IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 39/2013

Appeal from Magistrates Court Decision 44/2012

[2016] SCSC 553

HIGHLAND INTERNATIONAL LTD

Appellant

versus

FLYING FISH (PTY) LTD

Respondent

Heard: 17 June 2016

Counsel: Mrs Amesbury for appellant

Mr Chetty for respondent

Delivered: 17 June 2016

JUDGMENT

Akiiki-Kiiza J

[1] This is an appeal from the Judgment of the Rent Board of Seychelles dated the 29th of November 2013 whereby it ordered the eviction of the Appellant from the Respondents premises for non-payment of rent. That is to say from the end of March 2012 to date. He was ordered to pay all the areas due to Respondent less the alleged 5% increase in rent. Being dissatisfied with the Rent Board's Judgment and Orders, the Appellant has now appealed to this Court on the following grounds;

(1) *That the honourable Rent Board erred in finding that the lease agreement existed between the parties are not giving due consideration of the Appellant's position that there existed am easement between the parties and that the Appellant company had with the consent of the Respondent constructed the showroom which was just a structure with a roof and one wall. Furthermore, that the Board wrongly found that the Appellant contributed SR 500,000 towards the showroom. When evidence established that the expenses was SR 5,500,000.*

(2) *That the honourable Rent Board was wrong that the Appellant was in breach of the agreement existing between the parties and failing to consider that the Respondent was the one that breached the agreement in suspending the utilities to the premises whereby causing prejudice and loss of the Appellants business undertakings. That the Board also erred in holding that the cheque to pay rent has been dishonoured especially when the Public Utilities Corporation had expressed willingness to reconnect electricity provided the Respondent to give approval or Court made an appropriate Order to that effect.*

(3) *That the honourable Board erred in failing to give due consideration to the fact that the Respondent's real intention was to evict the Appellant from the premises was that the Respondent had found other tenants for the premises and had offered alternative premises for the Appellant and when he refused, he took steps to frustrate the business operations of the Appellant.*

[2] The Memorandum of Appeal was filed by Mr Vidot but the hearing of the Appeal was argued by Mrs Amesbury. As for the Respondent Mr Basil Hoareau drafted the skeleton's Heads of Argument but in Court Mr Chetty appeared for him. Secondly, in her skeleton's Head of Argument, Mrs Amesbury dealt with the First Ground of Appeal and promised to address the Court on the other grounds (Second and third) if called upon to do so by the Court. However, no oral argument was made by either party in respect of the merits of the case.

[3] This case was originally before the Honourable Justice De-Silva from the beginning and it came before me in November 2015. All parties relied on the written submissions in the form of Skeleton Head's of Argument filed and this Judgment is solely based on the same as filed by each party.

[4] As for the first ground of Appeal which is in regard to whether there was a lease agreement between the parties or whether there was an easement created in favour of the Appellant, it was Mrs Armesbury argument that there was no any form of lease created between the two parties. She cited Section 7, 9, 12 and 13 of the Control of Rent and Tenancy Agreement Act in support of thereof.

[5] On the other hand Mr Hoareau, Counsel for the Respondent in his skeleton head of arguments relied on section 3 of the Evidence Act in that, Oral evidence can be adduced and was adduced by his clients to prove that the Appellant indeed had occupied their property for an agreed monthly fee despite the Appellant's denial that there was no lease agreement between himself and the Respondent.

[6] On the other hand the Rent Board, relied on Section 2, 13 (1) as read with Section 10 (2) (a) of the Act, Cap 47 and made several findings including one to the effect that although there was no written lease agreement between the parties, there was evidence on the record and the Appellant does not deny the fact that they have been in occupation of the premises which is on the Respondent's property as part of this lease he had secured from the Seychelles Industrial Development Corporation (SIDEC) in May 1997, (Exhibit A2). That the Appellant has been occupying that property since November 2009 till the time of the Application in 2013.

[7] It is common ground that, at first the rent was fixed at SR 40,000 per month till April 2012, when it was revised upwards to the sum of SR 74,000 per month. It is also common ground that the Appellant had been paying the agreed rent until he suddenly stopped paying the same with effect from March 2012. The Respondent therefore sought an eviction of the Appellant from his premises due to the none payment of the agreed rent. The matter then went before the Rent board, which decided in favour of the Respondent resulting into this Appeal.

[8] I will restrict myself to what the lower Rent Board decided. I have carefully considered the skeleton heads of arguments filed by both learned counsel and I have carefully and analytically reviewed the proceedings before the Rent Board and its Judgments. A careful perusal of the Board's proceedings shows that there was an oral agreement to pay rent on a monthly basis between the two parties for the occupation of the Respondent's property by the Appellant and that rent was initially fixed at SR 40,000 and later revised as 74,000 per month. This continued to be the case till the Appellant defaulted in March 2012. Both parties acknowledged that there was no written lease agreement between them. As found by the Rent board, the Appellant was occupying the Respondents premises. Oral evidence was adduced to this effect. As pointed out by the learned counsel for the Respondent, oral evidence has been adduced under Section 4 of the Evidence Act to prove the occupation of the client's premises despite the denial by the Appellant that a written lease agreement between the parties existed and it's my considered view that by virtue of the Control of Rent and Tenancy Agreement Act, Cap 47, the Respondent is entitled to get the fruits of his investment as the Appellant was using his property. Secondly, as pointed out by the Rent Board, Section 2 of the Rent Act, defines a lease, inter alia, as including:, "*As any person enjoying the use and occupation of a dwelling house for which an indemnity is payable or not*". In my view the rent paid by the Appellant for the premises is compensation for his use of the same hence he is lessee within the meaning of Section 2 of the Act. By virtue of Section 13 (1) of the Act, a dwelling house includes premises used for business as in this case. Hence in my considered view I tend to agree with the Rent Board that the business relationship between both parties amount to at least, an “oral sub lease”, and this Act applied. This in my view, is quite different from an easement as contended by the Appellant, which is Servitude or a right enjoyed by the owner of land over the lands of another such as right of way, rights of light, rights to a flow of water or air. Usually an easement must exist for the accommodation and better enjoyment of the land to which it is annexed. The dominant tenement is the land owned by the possessor. By the possessor of the easement and the serviced tenement is the land over which the right is enjoyed. Also an easement confers no propriety rights on the owner of such easement. It is a privilege without profit. Having said that, clearly there is no easement in favour of the Appellant against the Respondent.

[9] As stated earlier, the 2nd and the 3rd grounds of Appeal were never argued before me and accordingly make no findings on them.

[10] All in all, I find that the Rent Board reached a right decision and which was supported by the evidence before it. I therefore confirm their Order as proposed.

[11] The learned counsel for the Respondent raised a *Plea in Lemine Litis,* in that the Appeal cannot stand on the ground that the Appeal was not filed according to Section 22 of the Control of the Rent and Tenancy Agreement Act. In that the provision of the Section 22 (2) of the Act was not complied with.

This Section provides as follows:-

> "*The procedure on Appeal shall be written notice to the Chairman of the Board. Such notice shall be delivered to a clerk within 14 days from the date of the decision complained of. Such a period may however be extended by a Judge. The notice shall set forth the substance of such decision and the grounds of Appeal*".

[12] In the instant case, the Appellant's counsel filed the Notice of Appeal with an attachment of the Memorandum of Appeal which gave the grounds which he wanted to appeal. To this end, it is my view that he complied with the provision of Section 22 (2) of the Act. However, it appears that the Notice of Appeal was filed in the Supreme Court Registry on the 13th of December 2013. It is not clear from the record who filed it, but there's the Court's seal on it bearing of the same date. It might have been the Chairman of the Board or counsel for the Appellant. In the premises, I am of a considered view that the Respondent has not satisfied the Court that the Appellant never complied with Section 22 (2) of the Act. Hence the plea in the main *Lemine Litis* fails.

[13] All in all, and for the reasons given above, this appeal fails and is dismissed with costs. The Rent Board to go ahead and enforce the Judgment in the terms proposed.

[14] Order Accordingly.

Signed, dated and delivered at Ile du Port on 20th June 2016.

Akiiki-Kiiza J
Judge of the Supreme Court