SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC …
CA 27/2020
(Appeal from RT 20/2019)

In the matter between:

BRENDA FIGARO **Appellant**
(rep. by Joel Camille)

and

PROPERTY MANAGEMENT CORPORATION **Respondent**
(rep. by Manuella Parmentier)

Neutral Citation:	*Figaro v Property Management Corporation* (CA 27/2020) [2022] SCSC 160 (23rd February 2022).
Before:	Pillay J
Summary:	Appeal from Rent Board
Heard:	By way of submissions
Delivered:	23rd February 2022

ORDER

The appeal is dismissed

JUDGMENT

PILLAY J

[1] By way of a Ruling delivered on 6th November 2020, the Rent Board made a finding in favour of the Respondent and ordered the Respondent to vacate the premises she was occupying within 3 months from the date of the order.

[2] The decision was based on the Board being satisfied that the Respondent had proved that the Appellant "has been in continuous breach of her tenancy agreement by causing nuisance to the Applicant and other tenants at Chetty flats property."

[3] Following the said decision the Respondent filed an application for execution of the decision dated 28th April 2021 which was duly executed resulting in the Appellant being evicted from the Respondent's premises at Chetty Flats property.

[4] The Appellant appealed to this Court by way of Notice of Appeal dated 26th November 2020. The grounds of her appeal are as follows:

(1) The Learned Chairperson of the Rent Board erred in entering judgment against the Appellant on the basis that she had breached the order given by the Magistrates Court under section 165 of the Penal Code regarding antisocial behaviour.

(2) The Learned Chairperson of the Rent Board erred in accepting evidence of the witnesses of the Prosecution and dismissing the evidence of the Appellant despite the fact that the Appellant had been an exemplary tenant ever since the order for antisocial behaviour was given in June 2016.

(3) The Learned Chairperson of the Rent Board erred in entering judgment against the Appellant in the absence of evidence from any of the complainants namely the neighbours of the Appellant.

Ground 1 - The Learned Chairperson of the Rent Board erred in entering judgment against the Appellant on the basis that she had breached the order given by the Magistrates Court under section 165 of the Penal Code regarding antisocial behaviour.

[5] Learned counsel for the Appellant submitted that the Board concluded at paragraph 16 of its judgment that the Appellant had "further been in breach of the anti-social behaviour order over the last 24 months that it was valid." He submitted that this meant that the Board had partly based its decision on that alleged breach.

[6] He further submitted that the Board was incompetent to have taken the issue of the breach of an order of the Magistrates Court, which the antisocial behaviour order was, in consideration in reaching its decision to evict the Appellant. It was his submission that

the order was made in 2018. The evidence of ASP Marie was to the effect that there were allegations of breach. Learned counsel submitted that there was no evidence tendered that those allegations resulted in any convictions entered against the Appellant. As such, he submitted, the Board was wrong to conclude that the Appellant was in breach of the antisocial order while it was valid.

[7] Learned counsel for the Respondent submitted that the Board at paragraph 14 of its Ruling highlighted the section of law it relied on to make its determination, specifically section 10 (2) (a) and 10 (2) (b) of the Control of Rent and Tenancy Agreements. She submitted that the antisocial behaviour order served to show a pattern of bad behaviour and nuisance by the Appellant. It was her submission that the Board has jurisdiction to determine through their own practice and through their own observation of the evidence brought before them, whether the Appellant's actions subsequent to the anti-social order amounts to nuisance. She submitted that the Board had the authority to come to this finding without the need to have a Magistrate confirm that an anti-social order has been breached.

[8] Paragraph 16 reads as follows:

> *After analysing the evidence before the Court, this Board is satisfied that the Applicant has it's evidentiary burden to prove that the Respondent had been in continuous breach of her tenancy agreement by causing nuisance to the Applicant and other tenants at Chetty flats property. That she has further been in breach of the antisocial behaviour order over the 24 months that it was valid.*

[9] At paragraph 15 the Board noted that "the Applicant [Respondent] is moving for eviction of the Respondent from the leased premises on the ground that she is in continuous breach of her tenancy agreement…" which the Board found the Appellant to be in breach of at paragraph 16.

[10] I agree with the submissions of the Learned counsel for the Respondent that the Board had the jurisdiction to determine that the Appellant's actions subsequent to the issuance of the anti-social behaviour order amounted to a nuisance. However the framing of paragraph 16 does not show that the Board considered that the Appellant's actions

subsequent to the order being made was additional evidence of a nuisance. Rather, the framing suggests that the Board found, that the evidence showed, that the Appellant had been in breach of the anti-social order made by the Magistrates Court, and that of itself was an additional reason justifying the order for her to vacate the premises.

[11] However even without a consideration of the evidence of breach of the order and a finding that she was in breach of the antisocial order the Board had sufficient basis to come to the conclusion that it did, that *"the Respondent had been in continuous breach of her tenancy agreement by causing nuisance to the Applicant and other tenants at Chetty flats property."*

[12] This ground of appeal therefore fails.

Ground 2 - The Learned Chairperson of the Rent Board erred in accepting evidence of the witnesses of the Prosecution and dismissing the evidence of the Appellant despite the fact that the Appellant had been an exemplary tenant ever since the order for antisocial behaviour was given in June 2016.

[13] Learned counsel for the Appellant submitted that since the antisocial order was made things have changed between her and her neighbours. They were all united with her and are friends with her. He submitted that the Board never considered this evidence but rather restricted their considerations on the basis of the Respondent's witness and officer Marie. It was further his submission that the evidence of Officer Marie related to complaints made from 17th July 2018 to 3rd January 2019. Learned counsel submitted that none of the alleged complainants testified before the Board.

[14] For her part Learned counsel for the Respondent submitted that the Board considered the evidence of the Appellant as made clear in paragraph 12 of the decision. She further submitted that the Appellant's evidence was self-serving without any corroboration whereas the Respondent brought two witnesses who both corroborated the Respondent's version of the facts.

[15] She submitted that Mr Marie's evidence is not hearsay as he had personally been on site as per his evidence on 10th July 2020 that

> *Tina Pierre said calls about loud music at all hours and drug activities. People group for drug related activities at odd…of the night. I went on site and verify the truth of the complaints….we see people coming in and out, injecting right there.*

[16] In paragraph 12 of the Ruling the Board noted that:

> *She did acknowledge that some neighbours had made complaints against her in the past but that they had now made amends and that she was friendly with all her neighbours. She denied that she had been in breach of any conditions imposed upon her in the anti-social behaviour order. She denied partaking in drug-related activities and stated that she had never been charged or convicted for the same.*

[17] I have difficulty following learned counsel for the Appellant's argument with regard to the complaints relied on being made between 17th July 2018 to 3rd January 2019. These complaints were complaints registered just before the Application was filed in February 2019. I would venture to say that on a reading of the Application itself the very reason that the Respondent filed the Application is that despite an "order" being in force the Appellant "continues to cause nuisance". By virtue of paragraph 4 of the Application the Appellant was put on notice of the case against her and chose to call no other witnesses but to testify on her own behalf.

[18] The Board having considered the evidence on record at paragraph 15 "found the evidence of the [applicant's] witnesses to be consistent and the Board has no reason to doubt the truthfulness of the witnesses."

[19] The Board further found that the "allegations of malice on the part of the Police and the Applicant are unfounded and unsupported."

[20] In the case of **Searles v Pothin Civil Appeal SCA07/2014 (21 April, 2017)** the Court applied the dicta followed by the Court of Appeal in **Akbar v The Republic Criminal Appeal SCA5/1998 (3 December, 1998)** on the role of an appellate court in an appeal against findings of facts by a trial court that:

An Appellate court does not rehear the case. It accepts findings of facts that are supported by the evidence believed by the trial court unless the trial judge's findings of credibility are perverse.

[21] In deciding on the appeal in the case of **Citizens Engagement Platform Seychelles v Bonnelame (CA 28/2019) [2020] SCSC 990 (28 December 2020)** Dodin J looked at the England and Wales Court of Appeal case of **Clydesdale Bank v Duffy [2014] EWCA Civ 1260** for guidance, wherein the process of appeal was explained as follows:

> *"The Court of Appeal is not here to retry the case. Our job is to review the decision of the trial judge. If he has made an error of law, it is our duty to say so, but reversing a trial judge's findings of fact is a different matter.... persuading an appeal court to reverse a trial judge's findings of fact is a heavy one. Appellate courts have been repeatedly warned by recent cases at the highest level not to interfere with findings of fact by trial judges unless compelled to do so. This applies not only to findings of primary fact but also to the evaluation of those facts and to inferences to be drawn from them".*

[22] The question then is whether the findings of the Board on the credibility of the Respondent's witnesses are perverse and is there a compelling reason for this court to reverse the finding of fact made by the Board.

[23] Having perused the decision delivered by the Board there is no basis for a finding that their finding is perverse. They made a finding based on the available evidence placed before them. The Board had the opportunity to observe the witnesses and found them to be consistent and truthful.

[24] The Appellant chose not to call evidence to corroborate her testimony that she was an exemplary tenant. The Board cannot be faulted for coming to the conclusion it did.

[25] On that basis this ground of appeal also fails.

Ground 3 - The Learned Chairperson of the Rent Board erred in entering judgment against the Appellant in the absence of evidence from any of the complainants namely the neighbours of the Appellant.

[26] Learned counsel for the Appellant submitted that the Appellant could only have been evicted by the Board if she was found guilty of conduct which is a nuisance or annoyance to neighbouring occupiers per section 10 (2) (e) of the Control of Rent and Tenancy Agreement. He submitted that there was no evidence of complaints "from tenants and in respect of loud music and drug-related activities" as relied on by the Board in paragraph 15 of its judgment.

[27] He further submitted that the Board cannot rely on evidence of hearsay to come to its finding to evict a person. It was his submission that in the absence of evidence of any of the complaints, the Board could not have made a determination as regards issue of nuisances as required under section 17 (3) of the Act. With this lack of evidence from the complainants it was Learned counsel's submission that this is fatal to the Respondent's case and on that basis the appeal should be allowed.

[28] Learned counsel for the Respondent submitted that "it is not necessary for all the complainant's themselves to be present [to depone] since all witnesses who testified on behalf of the Respondent, all witnessed the nuisance caused by the Appellant first hand and all corroborated with the version of the facts claimed by the Respondent."

[29] Learned counsel for the Respondent submitted that the Board took into consideration the evidence of ASP Marie to the effect that:

> *…some tenants were fearful to bring a case and intimidated by the Respondent. This is because she has influence over a lot of youngsters who would often threaten other tenants.*

[30] It was her submission that by virtue of sections 10 and 17 of the Act, the Board correctly ruled in favour of the Respondent.

[31] Section10 (2) (e) that the Appellant had to be found "guilty of conduct which is a nuisance or annoyance to adjoining neighbours". Learned counsel emphasized that the Appellant had to be found guilty.

[32] Section 10 (2) (b) rather than (e) as referred to by learned counsel reads partly as follows:

> *… the lessee or any person residing or lodging with him or being his sub lessee has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, …*

[33] The section speaks nothing of the Appellant having to be "found" guilty as submitted by the Appellant's counsel but of the lessee or sub-lessee being guilty of such conduct that would be considered a nuisance or annoyance to adjoining neighbours.

[34] The Rent Board is not a criminal court and the applicable standard is similar to that applied in a civil matter which is proof on a balance of probabilities and not the higher threshold as in a criminal case.

[35] Indeed, as the Learned counsel for the Respondent submitted, in accordance with section 17 of the Act:

> *(1) The Board before making any order shall give all interested parties the opportunity of being heard and of producing such evidence as may to be Board seem relevant.*
>
> *(2) The Board may examine witnesses and may summon any person to appear before it and may require such person to produce any document including a document of title which it considers relevant.*
>
> *(3) The laws of Seychelles relating to witnesses and evidence shall be applicable to all witnesses appearing and to all evidence taken before the Board which is hereby authorised through its Chairman to administer an oath to any witness appearing before it or allow an affirmation or a declaration to be made by such witness.*

[36] This Court is satisfied that the Board gave both parties an opportunity to be heard. The Appellant chose not to call any witnesses. The Respondent relied on the evidence of an

ANB officer, as well as ASP Marie and the enforcement officer Mr. Marie all of whom the Board found to be truthful. It is noted that a fact in issue can be proven without a victim being called to testify. The issue is whether on a balance of probabilities the Appellant was acting in such a way as to cause annoyance to the adjoining neighbours.

[37] The position in terms of hearsay evidence in civil cases is per the case of **Seychelles Construction v Braun SCA 9/2004, 20 May 2005** where the Court held that *"the trial court has the judicial discretion whether or not [to admit hearsay evidence]… in conjunction with other credible evidence"*

[38] At paragraph 9 of the Ruling the Board noted that ASP Marie had "on a few occasions he had to call the Respondent [Appellant] to the station along with other tenants to try to resolve the issues." In fact ASP Marie testified that the "complaints were regular from a lot of tenants".

[39] In addition Mr Marie from PMC stated that the Respondent (the Appellant in the present matter) has "received numerous complaints". That complaints were made is not hearsay. What would be hearsay is that content of the complaints.

[40] It is noted that the Respondent in evidence stated, in reference to Mr. Marie, that "… when someone makes a complaint, he never comes to me. I am not the only one who makes noise." She further accepted in evidence that "Numerous people made complaints against me…"

[41] Mr. Marie testified that he "has monitored the situation for some time and all the drug addicts are seen leaving the Respondent's flat at all hours of the day and night."

[42] When questioned, the Appellant accepted that "on Fridays my sisters come and we do barbeque; we have a little fun…"

[43] By her testimony she provides corroboration to the evidence of the Respondent's witnesses that complaints had been made by her neighbours to the Respondent and Police and that the content of those complaints were with regard to her making noise.

[44] On the totality of the evidence the Board was correct in entering judgment against the Appellant on the basis of the evidence before it.

[45] The appeal is therefore dismissed. No order is made for costs.

Signed, dated and delivered at Ile du Port on ……

PILLAY J