

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2020 SCSC 372
CA 21/2019
(Appeal from RB 27/2019)

MARY JUNE LADOUCEUR
(rep. by Lucy Pool)

Appellant

versus

JULIE VANNIER BORN SINON
(rep. by Karen Domingue)

Respondent

Neutral Citation: *Ladouceur v Vannier* CA21/2019 (Appeal from RB 27/2019) [2020] SCSC 372 (3rd July 2020)

Before: Dodin J.

Summary: Jurisdiction of the Rent Board on issue of *droit de superficie* - Whether application to the Rent Board is *res judicata*. Plea *in limine litis* on the requirement of leave to appeal - Rent Board has no jurisdiction to determine land rights or ownership hence has no jurisdiction to determine whether the Appellant has a *droit de superficie*. The principle of *res judicata* does not arise - Rent Board did not err in placing emphasis on the letter of the Tenants Right Registrar.

Heard: 4 March, 7 April 2020 (written submissions)

Delivered: 3rd July 2020

ORDER

1. The appeal from the Rent Board is dismissed in its entirety with costs to the Defendant.
 2. Notice of this judgment is to be served on the Chairman of the Rent Board.
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JUDGMENT

DODIN J

[1] The Appellant is appealing the ruling of the on a plea *in limine litis* dated 9th August 2019 (RB 27/2019). In that ruling, the Rent Board found that the three preliminary points

raised by the Appellant had no merits and proceeded to set a date to hear the case on the merits.

[2] The grounds of appeal are:

1. The Learned Chairperson of the Rent Board failed to consider all the judgments with regard to the above case. She only considered the 2 Rent Board Rulings and not the judgments of the Supreme Court and the Court of Appeal, which are both Courts of record.

2. The Learned Chairperson wrongly based her Ruling entirely on the letter of the Tenants' Right Registrar dated 13th June 2017. She did not consider the fact that the Appellant is the executrix of the estate of the statutory tenant. The Registrar of Tenant's Right is a member of the Rent Board.

3. The Learned Chairperson failed to consider the whole of the evidence on the plea in limine litis placed before her, had she done so she would have come to a different conclusion.

[3] The relief sought is for this Court to reverse the decision of the Rent Board and hold that the Rent Board had no jurisdiction to hear the matter and that the application is *res judicata*.

[4] Learned counsel for the Appellant submitted the appeal is against the ruling of the Rent Board on a plea *in limine litis*. If the Appellant had been successful on her plea, it would have disposed of the entire case before the Rent Board. Learned counsel submitted that the ruling is not on an interlocutory order and therefore no leave to appeal is required.

[5] On ground 1 of appeal, learned counsel submitted that that the Rent Board failed to consider all the judgments with regard to the above case. It only considered the two Rent Board Rulings and not the judgments of the Supreme Court and the Court of Appeal, which are both Courts of record.

[6] Learned counsel further submitted that besides the two Rent Board rulings, the Board was referred to the cases of *Julie Varnier v/s Mary June Ladouceur – Civil Appeal 1/2003*,

Julie Varnier v/s Mary June Ladouceur Civil Appeal 1/2005, Julie Varnier v/s Michel Alcindor SCA 1/2005 to support the Appellant's contention that the issues in the above case have been litigated several times between the same parties, on the same subject matter and the same decisions have been given. The Respondent (Applicant) filed a case for eviction in the Rent Board against the Respondent in 2004 in RB141/04 and again in 2015 in RB 5/15. The Board's Ruling was appealed against twice in the Supreme Court between the same parties. Learned counsel submitted that the Board did not consider the Supreme Court and Court of Appeal judgments in coming to its decision and had it done so it would have come to a different conclusion.

- [7] Learned counsel submitted that the Board only relied on the purported letter of termination issued to the Appellant by the Tenant's Right Registrar dated 13th June 2017 to conclude that the previous rulings and judgments were not final. Learned counsel referred to the case of Gomme v Maurel – 2012 SLR 342 on the issue of *res judicata*. She argued that the rationale behind the rule of *res judicata* and its strict application is grounded on a public policy requirement that there should be finality in a court decision and an end to litigation in a matter which has been dealt with in an earlier case. She submitted that because of the imaginative use that has been made to go round the rule, courts have developed the rule of abuse of process and concluded that the Board was wrong not to find that the application before the Rent Board was *res judicata* and an abuse of process.
- [8] On ground 2 of appeal, learned counsel submitted that the Rent Board wrongly based its ruling entirely on the letter of the Tenant's Right Registrar dated 13th June 2017. She did not consider the fact that the Appellant is the executrix of the estate of the statutory tenant. She noted that the Registrar of Tenant's Right is a member of the Rent Board.
- [9] Learned counsel submitted that the Appellant is the Executrix of the estate of late Michel Alcindor. She is also the mother of the deceased three children. The late Michel Alcindor was renting the Applicant's house and subsequently made an application under the Tenant's Right Act and was registered first as a Provisional Statutory Tenant and later, on 24th November 1993, he was registered as a Statutory Tenant. Learned counsel submitted

that the Tenants Right Act Cap 235 (ie) Act 24 of 1981 as amended by Act 7 of 1984 was repealed by the Tenant's Right (Repeal) Act 1992 (Act 7 of 1992). However, provision was made that Applications received before 13th April 1992 and pending on that date shall continue to be dealt with under this Act as if the Act had not been repealed.

[10] Learned counsel submitted that the Respondent as the executrix of the estate of the Statutory Tenant appointed under Article 1026 of the Civil Code of Seychelles steps into the shoes of the deceased to administer his estate. She argued that section 29 of the Tenant's Right Act does not apply to her. As executrix she stands in the position of the deceased statutory tenant. She argued that in any event Section 29 does not impose an obligation on the spouse or family member to make an application within a month of the death of the Statutory Tenant. The wording of the Act is "may apply to the Registrar within one month of the death to be registered". She submitted that if the legislators intended the application by the spouse or partner to be mandatory the word "shall" ought to have been used. The Respondent is acting in her capacity as the legal representative of the deceased and not as the partner or concubine.

[11] Learned counsel further argued that in any case even if Section 29 of the Act could have applied to the Appellant, the Tenant Rights Secretariat had ceased to exist after the Act was repealed. It is the Appellant's averment in her letter dated 30th August 2017 that many years back, to be on the safe side, she went to the Tenant's Right Secretariat for that purpose but she found no one to speak to.

[12] Learned counsel concluded that the Board misinterpreted the letter of termination issued to the Respondent dated 13th June 2017 by the Registrar of Tenant's Right. She submitted that the Registrar of the Tenant's Right herself is a member of the Rent Board and might have been in a position of conflict in issuing the said letter. For this reason the Board should not have based its decision entirely on the said letter.

[13] On ground 3 of the appeal learned counsel submitted that the Board failed to consider the whole of the evidence on the plea *in limine litis* placed before it. Had it done so it would have come to a different conclusion. Learned counsel submitted that the Board did not consider the fact that the Respondent and her family have been in occupation of the

property for more than 41 years and has contributed substantially to render a house that was in a derelict state to a habitable state without any contribution from the Applicant and that by conduct the Respondent (now Appellant) has acquired “*a droit de superficie*” on the property.

[14] Learned counsel hence moved the Court to allow the appeal by reversing the decision of the Rent Board and to hold that the Rent Board has no jurisdiction to hear the matter and that the application is *res judicata*.

[15] Learned counsel for the Respondent raised the following objections to the appeal;

Plea in limine litis

[16] The Respondent submitted that prior to filing the appeal the Respondent should have sought leave as the appeal is on an interlocutory order. This is obvious as the Respondent raised a plea *in limine litis* on which the Board ruled and which the Appellant is presently appealing. Had the Board heard the totality of the case then the Appellant could have appealed without leave of the Court.

[17] The Respondent submitted further that there are no specific laws guiding the procedures to be followed in respect of an appeal on an interlocutory order from the Rent Board to the Supreme Court. Hence, in terms of Rule 27 of the Appeal Rules (made in terms of the Courts Act and herein referred to as the Appeal Rules) the Rules applicable to an appeal from the Magistrates Court to the Supreme Court would be applicable.

[18] Learned counsel for the Respondent submitted that Rule 27 provides that: “*Where an Act allows an appeal to the Supreme Court from an of order or decision of any commissioner or other tribunal or officer the procedure in such an appeal shall be in accordance with such Act and regulations thereunder and subject thereto, and in respect of all matters for which they do not provide, in accordance with these rules*”.

[19] Learned counsel further submitted that even if one were to argue that the above (paragraph 17) is not applicable in an appeal from an interlocutory order one must bear in mind that where the procedure is silent one can turn to the Supreme Court Rules, namely Rule 12. According to Part II, B, which relates to the Supreme Court, Rule 12 of the

Courts Act which pertains to appeals in civil matters, "*Subject as otherwise provided in this Act or in any other law, the Court of Appeal shall, in civil matters, have jurisdiction to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction*". Thus the Appeal should be dismissed on the fact that no leave has been obtained by the Appellant to file the present appeal.

[20] On the merits learned counsel for the Respondent submitted that the Rent Board considered all the arguments laid down in both submissions of the learned Counsel and came to the right decision. Although it may be true that the Rent Board did not, in its ruling refer to the cases of the Supreme Court and the Court of Appeal, it cannot be said that the Rent Board did not consider these judgments. She submitted that in fact the Respondent's counsel, (Applicant then before the Rent Board), did address this matter in her submissions in reply to the plea *in limine litis* raised by the then Respondent, now Appellant.

[21] Learned counsel submitted that the litigation filed before the Supreme Court and the Court of Appeal related to the Respondent attempting to exercise rights as a statutory tenant which clearly she is not. It was Michel Alcindor who was the registered statutory tenant and all litigation at the level of the Supreme Court and Court of Appeal was initiated or defended by Michel Alcindor or else by the executrix of his estate in an attempt to realise, execute and benefit from rights which were due to Michel Alcindor. It is only the last two cases, namely RB 141/14 and RB 5/15, which were brought in the name of the Appellant and thus it is only just and reasonable that the Rent Board referred to those two cases rather than those brought before the Supreme Court and the Court of Appeal.

[22] Learned counsel further submitted that the Rent Board did not overlook the judgments of the superior courts as at Paragraph II of her ruling the Rent Board did make reference to the position of the Supreme Court whereby it stated: "*The Supreme Court upheld this decision of the Board thereby bringing no determination as to the application for eviction and in fact it is only upon the letter dated 13th June 2017 that the Registrar of Tenant's*

Rights took a decision regarding the status of the Applicant." Learned counsel hence moved this Court to dismiss the 1st ground of appeal.

[23] On the 2nd ground of appeal learned counsel submitted that the Respondent filed her application for eviction against the Appellant on 4th April 2019 against the Appellant in her personal capacity and not in the Appellant's capacity as executrix of the Estate of the late Michel Alcindor. Consequently, whether the Appellant was executrix of the Estate of Michel Alcindor or not is immaterial for the purposes of the present case.

[24] With regards to the letter of 13th June 2017 addressed to the Appellant by the Registrar of Tenant's Right learned counsel submitted that the Rent Board properly considered this letter as this letter finally brought to an end the issue of whether the Appellant is a statutory tenant or not. This issue is one which has been at the root of much litigation between the Appellant and the Respondent and it is therefore a necessary prerequisite to be determined. Indeed, should one look at the judgment of the Court of Appeal in CA 28/2000 decided on 14th April 2002, the Court of Appeal differentiates between a statutory remedy and a contractual remedy. Hence, a statutory tenant who is looking for a remedy under the Tenant's Rights Act should seek a remedy under that statute and a tenant looking for a remedy under a lease or the Control of Rent and Tenancy Agreement Act should seek a remedy from the Rent Board. Thus the Board rightly took into account the letter of 13th June 2017 which clearly stated that the Appellant is not a statutory tenant. This decision must be taken as final as no challenge was made to the decision given by the Registrar of Tenant's Right.

[25] As regards the fact that Mrs Afif is a member of the Rent Board and as such she may be in a position of conflict learned counsel submitted that the Appellant cannot just make such an assertion without any justification or advancing any proof that there was in fact conflict or showing good reasons as to why it should be concluded that there was or might have been a conflict. This, the Appellant failed to do. In addition, in the present case Mrs Afif was not a member of the Board as the Ruling is signed by the chairperson and another member. Learned counsel hence submitted that this ground of Appeal must be dismissed.

- [26] On the 3rd ground of appeal that the Appellant has been in occupation of the Respondent's premises and her alleged contribution to transform a derelict house into a habitable one, learned counsel submitted that such cannot give the Appellant a "*droit de superficie*" by conduct as submitted by the Appellant. A "*droit de superficie*" is acquired when a person builds on someone's land with the permission or consent of that person. It is never acquired by conduct as it is a real right which has been conferred by the owner of the property. It cannot be argued that this is the case in the present matter. Furthermore the Board has no jurisdiction to make a determination on a "*droit de superficie*". This can only be done by the Supreme Court and therefore the Appellant is claiming this right before the wrong forum. Therefore, the submissions of the Appellant that the Rent Board has no jurisdiction in this matter and that the matter is *res judicata* must be dismissed.
- [27] On the preliminary objection, plea *in limine litis*, it is clear in this case that the Rent Board's ruling was on a plea *in limine litis* raised by the Appellant maintaining that the matter before the Rent Board was *res judicata*. It is trite law and now well established that a ruling on a plea *in limine litis* is an interlocutory ruling which may or may not dispose of a matter prior to hearing it on the merits. As such an interlocutory ruling or order is not appealable as of right. It is subject to leave. See the case of *Gangadoo v Cable and Wireless Seychelles Ltd (2013) SLR 317*. For this reason alone this appeal should be dismissed.
- [28] However it would not stop the Appellant from applying and seeking leave to file an appeal out of time which the Court may or may not grant but which would have the inevitable effect of delaying the settlement of the dispute initially between the late Michel Alcindor, then the executrix of the estate of the late Michel Alcindor and now the Appellant in her own capacity against the Respondent. For this reason alone I do not dismiss the appeal on the plea *in limine litis* and I shall proceed to give judgment on the merits.
- [29] The 1st, 2nd and 3rd grounds of appeal are interlinked and the issues of *droit de superficie* and *res judicata* can be dealt with in very short order. The Rent board has no jurisdiction to make a determination that determines and confers a real right of ownership or quasi-

ownership to land. This is reserved for the Superior Courts. It is clear from the cases brought by or on behalf of the late Michel Alcindor that the neither the Supreme Court nor the Court of Appeal was required to or made a determination in favour of the late Michel Alcindor or the Appellant in her own right or as executrix to the estate of the late Michel Alcindor.

[30] Furthermore, it appears that the late Michel Alcindor was renting the house from the Respondent which entitled him to make an application to be declared a statutory tenant. He never applied for a *droit de superficie*, perhaps having been rightly advised that he would not be entitled as a simple paying tenant. Now the Appellant as executrix can only be entitled to the estate of the late Michel Alcindor as it stood at the time of his death. It did not include a *droit de superficie*. Since a superior Court has never determined the issue of *droit de superficie* in favour of the late Michel Alcindor and the Rent Board has no jurisdiction to determine the same, the concept of *res judicata* does not arise at all in respect of these grounds of appeal.

[31] It follows that the Rent Board rightly considered in its ruling as important the letter of the Registrar of Tenant's right who was not a member of the panel which determined and gave this ruling. Secondly, the Appellant was appearing in her personal capacity before the Rent Board and not as executrix to the estate of the late Michel Alcindor. There was therefore no reason and it would have been wrong for the Rent Board to consider the cases by and on behalf of the late Michel Alcindor as the same case brought against the Appellant in her personal capacity.

[32] I therefore find the 1st, 2nd and 3rd grounds of appeal to be devoid of merit hence this appeal is dismissed in its entirety.

[33] I award costs to the Respondent.

Signed, dated and delivered at Ile du Port on 3rd July 2020.

Dodin J.