

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

MCVAP 2009/001

BETWEEN:

ANNETTE CASIMIR

Appellant

and

SHARON ASTAPHAN AUGUSTINE

Respondent

Before:

The Hon. Mde. Janice George-Creque

Justice of Appeal

**Appearances on written submissions:**

Ms. Alix Boyd Knights for the Appellant

Mr. David Bruney for the Respondent

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2009: April 1.

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*Civil Procedure – Appeal from Tenancies and Rent Control Tribunal – whether in the circumstances of the case the appeal ought to be made to a judge in chambers or to the court of appeal – sections 4(9) and 42 of the **Tenancies and Rent Control Act** Chap.54.72..*

The appellant, Ms. Casimir, is in possession of premises situate at 35 Kennedy Avenue, Roseau (“the premises”). The respondent, Ms. Augustine, owns the premises. Ms. Augustine served on Ms. Casimir a notice to quit on 10<sup>th</sup> September 2008, and an application for possession on 12<sup>th</sup> November 2008. By order of the Tenancies and Rent Control Tribunal dated 22<sup>nd</sup> December 2008, Ms. Casimir was ordered to vacate the premises on or before 15<sup>th</sup> January 2009, in default of which a warrant of ejection would be issued. Ms. Casimir appealed against this decision to the Court of Appeal under section 42 of the **Tenancies and Rent Control Act** Chap. 54.72 (“**TRCA**”), and also sought, and obtained, a stay of execution of the order. Ms. Augustine challenged the appeal on the ground that the Court of Appeal had no jurisdiction to hear the matter as it concerned a notice to quit and application for possession and ought, in accordance with section 4(9) of the **TRCA**, to have been made to a judge in chambers. Ms. Casimir argued that section 4(9) ought not to apply as it is concerned with “recovery of possession” and

not the “ejection of a tenant”, on which this appeal is premised.

**Held:** dismissing the appeal and lifting the stay of execution with costs to the respondent:

1. The words “delivery of possession” contained in section 4(9) of the **TRCA** are analogous with the words “recovery of possession of any premises” and “the ejection of a tenant therefrom” contained in section 33(1) of the **TRCA**.
2. The appeal concerns a notice to quit and an application for possession which falls squarely within the ambit of section 4(9) of the **TRCA**. The appeal ought to have been made to a judge in chambers in accordance with section 4(9). The Court of Appeal accordingly has no jurisdiction to hear the appeal which is not properly before this court.

### JUDGMENT

- [1] **GEORGE-CREQUE, J.A.:** The appellant, Ms. Casimir, who resides in the United States of America, is in possession of premises situate at 35 Kennedy Avenue, Roseau (“the premises”). The premises are owned by the respondent, Ms. Augustine, who is desirous of selling the premises. Ms. Augustine served a notice to quit on 10<sup>th</sup> September 2008, and an application for possession on 12<sup>th</sup> November 2008.
- [2] By a decision dated 22<sup>nd</sup> December 2008, the magistrate, sitting as the Presiding Officer of the Tenancies and Rent Control Tribunal, ordered that Ms. Casimir vacate the premises on or before 15<sup>th</sup> January 2009, in default of which a warrant of ejection would be issued.
- [3] Ms. Casimir appealed from the decision of the Tribunal to the Court of Appeal by notice of appeal dated 5<sup>th</sup> January 2009. By notice of application of that date, Ms. Casimir also sought a stay of execution of the order pending the final determination of the appeal; which stay was granted on 24<sup>th</sup> February 2009.
- [4] The grounds of the appeal were stated in the notice of appeal as follows:  
“1. The Notice to Quit contained no proper reason, as is required by law,

and was therefore void.

2. Further the time frame given to vacate the premises in the Notice to Quit, being inadequate, was wrong, thereby making the said Notice to Quit void.

3. The procedure of recording the service of the said Notice to Quit on the Appellant/Defendant was not complied with.

4. The service of the Application for Possession on the Appellant/Defendant was improperly executed.

5 ...”

[5] Counsel for Ms. Augustine initially resisted the appeal on the ground that the notice of appeal was irregular and should be struck out for failure to comply with section 145(1)(a) of the **Magistrates Code of Procedure** Chap 4.20 which requires an appellant to enter into a recognizance before the magistrate within 14 days of the judgment appealed against. Counsel argued further, that the notice was deficient, in that the affidavit in support had been improperly sworn to by Ms. Casimir’s solicitor, which deficiency would necessitate the striking out of the appeal.<sup>1</sup>

[6] Counsel for Ms. Casimir contended that section 145 of the **Magistrates Code of Procedure** was inapplicable to the case at bar. She argued that the respondent’s application for possession before the Tribunal, was brought under the **Tenancies and Rent Control Act** Chap 54.72 (“**TRCA**”), and the applicable appeal provisions of that Act, namely sections 4(9) and 42, included no requirement to follow the **Magistrates Code of Procedure**. With respect to the improper swearing of the affidavit, Counsel applied for relief from sanctions and requested that the court rectify the error in a summary manner as permitted by CPR 26.9.<sup>2</sup>

[7] Counsel for Ms. Augustine contended in reply, that by virtue of section 4(9) of the **TRCA**, the appeal from the decision of the Tribunal ought to have been made to a judge in chambers, and not to the Court of Appeal. Section 4(9) provides:

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<sup>1</sup> Counsel cited *Casimir v Shillingford and Pinard* (1967) 10 WIR 269 in support of this proposition.

<sup>2</sup> Counsel relied on *Craig Reeves v Platinum Trading Management Ltd.* HCVAP 2007/022 (delivered 25<sup>th</sup> February, 2008)

“Appeals against decisions of a Tribunal involving notices to quit and the delivery of possession of rented premises shall be made to a Judge in Chambers, whose decision on the matter shall be final.”

[8] Counsel submitted that the present appeal falls squarely within the ambit of section 4(9), for the appellant’s grounds of appeal all pertain to the notice to quit served and possession of the property to which the notice to quit applied.

[9] It was argued on behalf of Ms. Casimir that section 4(9) ought not to apply, as it is concerned with “recovery of possession” and not the “ejection of a tenant”, on which this appeal is premised. Section 33(1) which appears to differentiate between these terms was relied on in support, and states thus:

“No order or judgment for the recovery of the possession of any premises to which this Act applies, or for the ejection of a tenant therefrom, shall be made or given, whether in respect of a notice given in proceedings commenced before or after the commencement of this Act, unless ...”

[10] Counsel submitted further, that because the decision of the Tribunal contained the words “in default of a warrant of ejection be issued”, the decision became one that was more than just a decision, “involving a notice to quit and delivery of possession.” It was argued that the inclusion of these words took the decision away from one that could be appealed under section 4(9). Counsel contended that the appeal was accordingly correctly brought under section 42 of the **TRCA** which provides:

“Save as in hereinbefore provided, an appeal shall lie from the decision of the Tribunal in the exercise of their jurisdiction to the Court of Appeal, and the appeal shall be governed by the provisions of the Eastern Caribbean Supreme Court (Dominica) Act, and shall be in accordance with the Rules of the Supreme Court 1970 and the Court of Appeal Rules 1968.”

[11] Counsel for Ms. Augustine submitted that “the principle purpose of a notice to quit is to obtain “delivery of possession” of subject premises which by very definition

would require the ejection of a tenant in default of adherence of an order for possession issued by the Tribunal for such “delivery of possession” to be effected.” It was submitted further that the words “delivery of possession” contained in section 4(9) are analogous with the words “recovery of possession of any premises” and “the ejection of a tenant therefrom” contained in section 33(1) and as such are outside the ambit of section 42 of the **TRCA**. I agree.

[12] It follows that the appeal should have been made to a judge in chambers in accordance with section 4(9) of the **TRCA**. The Court of Appeal accordingly has no jurisdiction to hear the appeal which is not properly before this court.

[13] **Order:**

I therefore make the following order:

1. The appeal is dismissed.
2. The stay of execution dated 24<sup>th</sup> February 2009, is lifted.
3. Costs to the respondent in the sum of \$1,000.00.

  
**Janice George-Creque**  
Justice of Appeal