

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Appeal No. 51 of 2012**

**Appeal from Magistrate's Court decision 3/2012**

**[2013] SCSC**

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GRACIA ZATTE Appellant

versus

PHILIP BANANE Respondent

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Heard: 25 March 2013

Delivered: 15 May 2013

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**JUDGMENT**

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**Egonda-Ntende CJ**

[1] The appellant in this case is an elderly woman. Her son, Mr Zatte, holds power of attorney for her. On the day fixed for hearing of this appeal Mr Camille, Mr Zatte's attorney, did not appear. Mr Zatte decided to proceed without Mr Camille's assistance. The respondent, a Mr Banane, also presented his case in person. Mr Zatte and Mr Banane are known to each other.

[2] The dispute is about the end of a lease and the obligations of Mr Banane, the departing tenant, to Mrs Zatte, his landlady. Mrs Zatte filed a claim for arrears of rent and damage to the house in the Magistrate's Court. When neither Mr Banane nor his counsel appeared on the hearing date, the learned Magistrate heard the case ex parte. She decided that the relevant dispute had already been determined by the Rent Board (case number RB 78/2010). The Rent Board has parallel jurisdiction to the Magistrate's Court. If Mrs Zatte (or her son) was aggrieved with the Rent Board's decision, she should have appealed to the Supreme Court, as provided for in s 22 of the Control of Rent and

Tenancy Agreements Act. It was not open to her to file a new case in the Magistrate's Court. The learned Magistrate accordingly dismissed the case with no order as to costs.

- [3] A memorandum of appeal was filed very late. As in a number of other recent cases before this Court, the memorandum fails to include any prayer for relief. Both defaults mean that the appeal is technically deemed to have been withdrawn under r 14. I have proceeded to consider it on its merits in the interests of justice for both parties who were, ultimately, unrepresented. Parties and their advisers in future cases must not expect such indulgence from the Court.
- [4] The substance of the memorandum of appeal is that the issue of rent arrears was never heard or determined by the Rent Board. Mr Zatte was not able to expand on this submission at the hearing. Both parties focused on the merits of their dispute.
- [5] Review of the file confirms that the claim before the Rent Board was for an eviction order and arrears of rent. The period for which rent was claimed was June to October 2010. There was a counter-application by Mr Banane based on the "deplorable condition of the premises". The case was dismissed in April 2011 after Mr Banane vacated the house and handed over the keys. Mr Camille was representing Mrs Zatte throughout. There is no record of Mr Camille pursuing the claim for rent arrears or objecting to the dismissal.
- [6] No appeal was filed against the Rent Board's decision. Mr Camille did however file a plaint in the Magistrate's Court in December 2011, more than seven months later. This plaint sought rent arrears up until April 2011 (when the Rent Board proceeding was dismissed). There was also a claim for compensation for damage to the house.
- [7] In response to a request for further particulars from Mr Banane, who was at that time legally aided, Mrs Zatte pleaded that she could not do an inventory when the lease came to an end because Mr Banane had not returned the key.
- [8] Mr Banane's attorney, Mr Vidot, reiterated the "deplorable state" of the house and referred to the dismissal of the Rent Board claim, but he did not rely on *res judicata* or seek to have the case dismissed as an abuse of process. The learned Magistrate's

judgment does not refer to either *res judicata* or abuse of process, but she must have had one or both of those concepts in mind.

[9] The Seychelles Court of Appeal has recently considered the rule of *res judicata*, and the related but broader doctrine of abuse of process, in *Gomme v Maurel* [2012] SCCA 28. I have had occasion to apply that decision in a ruling delivered earlier this week, *Platte Island Resort and Villas Ltd v EME Management Services Ltd* (CC 03/2013). The observations made in that ruling are of relevance here also.

[10] *Res judicata* is codified in Seychelles in Article 1351(1) of the Civil Code, which provides:

The authority of a final judgment shall only be binding in respect of the subject-matter of the judgment. It is necessary that the demand relate to the same subject-matter; that it relate to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities.

[11] The rule thus stated is relatively confined in application. However, as the Court of Appeal observed in *Gomme v Maurel*, “the imaginative use that has been made to go round the rule” has prompted the development of a broader doctrine of abuse of process. This doctrine vindicates the same fundamental principle of finality in litigation but finds its source in the inherent jurisdiction of the Court to control its own processes.

[12] Was this claim barred by *res judicata* in the “strict” sense? The identity of these parties and their respective capacities were the same before the Rent Board and Magistrate’s Court. The subject-matter of the dispute (the end of the lease) and the nature of the action (a claim for compensation from the former tenant) were also essentially the same. There was one new issue raised before the Magistrate’s Court in the form of a claim for damage to the house. To adopt the language of Auld J in *Bradford & Bingley Building Society v Seddon Hancock* (1999) 1 WLR 1482, the Rent Board did not make any decision on this issue that was “capable of amounting to *res judicata*”. However, the memorandum of appeal drafted by Mr Camille makes no reference at all to the claim for damages. Indeed, the memorandum states unequivocally that the case before the Magistrate was “solely on the issue of claim of rents”. The only conclusion

that can be drawn from this statement is that the damages claim was abandoned. There is accordingly no basis for considering it further on appeal.

[13] Unfortunately for Mrs Zatte, confining the appeal “solely [to] the issue of claim of rents” shows that issue to be squarely within the scope of Article 1351. Mrs Zatte claimed for the payment of rent arrears in the initial application to the Rent Board, which she signed in person. The tersity of the Board’s records, and Mr Camille’s non-appearance before this Court, make it difficult to be confident that Mrs Zatte understood that the Board had rejected this claim when it dismissed her case. She did however permit seven months to elapse before filing in the Magistrate’s Court. This suggests that she may have simply decided to try a different tack. As demonstrated by decisions like *Gomme v Maurel*, our adversarial court system does not work that way. Parties have one chance to bring their whole case. It is the responsibility of their advisers to assist in ensuring that the chance does not pass them by.

[14] I conclude that the Magistrate did not err in holding that the proper course for Mrs Zatte was to pursue an appeal to the Supreme Court from the decision of the Rent Board. This appeal is dismissed. I make no order as to costs.

Signed, dated and delivered at Victoria this 15<sup>th</sup> day of May 2013

F M S Egonda-Ntende  
**Chief Justice**