IN THE SUPREME COURT OF SEYCHELLES

BERNARD PORT-LOUIS **Appellant**

VS.

PAOLO SALVATORE PROCOPIO **Respondent**

Civil Appeal No. 1 of 2007

Mr. Bonte for the Appellant

Ms. Domingue for the Respondent

JUDGMENT

***Gaswaga*, J**

This is an appeal from the decision of the Rent Board (hereinafter referred to as the Board). Benard Port-Louis, the appellant now, filed an application against Paolo Salvatore Procopio, the respondent, before the Board for an order of eviction on grounds of non-payment of rent, and for arrears of rent amounting to SR 32,000.00.

The facts disclosed are that the appellant together with his wife executed a lease dated 20th September, 2005 (EP2) with the Government of Seychelles in respect of the property (premises) comprised in Title No. V 1050 located at, also known as Le Rocher Factory. Prior to this, in a letter of 11th February, 2004 (EP3) the Ministry of Environment and Natural Resources confirmed its earlier verbal agreement to lease the demised premises to the appellant. Pursuant to a lease agreement dated 1st March, 2005 the appellant sublet part of the said premises to

the respondent for a period of two years (renewable) from the 1st April, 2005 at a monthly rent of SR 8,000.00 payable in advance on the first day of every calendar month. On the 13th January, 2006 the appellant's lawyer wrote to the respondent demanding for payment of arrears of rent totalling SR 32,000.00. The said letter (EP5) also served as a notice to the respondent to vacate the premises.

Consequently, an application for an order of eviction was filed before the Board to which the respondent vehemently objected by raising a number of *pleas in limine litis* to wit:

a. the applicant has no locus standi to request for the eviction of the respondent from the premises or that the respondent pays him arrears of rent as he is not the owner of the premises in question.
b. the respondent is a co-lessee of the premises and as such he had no capacity to enter into a lease agreement solely with the respondent.
c. as per clause 7 (11) of the lease agreement entered into on the 20th September 2005, by the applicant with the government, the applicant has no capacity to sublet the premises to the respondent.
d. the respondent avers that the rent Board has no jurisdiction to hear the case.

At the hearing, Mr. Basil Hoareau who stood in for Ms Domingue had opportunity to cross examine the applicant. Agreeing with Mr. Basil Hoareau's submission the Board found that the application could not be maintained as the applicant was not the owner of the premises and the same was dismissed. The present appeal is lodged on two grounds of appeal:

1. That the judgment is wrong and against the whole of the evidence.
2. The Board erred in law.

This court will confine itself to the two grounds and the relevant evidence adduced on the record and placed before it. A perusal of the record clearly shows that there was a relationship of landlord and tenant between the parties and the spirit of the lease executed by them to that effect reflected this as being their intention. Further the record reveals that the respondent took possession thereof and enjoyed quiet occupation of the demised premises without any disturbance or interruption. According to **Megarry's Manual of the law of real property** **6th Edition**, page 366, in such circumstances, "*rent continues to be payable unless the lease has been frustrated or terminated*". The respondent must first respect this covenant, honour and perform his obligations and only come to equity with clean hands. He is not a party to the lease between the appellant and the Government (EP2) and has not lodged any complaint or objection to this lease nor the one between the appellant and himself. In my view, it is not for the respondent to challenge such tenancy (EP2) but may be the co-lessee, who has not done so. His challenge to the respondent's standing in this matter only comes at a time when an order for payment of arrears of rent and eviction is sought. Was it in good faith? The respondent was not in any way affected or prejudiced by the terms of the above leases instead, as indicated by the evidence, he has enjoyed rent free accommodation in these premises since August 2005 and thereby unjustly enriched himself. Moreover, the lease continues to run. A court of law administering substantive justice should not allow such a party to hide under the cloak of technicalities.

The lease (EP2) is in respect of both the appellant and his wife as lessees. The letter of 11th February, 2004 confirming this lease is addressed to the appellant while that of 24th July, 2006 (EP4) granting permission to sublet the premises is addressed to his wife. The latter, which was admitted by the Board on the 25th July, 2006, was to apply retrospectively covering the period commencing 20th September, 2005. Moreover, there was no condition attached to the first formal grant of lease (EP3). All these documents however were referring to the same

subject matter, the property herein, and the content thereof binds both lessees. The argument that permission to sublet was only given and applies to the appellant's wife alone cannot be maintained.

The Board should not have divested itself of the jurisdiction it enjoys by refusing to entertain the application. There was ample evidence for the Board to consider the collateral issue (to the main issues before the Board, namely, that of ejectment and non payment of rent) that would help in establishing the relationship between the parties hence the jurisdiction. The underlying principle is to be found in **Halsbury's Laws of England, 3rd edition, Vol. 9** at paragraph 822:

> *"If a certain state of facts has to exist before an inferior tribunal has jurisdiction, it can inquire into the facts in order to decide whether or not it has jurisdiction, but it cannot give itself jurisdiction by a wrong decision on them. …………………….. The decision as to these facts is regarded as collateral, because though the existence of jurisdiction depends thereon, it is not the main question which the tribunal has to decide."*

While entertaining a similar question that arose in the case of **Ah-Thion Vs. Molle SLR 1973 P.378** the Court found that it was necessary for the Board to pronounce itself on the collateral issue basing on the available facts so as to determine whether the Board had jurisdiction to determine the main issue in the case of ejectment.

Section 22(1) empowers this court to "affirm, reverse, amend or alter "any decision of the Rent Board in appeal. From the above discourse, it is clear that the Rent Board erred in law and arrived at a wrong judgment. The said judgment should be set aside as the appeal has succeeded.

Since notice to vacate had already been issued to the respondent he should hand over vacant possession of the premises to the appellant within 14 days from the date hereof. The respondent should also pay the outstanding rent arrears (w.e.f August, 2005 at the rate of SR 8,000.00 per month) till the date he vacates. Costs are also awarded to the appellant.

D. GASWAGA

JUDGE

Dated this 10th day of October, 2007.