

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 932
MA 157/2021
(Arising in CA8/2021)

In the matter between:

CELINA MOREL

First Applicant

TOMMY FONSEKA
(rep. by Mr. Joel Camille)

Second Applicant

and

MURINA SABRINA DE SOUZA
(rep by Mr. S Roullion)

Respondent

Neutral Citation: Morel Celina and De Souza Sabrina Murina (MA 157/2021) [2021] SCSC 932) 30 December 2021

Before: ANDRE J

Summary: Ruling – Leave to appeal out of time – Section 203 of the Seychelles Code of Civil Procedure (Cap 213)

Heard: 9 December 2021

Delivered: 30 December 2021

ORDER

The application is denied

RULING

ANDRE J

Introduction

[1] This Ruling arises out of a Notice of Motion filed on 13 July 2021 and supported by an affidavit by Celina Morel thereof on the said date (“the Applicant”).

- [2] The Notice of Motion seeks for the intended appeal in CA No. 8 of 2021 to be heard out of time, against the Judgment of the Rent Board issued on the 23 April 2021, thereby ordering the eviction of the Appellants from the premises within 3 months from the date of the judgment (“the impugned Judgment”).
- [3] Murina Sabrina De Souza (“the Respondent”) objects to the application as per affidavit filed in response to the application on 28 July 2021.

Applicant’s grounds for leave to appeal out of time

- [4] In a gist, the grounds for the leave to appeal out of time are namely that;
- [5] By the impugned judgment, the Applicants were directed to vacate the premises of the Respondent within three months from the date of the impugned judgment, and that the direction arose as a result of a judgment by consent endorsed by the Applicants.
- [6] The Applicants are advised and verily believe that despite their consent to the judgment by consent, the Rent Board had no jurisdiction to make an order given that they did not have a tenant/lessor relationship with the Respondent at the material time, and further as per a statement of the reply filed by counsel Joel Camille, the issue of jurisdiction had been raised as a plea in *limine litis* in their defence, and the Rent Board had failed to address this legal point.
- [7] The Applicants having been unable to retain the services of counsel Camille for the hearing of the matter against them on 23 April 2021, they were unrepresented and the matter was concluded by way of a judgment by consent against them, without them being fully aware of the points raised in their pleadings in support of their defence before the Rent Board.
- [8] Based on the above, they are advised and verily believe that their rights to a fair hearing were not fully explained to them by the Rent Board, and as a result a judgment by consent was entered against them, when in fact their pleadings had challenged the Board’s jurisdiction.

- [9] Despite the above and being oblivious to the fact that their rights had been breached, they sought legal advice on the eviction order on 13 July 2021, at which point they were advised to appeal against the order made by the Rent Board.
- [10] They have been advised and verily believe that a notice of appeal had been prepared on their behalf, and with the leave of the court, would like to file a copy of the same. This notice of appeal was attached to the application. (This Court confirms the same).
- [11] They are instructed and verily believe that they have a good chance of success in the appeal on the premises that the Rent Board failed to consider their pleadings and the plea on jurisdiction raised on their behalf.
- [12] Finally, in the interest of justice, they apply for an order that their appeal is heard out of time, and that should the Court not grant the order, greater harm will be caused to them, as they will be evicted from the premises.

Respondent's objections to the application

- [13] On her part, the Respondent in a response affidavit filed on 28 July 2021 avers in objection to the application at paragraphs 9 to 14 of her affidavit, that the application is defective and cannot be entertained for reasons that there is no appeal against the order, for this honourable court to refer to or act upon, and the application is frivolous and vexatious. A simple draft notice of appeal not filed on time; not addressed to the chairman of the Rent Board; without sufficient grounds of appeal to satisfy the requirements of section 22 of the Control of Rent Act; and without stating any valid reason for the court to grant a stay of the Rent Board order; the affidavit fails to disclose all material averments necessary for the court to make a proper determination of the Motion. Therefore, there are no grounds for the court to grant the application for leave to appeal out of time.
- [14] It is further averred that the judgement by consent order was entered on a date that the Applicants' attorney had agreed for the hearing of the active application, thereby accepting the Board's jurisdiction to hear the application.

[15] Further, that in terms of hardship, since the covid-19 crisis in April 2020, she was laid off by Mason's Travel and is presently without means to support herself and pay for her rented living and accommodation, and urgently requires her home to live in since her current landlord, at the place that she currently resides at, gave her notice to vacate six months ago, in order to get higher rent from another tenant. Hence, the application should not be entertained.

Legal analysis and findings

[16] Now, the governing legislation pertinent to this Application is section 22 of the Control of Rent Act (Cap 47), which provides as follows:

Appeal to the Supreme Court

22 (1) Any person aggrieved by any decision or order of the Board may appeal to the Supreme Court on a question of law or of fact or mixed law and fact, and the Supreme Court may affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the board with the directions of the Court thereon, and may make any orders as to costs and all such directions shall be final and conclusive on all parties.

(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.”

(Emphasis mine)

[17] Similar provisions with more extensive explanations are also provided in Rues 5, 6 read with Rule 27 of the Courts Act (Appeal Rules) (Civil Appeals) (Cap 52).

[18] The clear indication from the said Rules is that every appeal:

(i) shall be commenced by notice of appeal;

- (ii) *the notice of appeal shall be delivered to the clerk of the court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorizes the appeal;*
- (iii) *any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme court considers sufficient;*
- (iv) *that where an Act allows an appeal to the Supreme Court from any order or decision of any commissioner or other tribunal or officer the procedure in such an appeal 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.*

[18] Now in the absence of provisions of extension of prescribed time in the Rent Board Act, the provisions of Rule 5 of the Courts Act guide this Court as to the criteria for entertaining such applications as indicated in subparagraph (iii) above, namely that: *“any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme court considers sufficient.”*

[19] The main reasons for the application as averred in the Applicants affidavit are first, the absence of knowledge of the pleadings, more particularly the issues around the jurisdiction of the Rent Board at the time they voluntarily entered into the judgment by consent as endorsed by the Rent Board on 23 April 2021; and also the fact that they were been unable to retain the services of counsel Joel Camille for the hearing of the matter, and they were therefore unrepresented on the date of the hearing.

[20] The Respondent has indicated that she objects to this application on the grounds cited above that; the affidavit fails to disclose material averments necessary for the court to

make a proper determination on the motion. Therefore, there are no grounds for the court to grant the application for leave out of time.

[21] Now, I have in the light of the above background of pleadings, find that this Motion filed on 13 July 2021 as supported by the affidavit of Celina Morel on the same date, was filed more than two months after the impugned Judgment. More precisely the ***impugned judgment of 23 April 2021, and this was past the fourteen days provided for appeal under the provisions of section 22 of the Rent Board Act.***

[22] I note further that in the case of **(Howard v Bodington (1877) 2 Pro. Div. 203 [1877] 2 WLUK 104) Lord Penzance** stated that:

“the continuance of a suit itself was harm which causes prejudice, and those disabilities of the petitioner are not what the court is called upon to consider, but material prejudice caused to the respondent”. The Learned Judge further stated that:

“if we desert the 21 days, the question arises how long may the matter hang over the head of the respondent”.

[23] In line with the above statement, the following passage from Maxwell on Interpretation of Statutes (11th Edition) on page 367 is relevant and provides as follows:

“Enactments regulating the procedure in Courts seem usually to be imperative and not merely directory. If, for instance, a right of appeal from provisions requiring the fulfilment of certain conditions, such as giving notice of appeal and entering into recognizances or transmitting documents within a certain time, strict compliance would be imperative and non-compliance would be fatal to the appeal.”

[24] Now, Rule 5 of the Appeal Rules (supra), gives this Court wide discretion in the matter of granting an extension of time. And to depart from the set-out procedures, the Court needs to have good reasons to do so. Albeit the overriding consideration of the prejudice caused to the Respondent by the delay as enunciated above, a Court should also be

prepared in the interest of justice and fairness to consider circumstances peculiar to each case and not apply the time limits rigidly in all cases.

[25] Now, in this case, it has transpired from the Records of proceedings and documents filed in support of this Motion, the Applicants were privy to the judgment by consent as of 23 April 2021; the fact that their counsel Joel Camille was not available for the hearing is untenable in the circumstances, for they could have easily sought an adjournment of the hearing to secure the appearance of counsel of their choice to represent them. A reasonable tribunal would grant such an adjournment if amply justified in line with the rights to fair trial principles. What is interesting to note in this case, is that albeit stating that they required time to seek Counsel's assistance, the applicants went on and entered into a judgment by consent before the Rent Board. I note in that respect that there is no evidence attached in support of the averments of the affidavit that they were unaware of the pleadings filed on their behalf by Counsel before the Rent Board at the material time.

[26] Further, I consider the fact that it took the Applicants 82 days to realize their "*alleged error*", this is unjustified and untenable in the circumstances of this case, bordering on the precincts of time-wasting tactics and abuse of court process, as clearly indicated in Rule 5 above cited.

[27] It is further noted in the same light that this application is not in line with the provisions of section 22(2) of the Rent Board Act. Apart from the fact that the notice of appeal was out of time, the application does not fulfil the criteria set out in the said Act, to its specific form and substance as required. Therefore the application did to even meet the qualification of a notice of appeal for purpose of appeal before the Rent Board.

[28] Now, it follows, that even if the practice of the Court in comparable situations shall be to eschew undue technicality and ask, based on peculiar circumstances of each case, whether any substantial injustice has been caused, is being or likely to be done to the Respondent, to justify the exercise of the discretionary powers of the Court under Rule 5, the Court is making it clear that it is not in any way going to condone the filing of the improper notice of appeal by the applicants for reasons as clearly illustrated and analysed above. I find thus, that in the instant case, the delay has been too long and the

reasons adduced for the delay are insufficient for this Court to grant an extension of time for the appeal to be filed.

[30] Leave to appeal is therefore denied.

Signed, dated, and delivered at Ile du Port on 30 December 2021

Samia Andre

Judge of the Supreme Court