

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC

MA 173/2022

(Arising in CA No 16/2022)

In the matter between:

WILLIAM CADEAU
Of Les Mamelles
Mahe
Seychelles

Applicant

And

MOHAN CHETTY
Of Plaisance
Mahe, Seychelles

1st Respondent

PRR PROPERTY (PTY) LTD
(Represented by its director Kalieperumal Deivanayaham Chetty)
Of Plaisance, Mahe, Seychelles

2nd Respondent

DHEEPALATHA CHETTY
Of Plaisance, Mahe, Seychelles

3rd Respondent

RAJESH CHETTY
Of Plaisance, Mahe, Seychelles
(All represented by Mr Guy Ferley)

4th Respondent

Neutral Citation: *Cadeau vs Chetty & Ors* (MA 173/2022) [2022] SCSC (17th November 2022)

Before: Adeline J

Summary: Stay of execution.

Heard: Submissions

Delivered: 17 November 2022

FINAL ORDER

Application for stay of execution of judgment is dismissed.

RULING

Adeline, J

[1] By way of a notice of motion supported by an affidavit of facts and evidence, the Applicant, (also the Appellant in Civil Appeal No 16 of 2022) one William, Cadeau of Les Mamelles, Mahe, Seychelles applies to this court for an order for stay of execution of a decision in the form of a ruling delivered against him in CS No RB 18 of 2021 on the 8th July 2022 by the Rent Board Tribunal. The Applicant, (also the Respondent to a cross application in CS No RB 18 of 2021) was ordered;

- (i) to vacate the rented premises not later than the 8th August 2022, and
- (ii) To pay the 2nd Respondent, PRR Property Development (Pty) Ltd the sum of SCR 120,000.00 as arrears of rent due as at June 2022, and any sum continuing to be owed until he vacates the premises

[2] The Applicant/ Appellant, has since filed an appeal against the decision of the Rent Board Tribunal before the Supreme Court on 13 different grounds, which are the following;

“1. The judgment was delivered in open court, and not signed in open court, with the absence of two members who heard the case as should have been the procedure.

2. The Appellant has been interrupted on several occasions by the chairman whilst arguing his case in respect to the event of the 4th September 2021.

3. The action of the Board, especially the chairman, was biased towards the Appellant, whilst arguing his case.

4. *The Board has misguided itself in accepting rather than rejecting a defective response by the Defendant thus basing its judgment thereon.*
5. *The Board has failed to acknowledge and make a decision on the event of the 4th September 2021, as an illegal eviction by the 3rd and 4th Defendants.*
6. *The Board has failed to acknowledge that there was no contract between the 2nd Defendant and the Appellant pursuant to the Control of Rent and Tenancy Agreement Act under Section 10 (2) (a).*
7. *The Board has failed to acknowledge and decide that there was no relationship between PRR Property Development (Pty) Ltd the 2nd Defendant, and LandMark Apartment, pursuant to Section 17 (2) of the Control of Rent and Tenancy Agreement Act.*
8. *The Board has found that, the original Contract was null and void Abnitio, and erred in creating a contract between the 2nd Defendant and the Applicant in the judgment.*
9. *The Board erred in recognising the relationship between the 2nd Defendant and Land Mark Apartment, without the 2nd Defendant providing proof thereof.*
10. *The Board has recognised that, there were interferences by the 2nd and 3rd Defendants against the quiet enjoyment of the premises by the 2nd and 4th Defendants, and failed to recognise the same as an illegal eviction.*
11. *The Board erred in not taking into account of the case law, as the case reference by the Appellant into consideration.*
12. *The Board erred and failed to pronounce itself on the Appellant's prayers for declaration on the Defendant's action.*

13. *The Board erred in creating a relationship between the Defendants and the Applicant.*

THE PLEADINGS AND EVIDENCE

[3] In the affidavit in support of the application, the Applicant deposes, inter alia, that;

“3. In its judgment of the case delivered on the 8th July 2022, the Rent Board ordered that, I vacate the premises by the 8th August 2022, and pay the amount of SR 120, 000.00 to the 2nd Respondent.

4. On the 24th April 2021, I entered into a lease agreement with Mohan Chetty of Plaisance, Mahe, Seychelles for the occupation of Apartment C7 at the Land Mark Apartment, for a monthly rental of SR 10,000.

5. A rental deposit of SR 10,000.00 and SR 5000 as initial rental and SR 5000 was paid on the 23rd September 2022.

6. On the 25th August 2021, Deepa Chetty, on behalf of Mohan Chetty, sent me a notice to vacate the premises, by the 25th September 2022

7. On the 4th September 2022, Deepa Chetty, accompanied by Rajesh Chetty and three Indian workers interfered with my peaceful enjoyment of the property, when they changed the lock and interfered with my personal belongings and properties.

8. That I am dissatisfied with the judgment of the Rent Board in the case, and I have lodged an appeal to the Supreme Court through the Rent Board, pursuant to Section 22 of the Control of Rent and Tenancy Agreement Act.

9. The fact that the Rent Board has nullified the Lease Agreement that I have signed with Mohan Chetty, and on its own motion created a Lease Agreement with PRR Property Development (Pty) Ltd, without any evidence thereof, and ordered for me to vacate the

premises and pay PRR Property Development (Pty) Ltd, is unreasonable, and legally not correct.

10. Furthermore, there are substantial questions of law and facts to be adjudicated upon the hearing of the appeal as per my grounds of Appeal and have high chances of success in my appeal based on such grounds.

11. That if the judgment is executed before the disposal of the appeal, I will suffer serious hardship into finding another rental premises, and again a Civil Suit is being lodged against PRR Property Development (Pty) Ltd, Deepa Chetty and Rajesh Chetty before the Magistrate's Court for damages for the illegal eviction on the 4th September 2021, and a Civil Suit against PRR Property Development (Pty) Ltd, to establish and determine ownership and relationship with the Land Mark Apartment, would render the appeal nugatory.”

[4] In their joint affidavit in reply, inter alia, the Respondents make the following averments;

“6. Paragraph 9 is denied. The decision of the Rent Board Tribunal to eject the Applicant is perfectly legal and correct. The Tribunals decision was based on the cross-application by the 2nd Respondent PRR Property Development (Pty) Ltd and not based on the Rent Board Tribunal's own motion as averred by the Applicant.

7. Paragraph 10 of the affidavit is specifically denied. We have been advised by the Attorney to our case, and we verily believe the same to be true. that there is no substantial points of law to be determined in this case for the following reasons;

7.1 There exists a relationship of lessee and lessor relationship between the Applicant and the 2nd Respondent pursuant to Section 2 of the Control of Rent and Tenancy Agreements Act.

7.2 The Applicant has failed and refused to pay rent, and had accumulated arrears in the sum of SR 120,000 at the time of the judgment of the Rent Board. Pursuant to Section 10

(2) (a) of the Control of Rent and Tenancy Agreement Act, the Rent Board was correct in law in ordering the ejection of the Applicant.

7.3 Since the judgment, the Applicant has not paid 1 cent towards the rent due. It is trite law that if a tenant/lessee doesn't pay rent, he cannot invoke the protection of the Rent Board consequently, also not the protection of this court.

7.4 The Appeal has no prospect of success. In any event, the prospect of success is not a matter for the court to take into consideration in deciding whether to grant a stay or not.

8. Paragraph 11 of the affidavit is denied. We further aver as follows;

(i) A civil suit in whichever shape or form will have no bearing on the merits of this application for a stay.

(ii) Ownership of the Land Mark Apartment is already established. The Applicant's case before the Rent Board was premised on the fact that the apartment did not belong to the Mohan Chetty but to PRR Property Development (Pty) Ltd.

(iii) The Applicant's averment that he "will suffer serious hardship into finding another rental premises" is very telling of the Applicant's attitude. He will not find an apartment for free.

(iv) There is nothing in the appeal which will be rendered nugatory if this application for stay is not granted.

9. Paragraph 12 of the affidavit is denied in its entirety. Fairness and the interest of justice will not be served by staying the execution of the judgment when the Applicant himself comes before the court in bad faith, in that, he is not paying any rent for the premises he has been occupying for more than a year.

10. (ii) *The present matter concerns an order for ejecting of the Applicant from premises belonging to the 2nd Respondent, and for the Applicant to pay rent arrears in the sum of the SR 120,000.00.*

(a) *It has not been shown in the Applicant's affidavit, how and what loss he will suffer if the stay is not granted. He merely states that he will suffer hardship in finding another apartment.*

(b) *The Applicant does not show that any of the Respondents, more particularly the 2nd Respondent, is impecunious.*

(c) *The grounds of appeal are extremely vague and do not reveal any important facts or substantial question(s) of law to be adjudicated upon at the hearing of the appeal*

(d) *On the contrary, it is the 2nd Respondent who will continue to suffer pecuniary losses if a stay is granted.*

12. *We pray the Honourable court to dismiss the application with cost for the Respondents”*

SUBMISSIONS

[5] Submitting orally, learned counsel contends that, the Applicant's motion is for an order to stay execution of the judgment of the Rent Board Tribunal delivered on the 8th July 2022, by which judgment, the Applicant/Appellant was ordered to vacate the rented premises that belongs to the 2nd Respondent, and to pay arrears of the rent due to the 2nd Respondent to the tune of SCR 120,000. Learned counsel remarks, that since taking possession and occupation of the rented premises on the 24th April 2021, the Applicant/Appellant has paid only SCR 20,000 as rent and that since the judgment was delivered he has not paid rent.

- [6] Learned counsel also remarks that, although in his supporting affidavit to the motion the Applicant/Appellant avers that, there are “substantial questions of law and facts to be adjudicated upon at the hearing of the appeal” as regards to the grounds of appeal, and that he has a high chance of success, he fails to make any averment as to what these substantial questions of law and facts are.
- [7] Learned counsel takes issue over the Applicant/Petitioner’s averment in his supporting affidavit, that if a stay is not granted and the judgment is executed before the appeal is disposed of, he “will suffer serious hardship in finding another rented premises”. Learned counsel submits, that there are two months since the judgment was delivered, and the Applicant/Appellant has not obtained alternative housing accommodation whilst he continues to enjoy occupation of the rented property without paying rent, and that by pursuing this appeal with a stay, that will give him more time to occupy the rented property without paying rent at the detriment of the 2nd Respondent.
- [8] It is the submission of learned counsel, that should the Applicant be granted stay being sought for, it is the 2nd Respondent who would suffer hardship because the Applicant/Petitioner will continue occupying the rented property without paying rent denying the 2nd Respondent rent which it would generate if the rented property is made available and rented to someone else who will pay rent.
- [9] Addressing the court on the domestic jurisprudence in this area of law, learned counsel submits, that the principles to be applied in determining whether or not a stay of execution should or should not be granted, is well encapsulated in the judgment of Twomey JA in the case of Ashraf Elmasry Elena Kozlova vs Margaret Hua San, and that these principles have been rehashed and recast in many other case law authorities, often cited when determining whether or not a stay execution of a judgment should be granted. Quoted from the judgment of Ashraf Elmasry (Supra) learned counsel submits that these principles are;

“1. Where the Appellant would suffer loss which could not be compensated in damages.”

Learned counsel argues, that as per the averments in Applicant/Appellant's affidavit, the only hardship or loss he avers he will suffer, is "the inability to find himself alternative accommodation". Learned counsel explains that, the Applicant doesn't state, for example, that the 2nd Respondent is impecunious, and that if his appeal success, the 2nd Respondent is a person with no means and will not be able to compensate him for damages or to refund any money paid to him.

[10] Learned counsel refers to another principle spelt out in Ashraf Elmasry (Supras) which he quotes as follows;

(ii) Where special circumstances of the case so require

Learned counsel submits, that although there was an error in respect of the initial contract because it was signed by Mr Mohan Chetty, (an alias name) who is not a legal person, the Applicant/Appellant knew all along, who the owner of the rented property was, in that, it was PRR Property Development (Pty) Ltd, the 2nd Respondent. As per learned counsel's submission, that was so because the Applicant/Appellant paid the first two instalments of the rent into the 2nd Respondent's bank account, and the same being borne out of the Applicant/Respondent's pleadings and grounds of Appeal. Furthermore, it is submitted by learned counsel that, by implication, the reading of Section 2 of the Control of Rent and Tenancy Agreement Act, indicates, that there was a lessor and lessee relationship between the Applicant/Appellant and the 2nd Respondent. In otherwords, learned counsel seeks to argue that, there is an enforceable agreement between the Applicant/Appellant and the 2nd Respondent, PRR Property Development (Pty) Ltd. Within these background facts, learned counsel submits, that there are no special circumstances in this case that so require the grant of stay.

[11] Learned counsel submits, that another principle that is called for consideration for the grant of a stay is;

(iii) Where there is proof of substantial loss that may otherwise result. In this regard, learned counsel submits, that the Applicant/Appellant does not state in his affidavit in

support of his application, whether or not he is going to suffer loss or incur loss, and to what extent, should the court not grant him stay of execution of the judgment. Learned counsel also submits, that it is the 2nd Respondent who will suffer substantial loss if a stay of execution is granted, given that the Applicant/Appellant will continue to enjoy the occupation of the rented property without paying rent, thus depriving the 2nd Respondent rent it would have otherwise received if the rented property could be made available with vacant possession for rent to another person.

[12] Another principle which counsel for the Respondents submits, stating that the Applicant/Appellant should have addressed in his affidavit in support of his application for a stay, but has failed to do, is the principle that;

“ Where there is a substantial question of law to be adjudicating upon at the hearing of the appeal”. Learned counsel submits, that amid the issue raised by the Applicant/Petitioner surrounding the question whether or not there was a lease agreement between him and the 2nd Respondent, learned counsel submits, that the Rent Board Tribunal, in its judgment, gets it right in saying that, the agreement has been created by law by virtue of Section 2 of the Control of Rent and Tenancy Agreement Act. Learned counsel argues, that a tenancy agreement has been created by the operation of the law. Learned counsel added, that this legal point having correctly addressed, the Applicant/Appellant has not revealed what is or are the substantial questions of law to be adjudicated upon on appeal.

[13] In his written submission, the Applicant/Appellant, addresses two of the principles developed by case law for consideration for the grant of a stay. He first argues, that if a stay of execution is not granted, he would suffer substantial loss as he would have to vacate the rented property and pay rent in the total sum of SCR 120,000, and that if the appeal is successful, it would render it nugatory. Secondly, he seems to be arguing that, there are substantial questions of law to be adjudicated upon. As per the Applicant/Appellant's submission, one of these questions of law, is that, the chairman of the Rent Board delivered the judgment in the presence of two members who had not

heard the case. He contends, that this is a violation of Section 135(3) of the Seychelles Code of Civil Procedure.

[14] Learned counsel then proceeded to submit on what he perceives to have been the Rent Board errors in adjudicating over the application, which in my opinion, are irrelevant for the purpose of determining this application for a stay of execution.

[15] Having given due consideration to the affidavit evidence, and the submission of both parties to this motion, the vexed question to be determined is;

(i) Whether or not, execution of the Rent Board Tribunal's ruling should be stayed.

[16] I wish to emphasise, that the parties are where they are because the Applicant/Appellant, having filed an appeal to the Court of Appeal against the ruling of the Rent Board Tribunal dated 8th July 2022, is aware of Section 230 of the Seychelles Code of Civil Procedure ("SCCP") which provides, inter alia, that an "appeal shall not operate as a stay of execution". Section 230 of the SCCP is couched in the following terms;

"230. An appeal shall not operate as a stay of execution or of a stay of proceedings under the decision appealed from unless the court or the appellate court so orders and subject to such terms as it may impose. No intermediate act or proceeding shall be validated except so far as the Appellate court may direct".

[17] I also wish to emphasise, that the decision as to whether a stay should be granted or not in the instance case, is to be made on account of the grounds averred in the affidavit in support of the application, not on the basis of the submission made by the parties. The submissions simply seek to state the case for the parties and where appropriate, to cite case laws to support the legal points made. My reading of the Applicant/Appellant's affidavit, leads me to the conclusion, that the affidavit invokes two of the grounds for consideration of an application of this nature. The grounds having been elaborated in *Pool v William* (CS 244/1993) [1996] SCSC 1 (11 October 1996, rehashed in other case

law authorities such as *Casino des Iles v Compagnie Seychelloise SCA* 2/1994, *Ashraf Elmasry Elena Kozlova MA* 195/2019 (arising in *CC* 13/2014) and *Lablache de Charmoy v Lablache de Charmoy SCA* 9/2019 [2019] SCCA 35 (17 September 2019).

[18] In *Ashraf* (Supra) Twomey CJ, (as she then was), at paragraph [11] of her ruling reminds us all of the principles elaborated in *Pool* (Supra) as regards to the circumstances in which a stay should be granted by the court, quoted as follows;

- “1. Where the Appellant would suffer loss which could not be compensated in damages.
2. Where special circumstances of the case so require.
3. Where there is proof of substantial loss that may otherwise result
4. Where there is a substantial question of law to be adjudicated upon the hearing of the appeal, and
5. Where if a stay is not granted, the appeal if successful, would be rendered nugatory”.

[19] Of these grounds or principles, the only two which are invoked by the Applicant/Appellant are;

1. There are substantial questions of law to be adjudicated upon at the hearing of the Appeal, and
2. I will suffer serious hardship.

[20] In respect of the former ground, I observe, that the affidavit in support of the motion fails to elaborate on what these substantial questions of law to be adjudicated upon at the hearing of the appeal are. I note however, that in his written submission, the Applicant/Appellant has tried to argue what he perceives to be the substantial questions of law to be adjudicated upon. Unfortunately, this cannot be even considered because they are not evidence given that the affidavit is mute on them.

[21] As to the second ground that, “he will suffer serious hardship”, even if that is to be construed as the “Applicant/Appellant would suffer loss which could not be compensated

in damages” the affidavit does not disclose what these hardship or losses would be. All that the Applicant/Appellant avers, is that “he will suffer hardship into finding another rented premises”. In essence, therefore, the affidavit evidence is inadequate and fraught with deficiencies to enable this court to grant the application for a stay of the ruling.

[22] At this juncture, I need to remind the parties to this application, that a stay of execution is a discretionary remedy and for this reason, the English authorities are therefore relevant, particularly so, given the existence of Section 27 of the Courts Act. The general rule of the High Court of England, is that, a stay should be declined unless there are solid grounds for granting it. That having been said, means, that in his affidavit, the Applicant/Appellant must make full and frank disclosure of the facts, and “clear statements of the irreparable harm to him if no stay is granted”. In *Macdonald Pool (Supra)* the Sri Lankan case of *Sokkalar Ram Sait v Kumaravel Nadar and others* 13 CLW 52, was cited in which case, Keuneman J had stated;

“ It has been stated in England, that the usual course is to stay proceedings pending appeal only when the proceedings would cause irreparable injury to the Appellant. Mere inconvenience and annoyance is not enough to induce the court to take away from the successful party the benefit of the decree”

[23] At paragraph 11 of its affidavit, the Applicant/Appellant, seems to suggest, that, should his appeal be successful, by not granting him a stay, that would render it nugatory. On account of the affidavit evidence, I cannot find any averment of fact that would lead me to the conclusion, that this would be the case. There again, the affidavit is inadequate and fraught with deficiencies amongst other things, to support this assertion.

[24] At paragraph [10] of his affidavit, the Applicant/Appellant, avers, that he has a high chance of success on the ground that there are substantial questions of law and facts to be adjudicated upon. Not only has he not disclosed what these substantial questions of law and facts are, even if he was to be successful on appeal, for that reason alone, a stay cannot be granted. Based on *Macdonald Pool (Supra)* he needed to satisfy the court that,

if the subject matter was death with, the appeal if successful would be nugatory, something he has failed to do.

[25] In *Chang-Tave v Changtave* [2002] SLR 74, the court remarked that, based on the English principle, even if the Appellant had some prospect of success in his appeal, for that reason alone, no stay will be granted unless the Appellant satisfies the court that he will be ruined without a stay of execution.

[26] In *Avalon (Pty) Ltd & Ors v Berlouis* [2003] SLR 59, it was held “that the court will exercise its discretion to grant a stay of execution sparingly. The court will not without good reason delay a successful Plaintiff from enforcing the judgment obtained” and added, “equally the court should consider the balance of convenience, hardship and loss the parties may suffer. The Appellant/Judgment Debtor must show that the likely injury to be suffered by them is greater than any suffering by the Respondent if the stay is granted.

[27] The fact that the Applicant/Appellant has not made a convincing case with sufficient good reasons for the granting of a stay of execution that in effect would delay the Respondent from enjoying the fruits of the ruling made in her favour by the Rent Board Tribunal means, that the application cannot succeed. Clearly, therefore, the balance of convenience sways in favour of the Respondent to this application.

[28] In the circumstances, therefore, this court dismisses this petition for stay of execution with costs awarded in favour of the Respondent.

Signed, dated and delivered at Ile du Port 17 November 2022.

B Adeline, J