consider. **I think our duty simply is to obey the language of s. 33, sub-s. 2..**"[emphasis added]
>
> "*VAUGHAN WILLIAMS L.J. Very reluctantly I concur.* ***The words in the 2nd sub-section of s. 33 seem to me too strong for us****, and I agree with the argument of Mr. Danckwerts with reference to the case of Reg. v. Bridge. (1)* ***Under those circumstances there is nothing to do but to obey the words of the 2nd sub- section****. I do not feel quite confident myself that Parliament really intended what I cannot help calling a piece of retrograde legislation ; but we have nothing to do with that. We can only judge of what they intended through their words.* ***The words as used do not lead to such an absurd result that we can refuse to construe the words according to their natural meaning.***

*I am therefore of opinion that the preliminary objection should succeed."*[emphasis added]

40. In **Gover v Field [1944] 1 All ER 151**, the appellant was the lessee of a house which became controlled under the Increase of Rent and Mortgage Interest (Restrictions) Act 1939. Before 1939 she had let one room in that house at a rent of 11s 6d per week, but, on the coming into operation of the 1939 Act, the room was vacant and remained so until July 1940, when it was let to the respondent at 10s per week. In 1942 the respondent applied to have the standard rent of the room determined and the county court judge, apportioning the rent under s 12(3) of the 1920 Act, as amended by s 5 of the 1938 Act, determined that the standard rent of the room was 3s 8d per week. In a subsequent proceeding to recover the amount of the rent overpaid, it was contended that the standard rent was wrongly determined.

41. The Act provided that a decision of the county court judge on the question of the apportionment of standard rent shall be **final and conclusive**. The Court held that under section 12(3) of the 1920 Act the apportionment of the standard rent by the county court judge was final and conclusive and could not be questioned on appeal.

42. I also find it apposite to refer to what Lord Denning MR stated in the case of **Pearlman v Keepers and Governors of Harrow School [1979] 1 All ER 365** when considering the issue of jurisdiction -

*"There is an express provision in the 1974 Act which makes the decision of the judge in the county court 'final and conclusive'. It is Sch 8, para 2(2). It applies, among other matters, to the question whether the improvement is one to which the schedule applies. If such a question is not agreed, then '... the county court may, on the application of the tenant, determine that matter, and any such determination shall be final and conclusive'.*

*Those words 'final and conclusive' have been considered by the courts a hundred times. It has been uniformly held that they preclude any appeal to a higher court in the sense of an appeal proper where the higher court reviews the decision of the*

*lower tribunal and substitutes its own decision for that of the lower tribunal: see Westminster Corpn v Golden Hotels and Hall v Arnold. But those words do not preclude the High Court from correcting the errors of the lower tribunal by means of certiorari, now called judicial review.*"

43. Further it is relevant to refer to the following extract from **Page v Hull University Visitor [1993] 1 All ER 97**-

"*In the case of inferior courts, that is courts of a lower status than the High Court, such as the justices of the peace, it was recognised that their learning and understanding of the law might sometimes be imperfect and require correction by the High Court and so the rule evolved that certiorari was available to correct an error of law of an inferior court. At first it was confined to an error on the face of the record but it is now available to correct any error of law made by an inferior court. But despite this general rule Parliament can if it wishes confine a decision on a question of law to a particular inferior court and provide that the decision shall be final so that it is not to be challenged either by appeal or by judicial review. Such a case was Pearlman v Keepers and Governors of Harrow School [1979] 1 All ER 365, [1979] QB 56.*"

44. In **Shell Egypt West Manzala GmbH and another v Dana Gas Eguypt Ltd [2010] 2 All ER (Comm) 442**, the claimants and the defendant entered into an agreement relating to concessions for crude oil and gas exploration. Clause 4 of the agreement provided, inter alia, that any disputes 'arising out of or in connection with this agreement' should be settled by arbitration in London under the UNCITRAL Arbitration Rules. Clause 14.3 provided that the decision of the arbitrators would be 'final, conclusive and binding' on the parties. The arbitrators gave a final partial award in respect of a dispute between the parties. The claimants sought permission to appeal, pursuant to s 69a of the Arbitration Act 1996, on points of law. The defendant applied for an order that the court had no jurisdiction to hear the claimants' application for permission to appeal or any substantive appeal under s 69 of the Act. It was common ground that s 69 permitted the parties to an arbitration agreement to exclude any right of appeal to the court under the section. The issue arose as to whether

the words 'shall be final, conclusive and binding on the parties' in cl 14 excluded the right to appeal.

45. It was held that the phrase 'final, conclusive and binding', **in the context of the instant agreement**, was not to be construed as an agreement excluding the parties' rights of appeal under s 69 of the 1996 Act. In order to amount to such an agreement, **sufficiently clear wording was necessary, albeit no express reference to s 69 was required**. **In the context of a fairly standard governing law and arbitration clause,** such as the instant clause, **the use of the words 'final, conclusive and binding' in isolation would not convey to a reasonable person, with all the background knowledge reasonably available to the parties at the time of the contract, that the parties had agreed to exclude all rights of appeal on points of law under s 69**…

46. I do not consider that the judgment of **Shell Egypt** can be relied upon as an authority for the proposition that, where an Act provides that a judgment shall be final and conclusive, it should be construed that a right of appeal therefrom is still available. In the said case, the words were used in an agreement between the parties and not in an Act of Parliament and the judgment is authority for the proposition that **in an arbitration clause** the phrase 'the decision of the majority of the arbitrators...shall be final, conclusive and binding on the parties' was not to be construed as an agreement excluding the parties' rights of appeal, in relation to a question of law, under s 69 of the Arbitration Act 1996.

47. Finally, I also note that the Court of Appeal in **Adrienne** (supra) relied on the extract from Halsbury's which states that *"[a] provision that an act or order shall be 'final' bars any right of appeal but does not exclude the supervisory jurisdiction of the courts."*

48. In this regard, I find it relevant to refer to the scheme of the CRTA Act. It can be seen from a perusal of the CRTA Act that, pursuant to section 17, the Board before making any order gives all interested parties the opportunity of being heard and of producing such evidence as may seem relevant to the Board. The Board may also examine witnesses and may

summon any person to appear before it and may require such person to produce any document including a document of title which it considers relevant.

49. Thus, the parties are given a full-blown hearing where they have the opportunity of putting forward their respective contentions on the facts and the law before the Board takes any decision regarding any matter which is heard by it. Further, pursuant to section 22(1), a person who is aggrieved by a decision or order of the Board has a right of appeal to the Supreme Court on a question of law or of fact or of mixed law and fact to Supreme Court which under section 22(1) again gives the parties the opportunity of thrashing out all the issues by way of a re-hearing of the case, be it on the facts or in law, before the Supreme Court.

50. Taking all the above into consideration, it makes no doubt that section 22(1) was intended to bar any subsequent appeal to the Court of Appeal. The parties could possibly have a right of recourse to challenge the judgment of the Supreme Court, should grounds for seeking a judicial review be met.

51. For all the reasons given above, I uphold the preliminary objection. The appeal is dismissed. With costs.

K. Gunesh-Balaghee JA

I concur

J. De Silva JA

Signed, dated and delivered at Ile du Port on 3 May 2024.

**ANDRE, JA DISSENTING**

**INTRODUCTION**

[1] The legal dispute between the parties was firstly heard by the Rent Board of Seychelles. The Respondent (Applicant before the Rent Board) had applied for an eviction order against the Appellants (Respondents before the Rent Board) on 3 May 2022. This was done on the basis that there had been a rental agreement between the parties which the Appellants had defaulted on by not paying rent. The application was resisted by the Appellants, who raised three points of law in response. It was submitted that the Respondent had no *locus standi* to bring the action in law because at the time of the conclusion of the agreement, she could have not validly concluded it as she was not the owner of the property. It was their contention that the leased premises belonged to Mr Vital, the deceased husband of the Respondent. It was further submitted that the Respondent was relying on an agreement that was invalid in law given that she could not have been a party to the rental agreement without being the owner of the rental property. Finally, it was submitted that the Appellants had acquired a *droit de superficie* and therefore could not be evicted without compensation.

[2] The Respondent for her part, countered the points of law by submitting that there was a validly concluded agreement between the parties by virtue of the offer and acceptance between the parties. She further submitted that since she was a lessor as defined by the Control of Rent and Tenancy Act, she also had standing to bring a suit against the Applicants. In respect of the *droit de superficie,* the Respondent submitted that there was no evidence of this and neither was there any suit pending before any other court on this matter.

[3] The Rent Board made a finding that the Respondent had no legal capacity when the agreement was signed on 1 August 2017.[1] However, such capacity had been acquired by virtue of a Court order dated 15 November where the Respondent was appointed the

[1] Page 119 of the Court of Appeal Brief.

executor of the estate of Mr Vital. The Rent Board also made a finding that there is a lessor lessee relationship between the parties and therefore a rental agreement.

[4] The Appellants appealed to the Supreme Court, where the learned Judge in CA No. 2 of 2023, confirmed the decision of the Rent Board. On the reliance of Article 1338 of the Civil Code, the learned judge correctly highlighted that if a ground of nullity exists in a contract, this makes the contract voidable.[2] She further stated that while Respondent could have not validly concluded an agreement with the Appellants on 1 August 2017,[3] the voluntary adherence to the terms of the tenancy agreement by the Appellants following the death of the owner of the leased premises, tacitly confirmed the said agreement.[4] This, coupled with the existence of a lessee-lessor relationship enhanced the obligation on part of the Appellants to pay rent.[5] Therefore there was a valid agreement and the Respondent has *locus standi* to bring an action as she did before the Rent Board. The appeal was dismissed.

[5] The Appellants now appeal against a decision taken by the Supreme Court in CA No. 2 of 2023 setting out four grounds of appeal which read as follows:

> *GROUND 1*
>
> *The learned trial Judge having made a finding that the Respondent lacked the legal capacity to enter into the lease agreement with the Appellants in terms of Article 1108 of the Civil Code 2020 should have allowed the appeal and she committed an error of law when she failed to do so.*
>
> *GROUND 2*
>
> *The learned trial Judge's finding that the Appellants' conduct upon the death of Mr. Philip Vital and upon the Respondent becoming owner of the Premises to be consistent with tacit confirmation or ratification of the Agreement is erroneous in*

[2] Paragraph [31] of the impugned judgment.
[3] Paragraph [32] of the impugned judgment.
[4] Paragraphs [36] – [39] of the impugned judgment.
[5] Paragraph [43] of the impugned judgment.

*law and in fact in that the Appellants' conduct do not have any legal effect of making an otherwise illegal and defective agreement in law, lawful and valid.*

*GROUND 3*

*The learned trial Judge erred in law when she made a finding that the tenancy created under the Agreement is valid as the Respondent clearly lacked the legal capacity in terms of article 1108 of the Civil Code to enter into the Agreement with the Appellants.*

*GROUND 4*

*The learned trial Judge erred in law when she made a finding that the Respondent has locus standi to bring the action against the Appellants in law.*

[6] The parties have submitted their respective heads of arguments which I recount below in summary form.

[7] The Appellant submitted that the learned Judge should have allowed the appeal after making a finding that the Respondent lacked legal capacity to enter into the lease agreement. It was further submitted that where respondent lack the capacity to enter into an agreement, then the same lacks *locus standi* to bring any action in law. This was further substantiated by noting that the respondent could not have had any *locus standi* since she was claiming legal capacity from a defective and improperly executed lease agreement. The Appellant further submitted that that the conduct of the appellants cannot validate an otherwise defective lease agreement. It is the Appellants' prayer that this Court allow the appeal and declare that the lease agreement was invalid on law as it did not meet the requirements of Article 1108 of the Civil Code, and therefore failed to create legal obligations under Article 1134 and 1135 of the Civil Code.

[8] The Respondent submits a point of law to the effect that a party cannot appeal a decision of the Supreme Court when the said decision is as a result of the Supreme Court exercising its appellate jurisdiction in a matter from the Rent Board. Learned counsel submits that this has already been decided by this Court in ***Adrienne v Shelly Beach Properties Ltd*** **(SCA**

**10 of 1999) [1999] SCCA 7 (17 December 1999).** In that case, this Court relied on Section 22 (1) of the Control of Rent and Tenancy Agreements Act (CRTA) Act to conclude that it had no jurisdiction to hear an appeal against the decision of the Supreme Court in its capacity as an appellate court from the Rent Board. On this basis, the Respondent submits that this Court must decline to hear the appeal and subsequently dismiss the appeal.

[9] Apart from the point of law, the Respondent has addressed this Court on the merits of the appeal and maintain for the most part that the learned Judge correctly applied the law to uphold the decision of the Rent Board.

**PRELIMINARY OBJECTIONS BY THE RESPONDENT**

[10] Learned counsel refers this Court to Section 22 (1) of the Control of Rent and Tenancy Agreements Act which provides as follows:

> Any person aggrieved by any decision or order of the Board may appeal to the Supreme Court on a question of law or of fact or of mixed law and fact, and the Supreme affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Board with the directions of the Court thereon, and may make any orders as to costs and all <u>such orders shall be final and conclusive on all parties</u>.

[11] This provision has been previously interpreted by this Court in *Adrienne v Shelly Beach Properties* and it made the following main findings. To begin, the Court held that it did not have the jurisdiction to hear an appeal from the Supreme Court since that court's decision by virtue of the above cited provision. The Court ventured into Article 120 (2) of the Constitution and Section 12 (1) of the Courts Act to show how Section 22 (1) of the Control of Rent and Tenancy Agreement Act was a limitation to the right of appeal already anticipated by the Constitution and Courts Act. Further, it was held that even if a party would argue that there is nullity in the decision of the Supreme Court, this Court is not vested with any supervisory jurisdiction powers over the Supreme Court. Accordingly, the Court declined to hear the appeal on its merits and dismissed the Appeal.

[12] Counsel for the Appellant submitted that Section 22(1) of the CRTA Act cannot oust the jurisdiction of the Court of Appeal to hear a matter that comes from the Rent Board. He added that Section 22(1) is inconsistent with Article 120(1) and (2), which gives a person the right of appeal. He further submitted that Section 22 (1) of the CRTA Act has the effect of denying a person of the constitutional right to appeal and that because of this, it is a void provision that ought to be struck down by this Court. Further to this, learned counsel emphasised the principle of constitutional supremacy and maintained that Section 22 (1) CRTA is inconsistent with the constitution and should be struck out on that basis.

[13] I am inclined to disagree with the Court in *Adrienne v Shelly Beach Properties Ltd* for reasons I explain below.

[14] The interpretation of the terms "final and conclusive" has varied across different jurisdictions over time. In English and Commonwealth case law, the question of whether the phrase "final and binding" effectively excludes further appeal has been debated. Authorities such as the Australian case of ***White Constructions (NT) Pty Ltd v Mutton* (1988) 91 FLR 419** and the Canadian case of **Labourers International Union of North America (LIUNA), Local 183 v Carpenters and Allied Workers Local 27 (1997) 34 OR (3d) 472**, have affirmed its effectiveness as an exclusion provision. Conversely, other Commonwealth cases like ***American Diagnostica Inc v Gradipore Ltd* [1998] 44 NSWLR 312, and *Angela Raguz v Rebecca Sullivan* [2000] NSWCA 240** have suggested the contrary. Despite the Court in *Adrienne v Shelly Beach Properties Ltd* endorsing the former interpretation, I find myself in disagreement with that interpretation.

[15] I base my discontent with Court in *Adrienne v Shelly Beach Properties Ltd* ruling on more recent case law including ***Essex County Council v Premier Recycling Ltd* [2006] EWHC 3594 and *Shell Egypt West Manzala v Dana Gas Egypt Limited* EWHC [2010]**. Herein, the courts reviewed some of the Commonwealth authorities, and considered that the words "final and binding" were insufficient by themselves to amount to an exclusion of the right of appeal, although whether a clause containing those words would operate as an exclusion would depend on the remainder of the relevant clause.

[16] The contract in *Shell Egypt* (supra) included an arbitration agreement. The arbitration agreement stated that the arbitration tribunal's award would be "final, conclusive and binding on the parties". The question was, did this wording mean that the unsuccessful party to an arbitration could appeal to the court pursuant to section 69(1) of the Arbitration Act 1996 on a point of law? Section 69(1) of the Arbitration Act 1996 states that:

> Unless otherwise agreed by the parties, a party to arbitral proceedings may… appeal to the court on a question of law arising out of an award made in the proceedings.

[17] The Court in *Shell Egypt* stated that

> …although, on their face, the words "final, conclusive and binding upon them" are words of considerable width, which might, in an appropriate context, appear to be sufficient to exclude a right of appeal, the reality is that the expression "final and binding", in the context of arbitration, and arbitration agreements, has long been used to state the well-recognised rule in relation to arbitration, namely that an award is final and binding in the traditional sense and creates a res judicata between the parties …that the finality and binding nature of an award does not exclude the possibility of challenging an award, by any available arbitral process of appeal or review or otherwise
>
> ... As stated at page 342 of the 2001 Companion to Mustill and Boyd's The Law and Practice of Commercial Arbitration in England, Second Edition, this provision was inserted because the reference to finality…was sometimes assumed "wrongly" to exclude the possibility of challenging an award.
>
> To some extent the meanings conveyed by each of the three words overlap; but this does not, in my view, point to a conclusion that the clause, let alone the word "conclusive", should be construed as an agreement to exclude rights of appeal. …
>
> An award can be said to be "binding" in that each party promises to abide by the award and to perform it; it is not a mere expression by the arbitrator of his view as to the referred dispute, which a party is at liberty to disregard.
>
> An award is "final" in the sense that the successful claimant is precluded by the award from bringing the same claim again in a fresh arbitration or action. An award can be said to be "conclusive" of issues of fact and law, in that an award prevents a party in a subsequent arbitration or claim from disputing for a second time an issue of fact or law on which he has failed.

Moreover an award can also be said to be "conclusive" in that it precludes a party from reopening in a later dispute individual issues of law or fact which had been necessarily decided by the award.

In Corner v C and C News Pty Ltd (unreported, 17th of March 1989, (Supreme Court of New South Wales)), Yeldham J, obiter, said as follows at page 5:

> "Although, on the face of it, the words final, conclusive and binding upon them, being words of considerable width, would appear to be sufficient to exclude a right of appeal, the reality is that the expression final and binding is to be found in s28, and in the old Arbitration Act 1902 in the second schedule, as well as in s16 of the Arbitration Act 1950 (UK). Such expression was employed to bring finality, subject to well-recognised methods of challenging awards, to arbitral proceedings.
>
> Certainly, such expressions (and the word 'conclusive' does not alter the situation) do not constitute an attempt to oust the jurisdiction of the court see Ford v Clarkson's Holidays Limited [1971] 1 WLR 1412.
>
> I think it is correct to submit…that the words here employed….merely restate what has long been the rule in relation to arbitrations, namely that an award is final and binding in the traditional sense, and such an award creates a res judicata and an issue estoppel, subject to judicial review by the court.

[18] The essence of this case law is that the terms "final, conclusive, and binding" traditionally used in arbitration contexts do not inherently exclude the possibility of appealing or challenging an arbitration award. These terms are typically understood to mean that an arbitration award is definitive and obligates the parties to comply with it, acting as a res judicata to prevent the same claims from being litigated again. However, such finality does not prevent the arbitration award from being subject to established legal processes for review or appeal. This interpretation is supported by historical usage in various legal statutes and affirmed by case law, which indicates that these terms do not strip the court of its jurisdiction to review such awards. The words are meant to ensure that arbitration results are treated with the same respect and finality as court judgments, thereby providing closure and resolution to the dispute while still allowing for judicial oversight where necessary.

[19] While the referenced case law primarily concerns arbitration contracts, its interpretations can also be applied to legislative drafting and interpretation. Beyond the CRTA Act, the phrase 'final and conclusive' appears in various other pieces of Seychelles legislation. It is evident from these instances that the legislators did not intend to eliminate the appellate review process through the use of this language. Case in point, section 3(3) of the Foreign Judgments (Reciprocal Enforcement) Act provides that

> a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court

[20] In the context of the terms "finality" and "conclusiveness", this provision underscores that a judgment is treated as definitive and enforceable from the moment it is issued, even if it might later be contested or reversed on appeal. This differs from how "final" and "conclusive" has been interpreted in *Adrienne v Shelly Beach Properties Ltd* (supra), where these terms might suggest an absolute end to dispute resolution without further recourse. Here, the provision recognizes the practical need for a judgment to have immediate effect, maintaining legal certainty and allowing parties to act on the decision, while still preserving the right to appeal. Essentially, it balances the enforcement of judgments with the opportunity to challenge them, ensuring that the judicial process is both efficient and fair. So the words used ‘final’ and ‘conclusive’ as used in this section 3(3) of the Foreign Judgments (Reciprocal Enforcement) Act do not exclude any appeal attempts. So why should the same words work differently under the CRTA Act?

[21] Additionally, Section 336 of the Criminal Procedure Code exemplifies another situation where the terms 'final and conclusive' do not eliminate the possibility of appealing the given order. It provides that:

> The Supreme Court shall hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Magistrates’ Court with the opinion of the Supreme Court thereon, or may make

such orders as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties:

[22] Should we then submit that the Supreme Court is the highest appellate court in such criminal matters? Most certainly not. The use of these words is only meant to be interpreted in the traditional sense and create a res judicata between the parties as stated in the Shell Egypt case (supra). For if the legislature had intended to oust the appellate jurisdiction of such orders, they would have been clear and unequivocal in their drafting. If any act or other law or agreement intends to bar or restrict a person's constitutional right to appeal to this Court pursuant to Article 120(2), such law or agreement should be drafted in clear terms.

[23] As demonstrated in the *Shell Egypt* and *Essex County Council* cases (supra), a restriction on the right to appeal must be explicitly stated in the law or agreement. The intention to preclude appellate review must be unmistakably clear, either through express terms or discernible from the context. In the case of the CRTA Act, the use of 'final' and 'conclusive' does not definitively preclude appeals to the Court of Appeal. A clear manifestation of this point is seen in the case of **Arab-African Energy Corporation Limited v Ollyer Production Netherland BD (1983) 2 Lloyd's Reports 419** where court found that the wording in what is now Article 28.6 of the International Chamber of Commerce Rules was a valid and clear exclusion clause. It provides in clear language that:

> The parties shall be deemed to have undertaken to carry out the resulting award without delay and have waived their right to any forms of appeal insofar as such waiver can validly be made.

[24] Such language is clear and manifests the drafter's intention unequivocally. Minus such clear intention in the CRTA Act, I cannot conclude that the appellate jurisdiction of this court was ousted by section 22(1). When dealing with statutory interpretation, a legislative provision should be given its literal meaning unless such an interpretation would 'lead to some difficulties, if not absurdity'. (See **Reginald Rose & Anor v Alois Hoareau (Pty)**

**Ltd (SCA 5 of 1992) [1993] SCCA 7 (31 March 1993) at page 11.)** If the literal interpretation of a legislative provision would lead to an absurdity, a court can adopt a purposive approach **(Telecom (Sey) Ltd v Comm. Of Taxes (SRC) SCA 19 of 2013) [2015] SCCA 22 (28 August 2015) para 25).** As the Court of Appeal held in **Simeon v Republic (2010) SLR 195**, one of the cannons of statutory interpretation is that penal statutes should be interpreted strictly. The Court added that:

> Another well-recognized cannon of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision, the court should adopt the literal construction if it does not lead to an absurdity. We must not lose track of the maxim *'absoluta sententia expositore nonindiget*', which means that language that is unequivocal and unambiguous does not require an interpreter, in other words, plain words need no explanation. (at page 5)

It added that:

> The Court cannot, while applying a particular statutory provision, stretch it to embrace cases, which it was never intended to govern. In interpreting a statute, the Court cannot fill gaps or rectify defects. Undoubtedly, if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court would not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add or mend, and by construction, makeup deficiencies which are there.

[25] In light of the above-cited cases, I find that it is not within the judicial purview to stretch or alter the scope of a statute beyond its intended application or to correct legislative oversights. Therefore, unless the language of the Control of Rent and Tenancy Agreement Act explicitly eliminates the possibility of an appeal to the Court of Appeal, which it does not, the terms "final and conclusive" cannot be construed to deny the right of appeal. Hence,

in my opinion, the CRTA Act's reference to decisions being "final and conclusive" is not sufficient to preclude the appellate process to the Court of Appeal.

[26] Additionally, for context, when considered alongside other local statutes such as the Foreign Judgments (Reciprocal Enforcement) Act and the Criminal Procedure Code, which contain similar language, it is evident that the legislature did not intend to eliminate the constitutional appellate process to the apex court by the use of the words 'final' and 'conclusive'. Reference was simply made to the traditional meaning of the words in such settings where they serve to operate as res judicata. Therefore, I find the preliminary objection raised by the Respondent to be without merit.

[27] Before us lies the question of adherence to past precedent within this Court of Appeal in the ***Adrienne v Shelly Beach Properties Ltd*** case. It is well established through judicial principles and precedent that while courts generally follow previous decisions to ensure consistency and predictability in law, they are not inexorably bound to do so when circumstances or fundamental justice mandate departure. In the seminal case of **Young v. Bristol Aeroplane Co Ltd [1944] KB 718**, the Court of Appeal of England and Wales itself recognized exceptions to the rule of stare decisis, notably where its previous decisions have been implicitly overruled by the Supreme Court or where they conflict with each other. This case was cited with approval by this court in the case of **Wavel John Charles Ramkalawan v Lizanne Reddy and Michel Bernard Selwyn Gouffe SCA 07/2016.** Further, as observed in **Davis v. Johnson [1979] AC 264,** it is permissible for this Court to depart from its earlier decision when it is right to do so, to rectify past errors or adapt to changing conditions. Thus, the doctrine of precedent does not compel blind adherence but rather invites a reasoned application that respects the dynamic nature of law and its context. Accordingly, this Court holds that it is not bound by its previous decisions and will diverge from them when justice, legal evolution, or coherence of the legal system unequivocally requires it. However, this does not grant the Supreme Court or any other court the liberty to challenge the considered judgments of the Court of Appeal as freely. Even this apex Court exercises restraint and proceeds with caution when revisiting its own precedents.

[28] Based on the above findings, I will proceed to consider the merits.

**MERITS OF THE APPEAL**

[29] Having considered the four grounds of appeal and the heads of arguments submitted by the Appellants, I consider that the main legal question is whether or not there was a valid agreement between the parties. If there was/is one such valid agreement, then it follows that the appellant would have the *locus standi* to bring a claim as she did firstly before the Rent Board. If, however there is no valid agreement, then any *locus standi* ceases to exist.

[30] It is the contention of the Appellants that once the learned Judge had found that there was no legal capacity on part of the Respondent, she ought to have allowed the appeal in favour of the Appellants.

[31] I am minded to delve more into what is 'capacity' as contemplated by Article 1108 (b) of the Civil Code. Learned counsel for the Appellants maintains the argument that capacity is the Respondent's standing in respect of the premises she leased to the Appellants and the same of which she lacked at the creation of the agreement. The Rent Board and learned Judge in the court below accepted this argument and found that the Respondent had no legal incapacity to enter into a rental agreement because the leased premises did not belong to her at the time of the signing of the agreement.

[32] But, what is capacity or legal capacity to enter into a contract? The unanimous Court in ***Adeline v Talma* (SCA 19 of 2021; SCA 20 of 2021) [2023] SCCA 23 (26 April 2023)** observed (at paragraph [23]) that where a party to a contract is of feeble-mind, this goes to the heart of his/her capacity to contract. This is informed by Article 1124 of the Civil Code which lists those who have legal incapacity to enter into agreements, namely wards and those under a supervision order.

[33] There are some cases which seem to suggest that capacity is not limited to that which is provided by Article 1124 of the Civil Code. Arguably, capacity as contemplated by Article 1108 also includes that which is related to legal standing in respect of an object to the contract, and also legal personality to enter into a contract.

[34] For example, in ***Maeschig v Colling* SCA 11/2004 SLR 293**, the Court of Appeal held that an executor has no capacity to enter into agreements until his appointment is confirmed by

a court. The agreement was subsequently declared null and void. Clearly, this was done on the basis that the executor without being confirmed by the court, could not validly conclude the agreement because he would be neither the owner nor agent of the owner and thus lacking the capacity to validly conclude an agreement.

[35] In ***University of Sey v Ag*** **(SCA 11 of 2013) [2015] SCCA 16 (16 April 2015)** this Court determined the correctness of the court a quo's finding that the Appellant had no legal personality and could not be capable of entering into a contract with the Respondent. In my view, this was certainly a capacity issue and lack thereof would mean the agreement between the parties was void on account of the Appellant having no legal personality and therefore incapable of entering into a contract. The Court decided that since the Appellant was a Charter (equivalent to Royal Charter in the United Kingdom) it had the legal personality to enter into agreements, to sue and be sued.[6] In essence, the Appellant had capacity to enter into an agreement by virtue of having legal personality conferred to it by the State and not necessarily by the Companies Act.

[36] In view of the above Court of Appeal authorities, capacity in the Civil Code of Seychelles is broader than that which is otherwise provided in the Code Civil of France.

> **Article 1123 of the Civil Code of Seychelles**
>
> *Every person may enter into a contract unless subject to <u>some legal incapacity</u>.*
>
> **Article 1123 of the Code Civil of France**
>
> *Toute personne peut contracter si elle n'en est pas déclarée incapable par la loi.*

[37] The Seychelles Code refers to 'some legal incapacity' which includes a plethora of things such as that listed in Article 1124 of the Civil Code and those things such as legal personality and ownership or control over an object of the contract as the Court of Appeal judgments of *Maeschig v Colling* and *University of Sey v Ag* (supra) provide. The Code Civil on the other hand translates to '*Any person may enter into a contract unless declared*

[6] At paragraph [27].

*incapable of doing so by law*.' This means the law itself will provide who has legal incapacity and therefore limit how 'capacity' in Article 1108 should be interpreted. This however is not the case in Seychelles as capacity is afforded a wider interpretation by virtue of the words 'some legal incapacity' and certainly, as previous case law provides.

[38] If an entity does not have legal personality, it is incapable of entering into a contract. But assuming the entity it does enter into an agreement of some sort, on what basis can the said agreement be challenged on if not on the basis of lack of 'capacity' under Article 1108? Similarly, if a person enters into an agreement with a thing that neither belongs to him/her nor with the necessary mandate to do so (power of attorney etc), surely he/she does not have capacity as contemplated in Article 1108 of the Civil Code.

[39] A contract which lacks one of the conditions listed in Article 1108 can render it *nullité relative* (voidable) or *nullité absolue* (void ab initio).[7] In my view lack of capacity can make a contract *nullité relative* or voidable as Article 1125 provides for those identified in the preceding Article 1124, namely wards and those under a supervision order. Such a contract is only voidable at the instance of the person who lacks the capacity to contract (see generally ***Uzice v Provincial* (1975) SLR 235**). The logic for this is to protect persons who are considered to be in a disadvantageous position in comparison to the other based on their qualities. However, in respect of capacity related to legal personality and ownership or control over an object of the contract, this does not necessarily mean the one who lacks it is at a disadvantage comparable to wards and those under a supervision order. Therefore, in that instance, either of the parties can certainly raise this incapacity for their case.

[7] See generally the remarks by Twomey CJ (as she was then) in *Ailee Development Corporation & Anor v Lincoln* (MA 72/2020 (arising in CS 27/2008)) [2020] SCSC 608 (18 September 2020) at paragraph [32] where she stated that:
*"…Traditionally, French law has viewed a contract as a living person composed of organs. These organs can be defective. Where the basic conditions for a contract are not met, the private agreement between the parties essential to bringing the contract to life is stillborn. In this case nullity of the contract is absolute. However, when there exists a contract between the parties but there is a defect in the sense of error, fraud or duress the contract is only sick and therefore can be cured. In this case the nullity is relative. Although it is not clear, it would appear that generally a contract is void or annulled (nullité absolue) where it infringes the law or public policy but is voidable (nullité relative) where it affects private interests only. In this context the concepts of absolute and relative nullity may be compared to the English concepts of void and voidable (irregular) contracts."* (Footnotes omitted)

[40] In the present case, the Appellants raised the legal incapacity of the Respondent and that this means the agreement between them falls short of all four conditions required by Article 1108. I agree that the Respondent does have 'some legal incapacity' to enter into an agreement as she did. I am strengthened in my view because of the rule '*nemo dat quod non habet'*. Indeed, if the Respondent: (i) did not own the premises; (ii) did not have the power of attorney to act on behalf of the owner; or, (iii) was not an agent of the owner - she could have not validly concluded the rental agreement with the Appellants. The agreement was therefore void ab initio.

[41] I am strengthened in my view that the agreement is void when I take into account the highly persuasive judgment of this Court in *Maeshig v Colling* (supra) where an agreement was considered null and void ab initio on the basis that the executor at the time of the conclusion of the agreement, had no legal capacity to enter into an agreement because he had not been confirmed by the Court as one at the time of concluding the agreement. Following this precedent, the Respondent in the present case did not have any capacity to enter into an agreement with an object she was neither the owner nor agent for. Therefore, the rental agreement null and void ab initio. With this, the learned Judge was correct to have held so as she did in paragraph [33] of the impugned judgment.

[42] I note that in paragraph [30] of the impugned judgment, the learned Judge made reference to Article 1338 of the Civil Code which reads:

> 1338.(1) A document of confirmation or ratification of an obligation which is, by law, subject to an action for nullity or rescission is valid only if that document contains the substance of that obligation, a reference to the cause of the action for rescission and the intention to rectify the defect upon which that action is founded.
>
> (2) In the absence of a document of confirmation or ratification, it is sufficient if the obligation is performed voluntarily after the period during which the obligation was capable of being validly confirmed or ratified.
>
> (3) The confirmation, ratification, or voluntary performance in the form of, and during the period determined by, the law carries with it the waiver of the defences and denials that could be pleaded against that document, without prejudice to the rights of third parties.

(4) The respective rights of the parties under this article shall not be affected by the fact that a bill of exchange is drawn or endorsed by a minor or a corporation.

[43] From this, she went on to highlight how the voluntary performance of the agreement was tacit confirmation of the agreement.[8]

[44] As I have highlighted earlier, the contract between the parties was void ab initio for lack of legal capacity on part of the Respondent. Such a contract is not subject to an action of rescission or nullity contemplated in Article 1338 of the Civil Code. Therefore, the learned trial judge wrongly applied Article 1338 of the Civil Code and her subsequent findings that the agreement between the parties confirmed the agreement. Ground 2 therefore partially succeeds as the finding on tacit conformation was as a result of a wrongly applied provision of Article 1338 of the Civil Code.

[45] Although Ground 2 partially succeeds, Grounds 1 and 3 which are closely related to it cannot succeed for reasons I explain below.

[46] It is the Appellant's position by Ground 1 that following a finding that there was no legal capacity to enter into an agreement, the learned Judge ought to have allowed the Appellant's appeal. Similarly, it is the Appellant's contention in Ground 3 that the tenancy agreement is invalid and a finding stating otherwise is incorrect.

[47] The Respondent referred this Court to the case of ***Multichoice Africa Holdings BV & Anor v Intelvision Limited*** **(CS 46/2020) [2021] SCSC 873 (7 April 2021)** where the court held that: "*With regard to contacts in general it is established law that acceptance can be express or by conduct … and contract can come into existence as a result of a performance of obligations* -". Further to this, learned counsel referred the Court to the same judgment where the court referred to the case of ***G Percy Trentham Ltd v Archital Luxfer Ltd*** **[1993] 1 Lloyd's Rep 25** which held that: "*the fact that a transaction was performed on both sides will often make it unrealistic to argue that there was no intention to enter into legal relationships*." With this authority, it was submitted that in the present case both the Appellants and the Respondent have been acting in pursuit of the terms contained in the

[8] Paragraph [39] of the impugned judgment.

rental agreement for approximately 2 to 3 years. It was further submitted that it is only much later when it was time for the tenants to pay and the free period had run out, that the Appellants suddenly start taking an issue with the agreement.

[48] The learned appellate Judge in the Supreme Court upheld the findings of the Rent Board that there was a landlord-tenant relationship between the parties. This however was done on the basis that there has been voluntary execution under Article 1338 of the Civil Code, which I have earlier held inapplicable to this particular case. Be that as it may, I would venture into the legal construction by the Rent Board (which was upheld by the learned appellate Judge) that there existed a landlord-tenant relationship between the parties.

[49] It was on the reliance of the definitions of 'lease', 'lessee' , 'lessor' and 'rent' in Section 2 of the CRTA that the Rent Board was satisfied that there existed a landlord and tenant relationship between the parties. The Rent Board went further to highlight that the law does not require the existence of a formal lease agreement to prove the existence of a landlord and tenant agreement.[9] Further to this, the Rent Board held that the Appellants have always understood that they will have rent to pay for their occupation of the leased premises while the Respondent expected to receive a monthly rent of SCR 5,000 monthly.[10] Moreover, the Rent Board highlighted that there was no valid justification to deny the existence of a valid landlord and tenants relationship between the parties and rental payments ought to have commenced from SCR 5,000 per month.[11]

[50] On a careful reading of the proceedings and evidence before me, I do not see how I can differ from the reasoning of the Rent Board and later affirmed by the learned appellate Judge in the court below. While the Building and Rental Agreement (exhibited before the Rent Board as Exhibit A2) was void ab initio as I have earlier held, the subsequent actions of the parties showed that there was a landlord and tenant relationship. It would be repugnant to justice to find otherwise as the Appellants knew they ought to be paying rent but neglected to do so. The Appellants cannot at the instance of legal proceedings having

[9] Paragraph [28] of the Rent Board of Seychelles Ruling, found on page 121 of the brief.
[10] Paragraph [28] of the Rent Board of Seychelles Ruling, found on page 121 of the brief.
[11] Paragraph [28] of the Rent Board of Seychelles Ruling, found on page 121 of the brief.

been instituted against them, argue that there was never an agreement between them and the Respondent.

[51] When the Respondent's position changed to executor of the estate of her late husband and subsequently the owner of the rented premises pursuant to a Will, she attained the necessary capacity to enter and conclude a rental agreement with the Appellants. From the time the Respondent had capacity, the conduct between the parties created legal relations and was capable of being classified as a landlord and tenant relationship. For example, the Appellants stayed on the premises paying rent, and agreed to do some construction which would later result in the reduction of rent to meet that cost. Furthermore, when the Appellants received the letter of renewal of the rental agreement dated 7 October 2020, they did not reject any idea or suggestion of creating further legal relations with the Respondent. It would be repugnant to justice for this Court to consider that there was no legally binding and enforceable agreement when two things are clear. Firstly, there existed a landlord and tenant relationship that subsisted at least as of 15 November 2015 when the Respondent was confirmed as executrix to the estate of her late husband (the owner of the rented premises), Secondly, there continued to be a landlord and tenant agreement when the Respondent became the owner of the same rented premises following the last Will and testament of her deceased husband.

[52] Therefore, Grounds 1 and 3 have no merit.

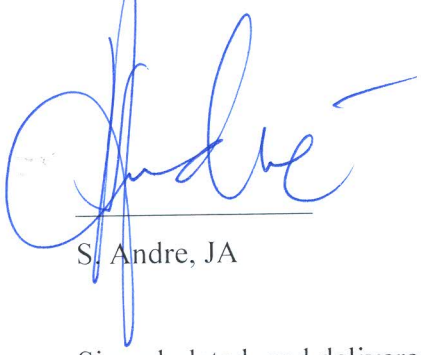
[53] Given that there was a landlord and tenant relationship, and therefore an agreement between the parties, it stands to reason that the Respondent had *locus standi* to bring an action against the Appellants as she did. Therefore, ground 4 has no merit.

**DECISION**

[54] Based on the above findings, the appeal is hereby dismissed.

[55] The orders of the Supreme Court are hereby affirmed.

[56] Costs awarded in favour of the Respondent.



S. Andre, JA

Signed, dated, and delivered at Ile du Port on 3 May 2024