

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC443
Arising in MA101/2021

In the matter between:

MARY-JANE LADOUCEUR
(rep. by Lucy Pool)

Appellant/Applicant

and

JULIE VARNIER
(rep. by Karen Domingue)

Respondent

Neutral Citation: *Ladouceur v Varnier* (MA 101/2021) [2021] SCSC443 (21st July 2021).

Before: Pillay J

Summary: Stay of execution

Heard: By way of submissions

Delivered: 21st July 2021

ORDER

(1) *The stay of execution is denied*

(2) *The Appeal is dismissed.*

(3) *This Judgment shall be served on the Registrar of the Supreme Court and brought to the attention of the Chief Justice.*

(4) *Each side shall bear their own costs.*

JUDGMENT

PILLAY J

- [1] The Appellant, also the Applicant in the Application for stay of execution, (hereinafter referred to as the Appellant) seeks an order staying the execution of the judgment of the Rent Board dated 27th November 2020 pending the appeal. She further appeals against the said judgment of the Rent Board on two grounds:
- (1) The Learned Chairperson failed to appreciate the hardship that the eviction order would cause the Appellant, having occupied and renovated the property for 42 years and having been a victim of the Tenant Right's System.*
- (2) The order for the Appellant to vacate the Respondent's premises within 3 months is extremely harsh in all circumstances of the case. It will take the Appellant more than a year to find alternative accommodation given the fact that the country is experiencing a pandemic at this point in time.*
- [2] Counsels agreed to deal with both matters simultaneously.
- [3] The Appellant submitted that the Ruling by the Rent Board was delivered on 27th November 2020. The appeal was filed on 11th December 2020 and on that basis was filed within the limit of 14 days per section 22 (2) of the Control of Rent and Tenancy Agreement Act.
- [4] It was counsel's submission that according to section 7 of the Courts Act the Clerk of the Court shall prepare the record as soon as practicable and served on the Appellant. It was her submission that the record of proceedings of the Rent Board dated 19th April 2021 was served on the Appellant's attorney some 2 or 3 weeks later. Thereafter the memorandum of appeal was prepared but was not filed as a result of the Registry informing lawyers and members of the public to avoid multiple trips to the Court House in order to curb the spread of Covid-19.
- [5] The Appellant prays for at least 5 months to vacate the Respondent's premises.
- [6] The Respondent's counsel submitted that in terms of Rule 11 of the Appeal Rules the Appellant should have filed her appeal within 14 days of service of the record of proceedings which she failed to do without advancing good cause and seeking leave of the Court to do file the Memorandum of Appeal outside the statutory delay.

- [7] It was counsel's submission that covid delay does not allow parties to circumvent the rules. She submitted that failure to adhere to statutory procedure was fatal to the matter.
- [8] In terms of the application for stay counsel submitted that the motion should not be granted especially in view that execution had already started when the Registrar stepped in and prevented the completion of the execution. She submitted that the Appellant had shown contempt of the order of the Rent Board and prevented the completion of execution thus at this stage cannot come and request a stay of an execution that has already started.
- [9] She relied on the case of **Pool v William CS 24/1993[1996] SCSC 1(11 October 1996)** for her contention that the application for stay is sparse and does not meet the requirements for the grant of an order for stay of execution.
- [10] In terms of the merits of the Appeal counsel for the Respondent submitted that the Rent Board did appreciate the hardship eviction would cause to the Appellant. It was her submission that the Rent Board had a duty to be fair to both parties hence balanced the hardship to be suffered by both parties and struck a just and reasonable balance.
- [11] She submitted that the Appellant had been given sufficient time to vacate the premises. She argued that given the current covid situation it is easier for the Appellant to find alternative accommodation at a cheaper rate.
- [12] Let me first start with the issue of tardiness of the Appellant/Applicant in filing her Memorandum of Appeal.
- [13] Section 22 (2) of the Control of Rent and Tenancy Agreements Act provides as follows:

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.

- [14] As can clearly be seen, in accordance with section 22 (2) there is no requirement of notice and then Memorandum of Appeal following service of the record of proceedings. The

Appellant has 14 days from the date of the decision against which the appeal is sought to file the notice with the grounds of appeal included.

[15] The record shows that the Notice of Appeal dated 7th December 2020 was filed 11th December 2020. The decision was given on 27th November 2021 hence the notice was filed within the delay. However the notice did not contain the grounds as required therefore is defective.

[16] I fail to follow the arguments put forward as to reasons for the delay being the directions from the Registry. One would have thought that in view of the directions of the Registry in line with the Ministry of Health guidelines, the underlying message would be for lawyers to be extra prepared and undertake all their transactions at the Court in as few trips as possible. With that in mind lawyers would have ensured that on a trip to Court they would prepare all documents and file them in one trip as opposed to coming in multiple times a day.

[17] In terms of the execution aspect, indeed the case of **Pool** which counsel relies on is authority on the manner in which applications for stay of execution should be made and considered. Per Amerasinghe J:

Both in England as well as in Sri Lanka Courts have held with approval the following circumstances in granting a stay of execution of judgment pending appeal

- (a) "The appellant would suffer loss which could not be compensated in damages"*
- (b) "where special circumstances of the case so require"*
- (c) "there is proof of substantial loss that may otherwise result".*
- (d) "there was a substantial question of law to be adjudicated upon at the hearing of the appeal"*
- (e) "is likely to grant a stay where the appeal would otherwise be rendered nugatory"*

[18] In dismissing a similar application the Court in **Pierre v Better Life Foundation (MA265/2018) [2018] SCSC 1093 (28 November 2018)** relied on the circumstance identified in **Pool** adding that:

The general rule to be observed is that a stay should be declined, unless solid grounds are shown. A stay of execution is therefore an exception rather than the

rule (see *Smith, Hogg & Co Ltd v. The Black Sea and Baltic General Insurance Co Ltd* 162 LTR 11).

[19] In the case of **Elmasry and Anor v Hua Sun (SCA 28/2019) [2020] SCCA 2 (23 June 2020)** identified the crux of an application for stay of execution as follows “...*the most important element that needs to be satisfied in seeking a Stay is to aver in the application and satisfy the Court prima facie that there are substantial questions of law and facts to be adjudicated upon at the hearing of the appeal.*”

[20] With that said the affidavit at paragraphs 2 and 3 read as follows:

3. *That I was given 3 months to vacate the Respondent’s premises after being registered a statutory tenant under the Tenants’ Right Act for 42 years.*
4. *That my appeal is only for an extension of time to find alternative accommodation.*

[21] It is unclear what connection paragraph 3 has to ground 1 of the appeal. As to paragraph 4 I can only assume that it is to be read with paragraph 3 in that the Appellant seeks an extension of time over and above the 3 months given by the Rent Board. In the absence of averments as to why an extension is necessary or her chances on succeeding in being granted an extension of time, this Court cannot make a finding in the Appellant’s favour.

[22] As to the first ground of appeal the Rent Board in its judgment at paragraph 8 addressed the issue of hardship stating thus “The Board is further satisfied that despite some foreseen hardship that may now be suffered by the Respondent, she had knowledge since 2017 that she had no right on the property and that the Applicant wished for her to find alternate accommodation.” The Board further noted that “she was allocated a piece of property by the government but instead chose to build a commercial building on the said property instead of her own home.” The Board went further and noted that “no steps [were] taken by the Respondent to mitigate any eventual hardship...” It is evident that the Rent Board addressed its mind to the hardship that would be caused to the Appellant and determined that the hardship was foreseen, the Appellant having been informed since 2017 that she had no right on the property. For that reason the first ground of appeal fails.

- [23] In terms of the second ground of appeal, we are now in July 2021, 8 months after the initial order was made and after the Appeal was filed. One would have thought that the Applicant would have realised that she has in fact already had the extra 5 months she thought was necessary for her to vacate the property. If indeed her intent was to request at least 5 months from the end of the initial 3 months given by the Rent Board, which would have been the end of February 2021 she would already be at the end of the extra 5 months at the end of July 2021, effectively in 6 days from the date of delivery of this decision (21st July 2021). Furthermore with a cursory glance at the classified adverts, I would have to agree with counsel for the Respondent that given the current health and economic situation in the country it very easy for the Appellant to find alternative accommodation. In the circumstances the second ground of appeal fails.
- [24] Before I take leave of this matter I have to address the events that unfolded after the Respondent filed for execution. Per the proceedings of 26th May 2021, on filing the appeal in December 2020, the Appellant did not file an application for a stay of execution. According to the Respondent's counsel with the eviction in process, the Registrar of the Supreme Court recalled the process servers without an order of the Court. This was confirmed by the Appellant's counsel who explained that she emailed the Registrar to inform her that there was an appeal pending with the only issue being a request for an extension of time if she would be minded to stop the execution giving time to the Appellant to file an application for stay of execution.
- [25] In terms of section 230 of the Seychelles Code of Civil Procedure "an appeal shall not operate as a stay of execution ... unless the court or the appellate court so orders." Section 2 of the same code defines "the court" as "the Chief Justice or a puisne judge sitting in court or in chambers." The Registrar of the Supreme Court therefore has no power to stop a stay of execution. The Registrar is neither "the court" nor above "the Court". A Court Order remains valid until it is stayed or overturned by a higher Court. The Registrar has no power to do any act if the law does not give him/her the power to do that act. The Registrar's powers comes from law and not from any individual. Counsel for the Appellant failed to file an application for a stay of execution at the time she filed her appeal by

oversight or otherwise. It was not for the Registrar, though, to listen to the pleas of counsel and stall the execution in order to give counsel time to file the application for stay.

[26] Accordingly I make the following orders:

(1) The stay of execution is denied

(2) The Appeal is dismissed.

(3) This Judgment shall be served on the Registrar of the Supreme Court and brought to the attention of the Chief Justice.

(4) Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on ... *21st July 2021*



Pillay J