

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 32/2018

Appeal from Magistrates Court Decision RB22/2015

[2018] SCSC 1091

WILLIAM CADEAU
Appellant

versus

PROPERTY MANAGEMENT CORPORATION
Respondent

Heard: Parties filed written submission
Counsel: In person for appellant
Ms. S. Aglae for respondent
Delivered: 29 November 2018

JUDGMENT

Vidot J

[1] The Appellant appeals against a Ruling of the Rent Board dated 25th May 2018. The Appellant has enumerated several grounds of appeal as follows;

- i. The Ruling was decided by a wrong person, wherefore the Rent Board is chaired by a chairperson and not a magistrate

- ii. The Learned Magistrate and members of the Rent Board, erred in giving a judgment against the Respondent (now Appellant) when it has erred into taking into account provisions of the Civil Code in respect of the laws of contract and agreement, which is not define in the Control of Rent and Tenancy Agreement Act, that will establish the legal relationship between the two parties.
- iii. The Learned Magistrate and members of the Rent Board, erred in giving a Ruling against the Respondent (now Appellant) when there was sufficient evidence to find that on the balance of probabilities the Applicant (now Respondent) was and does not have legal title to the property, and no transfer or assignment was done to SHDC (a body corporate), who is the original title holder of that property and there is no evidence of the transfer or assigned from it from a third party.
- iv. The Learned Magistrate and members of the Rent Board, erred in making a Ruling and Order, by way of relying on the unsubstantiated oral evidence of the Applicant (now Respondent) witnesses, whereby no reasonable tribunal can act on the same.
- v. The Learned Magistrate and members of the Rent Board, erred in giving judgment against the Respondent (now Appellant) where there was sufficient evidence to find that on the balance of probabilities the Defendant, does not have a written lease agreement with the Appellant, to qualify it to initiate a grievance before the Rent Board, and such an agreement would proven of the terms and conditions, between the landlord and tenant relationship.
- vi. The Learned Magistrate and the members of the Rent Board, erred in giving judgment to evict the Respondent without having sight of and knowledge whether there exist a contract, and if the contract subsists and the contract is not terminable on such ground of arrears of rental payment.

- vii. The Learned Magistrate and members of the Rent Board erred in making an order to evict the Respondent without taking into account, whether such eviction would cause greater hardship to the lessee and whether he has other accommodation.
- viii. The Learned Magistrate and members of the Rent Board, erred in making an order to evict the Respondent and make payment as per the application, and failed to take into account, of inconsistencies, in the amount of money owes, as deponed by witness, and
- ix. The Learned Magistrate erred in not dismissing the Applicant's (now Respondent) action when there was sufficient evidence to find that on the balance of probabilities, the Defendant have not been able to establish, that it has a legal title, and such assignment to title was lawfully given.

[2] I have to state at the very beginning that I have had time to fully consider the Ruling of the Rent Board dated 25th May 2018 and find it to be well reasoned and sound. I agree with the findings made by the Rent Board overall and it has my unequivocal support that the findings are based on a sound evaluation of law and facts. I find that many of the grounds of appeal to be devoid of merit.

[3] As regards ground 1 of Appeal, Section 15 of the Control of Rent and Tenancy Act ("the Act") is clear on the issue of the composition of the Board. The Board does not exclude a Magistrate being appointed as a board member. It is true that the chairperson of the board is a Magistrate but she was duly appointed to the Board and as such she is competent member of the Board albeit that when she sits on the Rent Board she should sign as chairperson. The fact that she signed as Magistrate does not necessarily make the Ruling invalid. So, in terms with Section 5 of the Act, I hold the board to be properly constituted.

[4] There is no merit in ground 2 of the Memorandum of Appeal. The law in relation to contract is to be found in Chapter III of the Civil Code of Seychelles. The Rent Board does not make provisions as to how contracts are made, the different form of contract,

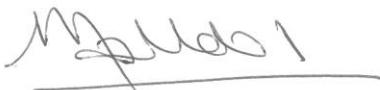
obligations and performance of contract. In such instance the Court has to fall back on the provision relating to the same which is found in the Civil Code of Seychelles.

- [5] I shall deal with grounds 3 to 9 of the Memorandum of Appeal together. This is because they are interlinked. I find that the Learned Chairperson of the Board made a sound evaluation of the evidence that was before her. I feel that the Appellant seems to be suggesting that since the Seychelles Housing Development Corporation (SHDC) did not advise him that they have changed into the Property Management Corporation (PMC), they are not now the owner of the bedsitter he is now occupying. This will mean that effectively he will be in ownership of a bedsitter which has no owner and therefore he can enjoy it for free. This is my view will be totally dishonest.
- [6] The Learned Magistrate at paragraph 14 of the Ruling clearly identifies the role of the PMC as provided for under Section 4 of the Property Management Act, which inter alia includes the right to acquire, buy, sell, dispose rent or hire, exchange, pledge or mortgage any moveable or immovable property or interest therein. The witnesses such as Rita Simara, Anne Marie Gedron and Ronny Palmyre, were clear that SHDC was broken down into 2; the PMC and the Housing Finance Company (HFC) and that when this happened the assets of SHDC was transferred to PMC.
- [7] In fact in 1999 the Appellant was a client of the SHDC and by then had already been allocated a bedsitter. At that time, more precisely 2001 when SHDC became PMC and HFC the Appellant was in occupation of the bedsitter. He made his last payment to PMC and a reminder letter was sent from PMC to the Appellant and he responded to the letter calling at the PMC office. He was engaged with PMC.
- [8] PMC is not duty bound to show to the Appellant that they have acquired the assets of SHDC. This fact is well known to the public at large. In 1999 the SHDC was the only body corporate managing government housing and now that role has been assumed by the PMC. Furthermore there is no requirement for a written lease to exist between the Appellant and the PMC in order to establish landlord and tenant relationship. The Learned Chairperson referred to the case of **Dugasse v SHDC [2006] SLR 149**, in which it was held that in

construing the Act, the Rent Board must do so in a way that does not penalise the landlord and ensure that the tenants fulfil their obligations.

- [9] As regards that eviction from the bedsitter would cause him great hardship, it was held in **Marrs v Adams (No3) [1973] SLR 343** and **Seysteel v Tropical [1989] SLR 278**, that greater hardship is not a matter to take into account on the issue of ejection where a claim is in respect of non-payment of rent.
- [10] As to whether the Rent Board should have dismissed the case because of inconsistencies in the amount of money owed I do not find merit in that ground of appeal. There is uncontroverted evidence that the Appellant was in arrears of rent. He had not been making rent payment for a number of years, thus every reason for an order of eviction. In any case, I do not find these inconsistencies. The statements of payment and arrears were before the Board and the Appellant did not take issue with them.
- [11] I find that the evidence was as a whole consistent. I find that the application of the facts to the law was sound. I do not believe that the Rent Board made its decision based on unsubstantiated evidence. In fact the Appellant had ample opportunity to challenge or contradict evidence placed before court. He did not succeed in doing that. In his own testimony the Appellant admitted to having signed the agreement and that he was paying rent to SHDC and later on to PMC.
- [12] Finally, I find that this appeal has no merit and therefore stands dismissed.

Signed, dated and delivered at Ile du Port on 29 November 2018



M Vidot
Judge of the Supreme Court