

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 353/2017
(arising in CA 37/2017)

[2018] SCSC 59

SAMICANNOU CAILACHAME

Applicant

versus

GEORGE LOW-HONG

Respondent

Heard: 15th January 2018
Counsel: Applicant - Unrepresented
Mr Joel Camille for respondent
Delivered: 19th January 2018

RULING ON STAY OF EXECUTION

R. Govinden, J

[1] This is an application for the stay of execution of a Rent Board decision filed by Mr Samicannou Cailachame, herein after also referred to as “*the Applicant*”, against Mr George Dave Low-Hong, herein after also referred to as the “*the Respondent*”.

- [2] In this Application the Applicant has moved this Court on two motions. First, that the motion be heard as one of extreme urgency and secondly for the Court to order for a stay of execution of the Judgment of the Rent Board dated the 13th of December 2017 in case number (RB 48/17), pending the hearing of an appeal on the merits of the said Rent Board decision before this Court.
- [3] The Rent Board decision went against the Applicant who at the time of the Rent Board application, was the tenant of the Respondent.
- [4] The Rent Board heard two different cases simultaneously. One was for a motion of urgency, (RB 48/17) and the second one was an application for eviction proper (RB 49/17). The Ruling of the Rent Board were for both applications.
- [5] According to the Rent board decision, Mr Cailachame had his one year Rent Agreement extended for 2 months by the Respondent. The extension expired on the 6th of December 2017. Mr Cailachame was to leave the rented premises by the 7th of December 2017. Prior to that date, that is on the 25th of October 2017, the Applicant filed for an order to remain in the premises. This Application was dismissed on the 24th of November 2017 by the Rent Board.
- [6] Before the Rent Board Mr Low-Hong had made out a case for him to be given back his premises for the use of his sister who was coming to Seychelles to take care of his mother. He had averred in his application, that he required the premises for his own occupation in pursuant to Section 10(2) (a) (ii) of the Control of Rent and Tenancy Act (CAP 47).
- [7] It appears from the Ruling of the Rent Board that Mr Cailachame had made known to the Rent Board that he was no longer in occupation of the premises as of the 7th of December 2017. And that he was at the time admittedly living somewhere else other than the rented premises. Further, as the rent agreement had expired, the Rent Board considered it reasonable to order the eviction of the Respondent, since no hardship would he caused.
- [8] The Rent Board, therefore, ordered Mr Cailachame to vacate the said premises and hand over the vacant premises to the landlord on or before the 20th of December 2017.

- [9] Mr Cailachame, thereafter, appealed against the Rent Board decision. He lodged his Notice of Appeal on the 19th of December 2017.
- [10] In his Memorandum of Appeal the Applicant averred, *inter alia*, that the Rent Board order is against the principle of Natural Justice; that the Board had heard his case without a hearing taking place and parties examined; that the Board neglected to take note that the Appellant was not served with any Notice of demand prior to the filing of the eviction application; that the Rent Board had blindly ordered the Appellant to vacate the rented premises in one week; that the Rent Board had failed to consider some of his prayers, namely that he be restored in full possession of the rented premises; that the Rent Board failed to decide that he had the right to use the rented premises until the full determination of the case by the Court; and finally that the Rent Board application of Section 9 of the Control of Rent and Tenancy Act was incorrect, and therefore to find that the Board had wrongly allowed the Appellant to be removed from the premises.
- [11] The grounds that the Applicant had averred as justification for the stay of execution is found in his supporting affidavit dated the 19th of December 2017, attached to his Application. In his affidavit the Applicant contended that the due date for evicting him falls as from the 21st of December 2017 and unless his application for stay is heard and granted he would be put to irreparable loss and severe prejudice will be caused to him. He further contended that he would be put to physically out of the house and would be on the Streets.
- [12] The Applicant further avers that has good a chance of success in his Appeal against the order of the Rent Board and that he wished that the case be decided with urgency and the seriousness involved in the matter.
- [13] Before the hearing, the Applicant had previously requested for time for him to be given a chance to seek legal representation for the hearing of the application for stay. At the hearing, however, he appeared unrepresented. Upon being asked by the Court as to whether he was ready to proceed with the hearing without his legal representation, the Applicant unequivocally said that he would represent himself during the course of this hearing. He was accordingly allowed to proceed under the guidance of the Court.

- [14] Mr Cailachame in a gist submitted as follows:- That there is no substance in the objection of the Respondent; Secondly, that there was a failure of natural justice by the Rent Board in his regards as he was not given the time and opportunity to contest the Rent Board Application. The Applicant claimed further that his appeal has a very good chance of success. He averred further that the Respondent is not entitled to enter into the rented premises when the matter is pending appeal before this Court and that this was what the Respondent did. He denied vacating the premises in accordance with the Rent Board decision.
- [15] On the other hand the Respondent filed an affidavit in reply contesting the motion for Stay of Execution.
- [16] It is the averment of the Respondent that the application for stay is without merits and is frivolous and vexatious and that the Applicant had at any rate moved out of the rented premises at the time of this Application. The Respondent further averred that he needed his premises for his personal used.
- [17] The Respondent averred further that he had access to his rented premises after the Rent Board gave him access and as such he is not in breach of any Court conditions or orders.
- [18] The Respondent denied that the Applicant has a good chance of success given that the Rent Agreement between him and the Applicant had expired by the 6th of December 2017.
- [19] Mr Camille, for the Respondent, strenuously objected to the Application and he argued that the Applicant has no chance of success. Mr Camille argued that the pre-emptive application by the Applicant for him to remain in the rented premises failed. Counsel further submitted that the proceeding of the Rent Board would reveal that the Applicant had admitted that he was not in occupation of the premises as of the 7th of December 2017. And that it was only on the 21st of December 2017, when the client had vacated the premises, that the Respondent entered into the rented premises.
- [20] In the case of *International Investment Trading vs Piazola (2005)*, SLR at page 57, it was held, “*whether to grant or deny a stay is entirely within the discretion of a Court in the*

exercise of its discretionary power, and equitable powers under Section 6 of the Courts Act the Court". The Court went on further in that case to hold that in considering whether to grant or refuse a stay, the Court must balance the interest of the parties by minimising the risk of possible abuse by an Appellant to deny the Respondent from ripping the fruits of his judgment.

[21] Further, the Court held that where an unsuccessful Defendant seek a stay of proceeding where an appeal is pending. It is legitimate ground for granting the application if the Defendant is able to satisfy the Court, that without a stay they would be ruined and their appeal has some prospect of success.

[22] In the case of *Choppy vs NSJ Construction (2011)* SLR page 215. The Court further ruled that the burden is on the Applicant for stay of proceeding to demonstrate the basis for stay which will be fair to all parties.

[23] Upon scrutinising the Grounds of Appeal in this case; the impugned decision of the Rent Board; the Application for Stay of execution and its attached Affidavit; the Affidavit in reply of the Respondent, in the light of submissions of the Applicant and the Respondent, the Court finds as follows:-

- i.** I find that the Rent Board made its decision on the 13th of December 2017. It ordered Mr Cailachame to vacate the rented premises by the 20th of December 2017. Evidence revealed that the Rent Board agreement between the Appellant and the Respondent had by the 6th of December 2017 expired and that the Appellant had admitted that he had vacated the premises by the 7th of December 2017.
- ii.** The Respondent before this Court had applied to the Rent Board to be given back the premises in pursuant to Section 10(2) (g) (ii) of the Control of Rent and Tenancy Act in order to use it for his own personal use. It was within his right as a Respondent to apply for the return of his premises, especially upon the expiry of the rent agreement based on this ground. This clearly demonstrate the likelihood

of success of the Respondent on appeal. Whilst it clearly diminished the chance of success of the Respondent on appeal.

- iii.** Moreover, evidence before the Board shows that at the time of the hearing the Applicant before the Board had already vacated the rented premises by the 7th of December 2017. At the time hearing of this motion the Applicant before this Court had only a key in his possession. At the time of the hearing of this motion the premises was being used by the Respondent's sister in order for her to cater for the mother of the Respondent. This defeat the Application for a stay as a stay of execution would have served to protect his tenure of the premises.
- iv.** Finally, the Applicant before this Court has not manage to show to what extend he could or would be ruined if the Stay of execution is not granted. He has already moved out of the rented premises in accordance with the Rent Board decision. The premises is being occupied by a third party. He, therefore, has other alternative modes of aboard and he has not been rendered destitute as a result of the of the Board decision.

[24] All in all I am satisfied that the Applicant before this Court has failed to demonstrate to the Court that it would be fair and equitable for the Court to rule in his favour in this Application. The Application for stay is accordingly dismissed with cost in favour of the Respondent and the appeal proper shall proceed from here.

Signed, dated and delivered at Ile du Port on 19 January 2018

R. Govinden, J
Judge of the Supreme Court