

# **IN THE SUPREME COURT OF SEYCHELLES**

MARCEL SERRET

APPELLANT

VERSUS

MARIE-FRANCE SERRET

RESPONDENT

Civil Appeal No 8 of

2007

Mr. W. Herminie for the Appellant

Miss. L. Pool for the Respondent

## **JUDGMENT**

**Perera J**

This is an Appeal against an order made by the Family Tribunal on 9<sup>th</sup> April 2007. The Appellant was the Respondent to an application made by the present Respondent before that tribunal under the provisions of the Family Violence (Protection of Victims) Act, 2000. The Tribunal, by judgment dated 16<sup>th</sup> October 2006 ordered the eviction of the Appellant for a period of 6 months from 18<sup>th</sup> October 2006, that is, up to 18<sup>th</sup> April 2007.

However, on 18<sup>th</sup> October 2006, the Tribunal, presided by three members, stayed the order made two days earlier on 16<sup>th</sup> October 2006. That order was signed by only one member of the Tribunal. On that day, the Applicant was present and the Respondent (present Appellant) was represented by Mr Dodin, Attorney at Law.

The present Respondent filed an Appeal against that stay order, and the Supreme Court by judgment dated 7<sup>th</sup> March 2007 set aside that order on the ground that it was invalid inasmuch as it had been signed only by a single member. In this respect, Section 78(5) of the Children (Amendment) Act no 4 of 1998 provides that – “A sitting of the Tribunal shall be presided by the Chairman or the Vice-Chairman who is a legal Practitioner as specified in Section 77(2) and there shall at each sitting be both a man and woman member of the Tribunal. It is to be noted that when the Tribunal is properly constituted, any order, decision or judgment recorded should be signed by all the members who constituted the bench, as it is in signing and dating such order, decision or judgment that it would be considered as having been entered. The record of the Family Tribunal shows that the three members have signed the record in agreement with that order. Although Section 78 A (5) permits the Tribunal to establish its own procedure for the hearing or determination of any matter falling under its jurisdiction, yet Sub Section (6) provides that a decision of the Tribunal is enforceable as if it were a decision of the Supreme Court. Hence it would be more appropriate that all three members signed any typed order issued by the Tribunal Office, or that it be shown thereon that they signed that order. The judgment of the Supreme Court therefore restored the status quo of the order of the Family Tribunal dated 16<sup>th</sup> October 2006, and the protection order evicting the Appellant up to 18<sup>th</sup> April 2007 became operative.

On 18<sup>th</sup> April 2007, the Tribunal, acted on the previous order of 9<sup>th</sup> April 2007 extending the protection order to 18<sup>th</sup> September 2007, which was set aside by the Supreme Court, and issued warrant of arrest on the Appellant returnable on 20<sup>th</sup> April 2007. On that day the Appellant's Counsel, who was present with the Appellant, was advised to file proper documents to canvass the order of 9<sup>th</sup> April

2007. In the meantime, the order to extend the protection order up to 18<sup>th</sup> September 2007 was maintained.

It is in these circumstances that the present Appeal was filed. The grounds of Appeal urged are as follows-

*“1. The Tribunal was wrong to order the eviction of the Appellant from the matrimonial home when there was no valid and fresh application before them.*

*2. The order of the Tribunal dated 16<sup>th</sup> October 2006, which the Supreme Court stated was the valid order, expired on 18<sup>th</sup> April 2007.*

*That after the 18<sup>th</sup> April 2007, the Respondent had to apply “de nouvo” for an eviction order against the Appellant. No such application was ever made.”*

The relief sought is that the Appellant be allowed to remain in occupation of the matrimonial home. Considering the three ground cumulatively, Section 4(5) (a) and (b) of the said Act provides that –

“(5) A Protection Order-

- (a) *shall be valid for the period specified in the order,*
- (b) *shall not, in any event, be for a period of more than 24 months”.*

Hence, pursuant to Sub Section (a), the initial order of 16<sup>th</sup> October 2006 was valid only up to 18<sup>th</sup> April 2007. However on 9<sup>th</sup> April 2007, the Tribunal ordered the Appellant to vacate the matrimonial home and extended the protection order to

18<sup>th</sup> September 2007, although the Appellant who was present, told the Tribunal that he had nowhere to go and that the house belonged to him. The grievance of the Appellant in this Appeal is that there was no fresh application for extension of the order of 16<sup>th</sup> October 2006. Section 3(11) and (12) of the Act are as follows-

“(11) Where there is a protection order in force, *either party or the person for whose benefit the order was made may apply to the Tribunal for a variation or revocation of the order and Subsection (2) (b) to (c) shall have effect for the purposes of an application under this Sub Section.*

(12) *The person applying for the variation or revocation of a protection order shall cause a copy of the application to be served on the other party and the Tribunal shall, before varying or revoking the order, allow all the parties affected by the order a reasonable opportunity to be heard and shall have regard to the matters specified in Sub Section (10)."*

The record of proceedings of the Tribunal shows that Sub Section (12) was complied with. A written application was made on 26<sup>th</sup> March 2007. A notice dated 28<sup>th</sup> March 2007 was served on him on 5<sup>th</sup> April 2007 for attendance on 9<sup>th</sup> April 2007. He appeared before the Tribunal and gave reasons why he had failed to vacate the house. Hence, although ground 2 is factually correct, grounds 1 and 3 have no merit.

There was therefore compliance with Sub Section, (12) and consequently the order dated 9<sup>th</sup> April 2007, which was based on a fresh application dated 26<sup>th</sup> March 2007 was binding on the Appellant. The Appeal is therefore dismissed.

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A.R. PERERA

**JUDGE**

Dated this 5<sup>th</sup> day of October 2007