

REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT
VICTORIA

Civil Side No. 214 of 2010

Libyan People's Bureau

Applicant

Versus

Fouhan Enterprises (Pty) Ltd

Respondent

Pesi Pardiwalla for the Applicant

Frances G Bonte for the Respondent

RULING

Egonda-Ntende, CJ

1. This is an application in which the applicant is seeking leave of court to file an appeal against the decision of the Rent Board out of time. The application is supported by an affidavit sworn by Mr. Danielle Belle, an attorney that appeared for the applicant before the Rent Board. The respondent opposes this application and an affidavit sworn by its attorney, Mr. Bonte was filed, in support of its stance.
2. The brief facts of this matter are that there was an application before the Rent Board brought by the current respondent against the current applicant. The applicant contended in a plea in *limine* that it enjoyed immunities from action in the host states' courts. This was rejected by the Rent Board. On 12 January 2010 the Rent Board entered what it called a consent judgement ordering the applicant to vacate the premises by the 31 May 2010. The Rent Board called the file on 4 June 2010 and ordered execution of the judgment.

3. It is contended for the applicant that it requested for a copy of the record and it was not until the 3 June 2010 that it obtained a copy of the record. The applicant was shocked to see that execution had been ordered based on what was called a consent judgment. The applicant did not consent to execution as it insisted it had immunity protecting it from execution.
4. The consent judgment is stated to be flawed and not in compliance with Section 131 of the Seychelles Code of Civil Procedure, hereinafter referred to as the SCCP. On becoming aware of the consent judgement the time for appeal had long lapsed. It is averred that the appeal has good chances of success.
5. The respondent objects to this application on broadly 2 grounds. Firstly that this court is *functus officio* because the applicant did not appeal the consent judgment when it was made on 12 January 2010. Secondly that this application is malicious, frivolous and vexatious and should not be allowed as the matter is at execution stage.
6. I shall start with the points raised by the respondent. Starting with the last ground, that this matter is malicious, frivolous and vexatious as the matter is not at execution cannot hold any merit. The fact that a matter is at execution stage is no bar to any other proceedings in the matter including an appeal. The respondent has not drawn the attention of the court to any facts that suggest that this matter is malicious, frivolous and or vexatious.
7. The claim that this court is *functus officio* is somewhat puzzling. This court has not made any decision in relation to a motion to lodge an appeal out of time in this matter. I do not see how it can become functus officio with regard to this application. A court is *functus officio* when it has already made a final decision in the matter and thus exhausted its decision making authority in respect of that particular matter. This is not the case here. This is the first time that this motion is being entertained.
8. The respondent has not shown that it would suffer any prejudice if this application is allowed. Nor is any possible prejudice to the respondent apparent on the record.

9. I agree with the counsel for the applicant that this court is empowered to consider this application under Section 22(2) of the Control of Rent Tenancy Agreements Act, Chapter 47. It states,

‘The procedure on appeal shall be by written notice to the Chairman of the Board. Such notice shall be delivered to a clerk within fourteen days from the date of the decision complained of. **Such period may however be extended by a Judge.** The notice shall set forth the substance of such decision and the grounds of appeal.’ (Emphasis is mine.)

10. Mr. Pesi Pardiwalla submitted that Seychelles law is silent on the grounds upon which this court should consider whether or not to grant an application for extension of time. He submitted that we must turn to English rules. He cited the White Book, page 962, which provides that the factors to be taken into account include, (a) length of delay; (b) reasons for the delay; (c) the likelihood of success of the appeal and (d) the potential prejudice an adverse party would suffer if application is granted.

11. Mr. Pesi Paridiwalla submitted that there were high chances of the appeal succeeding given that the Rent Board ignored the provisions of Section 131 of the SCCP. Secondly that there has been no prior case that considered the question of immunity of a foreign mission in our courts and that this appeal presents an opportunity for this issue to be discussed.

12. This application was filed 6 months after the Rent Board made its consent judgment. The applicant attorney states that he learnt of the consent judgment only on 3 June 2010 when he obtained a copy of the proceedings from the Rent Board. This is not disputed. I would assess the real period of delay as from the 3 June 2010 to the time this application was filed, which is about 5 weeks. There is no explanation why the applicant did not present this application earlier once he received the proceedings of the Rent Board. The greater period of the delay has been explained by the lack of awareness of the decision of the Rent Board.

13. I find that there is a substantial question of law to be considered on appeal as to whether a foreign mission in Seychelles may be subject to the process of our courts. It is important that this matter is addressed by the Supreme Court. I hesitate to make any finding on whether the appeal is likely to succeed or not, given that I may then be accused of pre judging the issues in the intended appeal. In my view it is sufficient if there is a substantial question of law to be considered on the intended appeal or if there is the possibility of a substantial miscarriage of justice if the application is not allowed.

14. Lastly if it turns out the consent judgment is no consent judgment within the meaning of Section 131 of the SCCP it is important that this matter be fully agitated on appeal not only for a decision on this point in this case but for future guidance of the Rent Board and others. There would be a substantial miscarriage of justice if it turns out that the consent judgment is no consent judgment in law and it had been left to stand.

15. I am satisfied that it is in the interests of justice to allow this application. I grant the applicant 14 days within which to lodge their appeal in the manner required by law. Costs in the matter will abide the outcome of the appeal.

Signed, dated and delivered at Victoria this 5th day of August 2010

FMS Egonda-Ntende

Chief Justice