

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 693
Civil Appeal 15/2020
(Appeal from RB 13/2020)

In the matter between:

**EDEN HOLISTIC SPA
(PROPRIETARY) LIMITED**
(rep. by Serge Rouillon)

Appellant

and

WOODLANDS HOLDINGS LIMITED
(rep. by Frank Elizabeth)

Respondent

Neutral Citation: *Eden Holistic Spa (Pty) Limited v Woodlands Holdings Limited (CA 15/2020)* 2021 SCSC 693 (20 October 2021).

Before: Dodin J.

Summary: Appeal from Rent Board - appeal out of time – section 22(2) of Control of Rent and Tenancy Agreement Act

Heard: Written submissions

Delivered: 20 October 2021

ORDER

The Appellant has done everything that could be done in the circumstances except filing the appeal in time required by section 22(2) of the Control of Rent and Tenancy Agreement Act.

The Court has inherent powers and jurisdiction as well as statutory authority under section 22(2) to grant extension of time to file an appeal under the Act.

The period of 4 days outside the prescribed time is not unduly lengthy and it would not cause undue prejudice to the Respondent

There are reasonably serious questions of law and fact to be tried on appeal hence this application for leave is not frivolous, vexatious or devoid of merit.

The plea *in limine litis* fails. Leave is granted to file appeal out of time.

RULING

DODIN J.

- [1] The Appellant being dissatisfied with the decision of the Rent Board delivered on 11th September, 2020, applies to the Supreme Court for leave to appeal out of time. The Application for leave was filed on the 29th September, 2020.
- [2] The Respondent objects to the application for leave raising the following plea in limine litis: “The Application for leave to file appeal out of time is frivolous, vexatious, devoid of merit and ought to be dismissed with costs”.
- [3] Learned counsel for the Respondent submitted with reference to section 22(2) of the Control of Rent and Tenancy Agreement Act which provide inter alia that the procedure for appeal shall be by written notice to the Chairman of the Board within 14 days from the date of the decision complained of. Such period may be extended by a judge.
- [4] Learned counsel submitted that the Appellant has not followed or complied with the legal procedure and since the Application was fundamentally erroneous in law, the Court cannot act upon it or make any order upon it. It is frivolous, vexatious, devoid of merit and ought to be dismissed.
- [5] Learned counsel nevertheless addressed the grounds upon which the Court can extend the time for appeal. These include (a) length of delay; (b) reasons for the delay; (c) the likelihood of success of the appeal; and (d) the potential prejudice an adverse party would suffer if the application is granted.
- [6] Learned counsel submitted that the grounds of appeal set out by the Appellant in the memorandum of appeal are not serious and have no chance of success. The same would be potentially prejudicial to the Respondent who would suffer undue delay from enjoying the fruit of the judgment given by the Rent Board.

- [7] Learned counsel further submitted that Appellant has failed to give the Court any explanation as to why it did not file its appeal within time. Learned counsel moved the Court to dismiss the appeal with costs.
- [8] Learned counsel for the Appellant essentially submitted along the same line as the Respondent on the provisions of section 22 of the Act with respect to the conditions which would allow the Court to exercise its discretion to allow the filing and hearing of appeal out of time.
- [9] Learned counsel submitted that although the judgment is dated 11th September, 2020, the Respondent was not able to obtain a copy of the judgment until the 23rd September, 2020 as the Rent Board member had not signed the judgment. The notice was filed on the 29th September 2020 which was a mere 4 days after the after the 14 days prescribed by section 22(2). It is therefore not a lengthy delay either. Learned counsel further submitted that the power to extend time is in addition to the inherent jurisdiction and powers of the court.
- [10] Learned counsel further submitted that the Appellant has a high likelihood of success on appeal as the Tribunal had taken into consideration a claim for unpaid deposit not made in the pleadings. Learned counsel submitted that the application is made in good faith to hear a point of law and fact upon which the award was made and which would cause no prejudice to the Respondent.
- [11] As submitted by both learned counsel, the Court indeed not only has inherent powers and jurisdiction to allow meritorious appeal to be filed and heard out of time but in this case section 22(2) of the Control of Rent and Tenancy Agreement Act makes specific provision for this:

22. (1) ...

(2) The procedure on appeal shall be by written notice to the Chairman of the board. Such notice shall be delivered to a clerk within fourteen days from the date of the decision complained of. Such 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 case of Commissioner of Police vs Antonio Sullivan case number SCA 26 of 2015, the Chief Justice stated clearly that good cause to be shown to grant or deny an extension of time and the Court should take into account the following considerations in determining whether to grant leave for appeal out of time:

- a. The length of the delay;
- b. The reasons of the delay;
- c. The chances of the Appeal succeeding if the Application is granted and;
- d. The degree of prejudice to the Respondent.

[13] One must also keep in mind the English case of Ratnam vs Cumarasamy and another (1964) 3 All ER 933 where the Appellant was out of time by four days only but his application for time to be extended was denied because the Court stating that, “*the rules of court must, prima facie, be obeyed, and, in order to justify a Court in extending the time during which some step in procedure requires.*” If the Court is of the opinion that the Appellant has no good reason not to have filed the appeal on time and no steps had been taken to mitigate the adverse state of affairs, then such Appellant is not deserving of being given more time.

[14] Having considered the affidavit of Mrs Sabine Hamma alongside the submission of learned counsel for the Appellant and balancing that against the submission of learned counsel for the Respondent I am more inclined to find in favour of the Appellant on the grounds and length of the delay. I also find that the Appellant has done everything that could be done in the circumstances except filing the appeal in time. Furthermore the period of 4 days outside the prescribed time is not unduly lengthy that it would cause undue prejudice to the Respondent.

[15] I have also perused the memorandum of appeal and I find that there are reasonably serious questions of law and fact to be tried on appeal. This meets the requirements set out in the case of Yvon Dubel & anor v Yvette Juliette & Anor Case NO 1 of 2005,

where the Court of Appeal determined that the Applicant must “*show that on the appeal they have an arguable case and the prospects of success are good on balance of probabilities.*”

[16] Considering the findings above, the plea *in limine litis* fails and the application for leave to appeal out of time is found to have merit.

[17] Leave to file appeal out of time is granted.

[18] Costs shall follow the event.

Signed, dated and delivered at Ile du Port on 20 October 2021.

Dodin J.