[2025] UKPC 36
Privy Council Appeal No 0089 of 2023

JUDGMENT

Lutchmee Narain Dhunnoo (Respondent) *v* Shyam Kumar Cheekooree (Appellant) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Lloyd-Jones
Lord Hamblen
Lady Rose

JUDGMENT GIVEN ON
5 August 2025

Heard on 26 June 2025

Appellant
Dhununjay Sibartie
(Instructed by Rumesh Posooa (Mauritius))

Respondent
Antoine Domingue SC
Vijay Ranghen
Abdalaliyy Aumeer
(Instructed by Zubeida Ismael Salajee (Mauritius))

LORD HAMBLEN:

1. This is an appeal as of right from a decision of the Supreme Court of Mauritius dismissing the appellant's appeal by way of case stated from the determination of the Fair Rent Tribunal (the "Tribunal") of the market rent for a commercial premises used by the appellant tenant as a retail shop (the "premises").

2. Under section 15(1) of the Landlord and Tenant Act 1999 (the "Act") appeals from the Fair Rent Tribunal may only be made "on a point of law".

3. The appellant advances two grounds of appeal.

4. The first is that the Tribunal erred in law in taking into consideration the absence of documentary evidence when finding that it accepted the evidence of the valuer of the respondent rather than that of the appellant in relation to the comparable rental property on which it relied in determining the market rent.

5. The second is that the Tribunal erred in law in failing to determine the market value as at the date of the respondent's original application in 2013 and instead relying on 2017 values put forward by the respondent's valuer.

6. The appellant also seeks permission to advance a new ground of appeal relating to the case stated by the Tribunal.

The factual and procedural background

7. The appellant has been a tenant of the premises since February 1993. The premises are situated on the ground floor of a storeyed commercial building known as "Le Royal Complex" at St Ignace Street, Rose Hill.

8. On 1 July 2013, the respondent, who is the appellant's landlord, lodged an application before the Tribunal under section 11 of the Act for the determination of the market rent of the premises. Amended applications were later made dated 12 April 2016 and 28 September 2017 (the "2017 application"). The claim which the Tribunal had to determine was that advanced in the 2017 application which relied on a 2017 valuation report by the respondent's valuer, Mr Jeetun.

9. In his report Mr Jeetun used four comparables with rental values ranging between 146.34 rupees and 187.50 rupees per square foot and recommended a market rent of 43,000 rupees monthly at 185 rupees per square foot.

10. The appellant's valuer, Mr Nundalalee, in his report, used three comparables with rental values ranging between 31.81 rupees and 72.21 rupees per square foot and concluded that the current market rent of 13,000 rupees monthly at 56 rupees per square foot was sufficient.

11. There was a hearing before the Tribunal on 24 May and 28 June 2018. Both valuers gave evidence at the hearing.

12. In its determination dated 2 August 2018, the Tribunal rejected all the comparables except for one which had been identified by Mr Jeetun. This related to a similarly sized premises nearby in the same building called Kestrel Digital. In reliance on this comparable the Tribunal determined the market rent to be 38,414 rupees per month at 165.28 rupees per square foot. It found as follows:

> "The last comparable is Kestrel Digital. Both surveyors gave their versions and we have no qualm, in absence of any documentary evidence to the contrary, to accept the value given by Mr Jeetun.
>
> In that respect, we find that Kestrel Digital which is inside the Building and along a corridor, therefore enjoying similar location as the subject property within the mall, should be preferred as comparable."

13. The appellant appealed against the Tribunal's decision. The respondent raised a preliminary objection that the grounds of appeal were not on points of law and therefore fell outside the scope of an appeal under section 15(1) of the Act.

14. The appeal was heard by the Supreme Court on 13 June 2022 and judgment given on 26 July 2022. The appeal was set aside with costs.

15. The appellant appealed as of right from that decision and final leave to appeal to the Privy Council was granted on 24 July 2023.

The new ground of appeal

16. The appellant sought the permission of the Board to advance a new ground of appeal relating to the case stated by the Tribunal. It was said that the case was stated and signed by a differently constituted panel of the Tribunal, that it had impermissibly advanced arguments on the grounds of appeal and that it showed signs of having been written by an unauthorised person in the administrative side of the Tribunal. These grounds are all based on matters which are apparent on the face of the case stated. If such objections were to be raised they could and should have been raised before the Supreme Court. They are, moreover, matters on which the Board would have wanted to have the views of the local court. It is only in exceptional circumstances that the Board will depart from its settled practice of refusing to allow new grounds to be raised before it – see, for example, *St Nicholas Grammar School Ltd v Arnulphy* [2022] UKPC 23 ("*St Nicholas*") at para 3. There are no such circumstances in this case. As made clear at the hearing, the Board accordingly refuses permission for this new ground of appeal.

Ground 1

17. In considering whether an appeal raises a point of law the Supreme Court stated as follows:

> "What are questions of law and what are questions of facts was considered in *Mauritius Breweries Ltd v The Commissioner of Income Tax* [1996 SCJ 402] in which the Full Bench of the Supreme Court referred to *Wade on Administrative Law* (6th Edition). We find it useful to reproduce the following excerpts -
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> 'The learned author goes on to give various instances of questions of law and errors of law at pages 936 to 944.
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> (1) Failure of a tribunal to give reasons for its decision deprives a litigant of his right of appeal on points of law.
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> (2) A tribunal's findings of fact can be challenged on a point of law if they are based on no evidence.
>
> (3) If a tribunal is primarily a fact-finding body which ascertains the facts, the question whether those facts satisfy a legal definition or principle is a question of law.

> (4) The application of a legal definition or principle to ascertained facts is an error of law if 'the case contains anything ex facie which is bad law and which bears on the determination' or the tribunal's determination is unreasonable ie 'one in which there is no evidence to support the determination, or as one in which the evidence is inconsistent with, and contradictory of, the determination, or as one in which the true and only reasonable conclusion contradicts the determination', per Lord Radcliffe in *Edwards v Bairstow* [1956 AC 14].
>
> (5) An erroneous exercise of discretion by a tribunal which has acted in disregard of some legal definition or principle eg through self-misdirection or taking into account irrelevant factors, is an error in law.
>
> (6) Questions relating to the jurisdiction of a tribunal eg whether there has been a breach of the rules of natural Justice or whether the tribunal has acted within its powers or not, can be raised on appeal as they are points of law.'"

18. The appellant accepted that this was a correct summary of the law in Mauritius.

19. It follows that a finding of fact may only be challenged if there is no evidence to support it (point (2)) or if the true and only reasonable conclusion on the facts contradicts the determination made (point (4)) – ie the finding is so unreasonable as to be perverse; see also *St Nicholas* at para 3.

20. There was clearly evidence to support the market rent finding made by the Tribunal, namely the evidence of Mr Jeetun and the Kestrel Digital comparable. The finding made was not perverse, nor is it so contended.

21. The appellant instead relies on point (5) and the reference there to taking into account irrelevant factors. That point, however, relates to the exercise of a discretion. This case concerns a challenge to a finding of fact by the Tribunal; not the exercise of a discretion.

22. In any event, there is nothing wrong with the Tribunal referring to the absence of documentary evidence as a relevant factor. The dispute between the valuers in relation to Kestrel Digital concerned Mr Nundalalee's evidence that he had been informed orally that the tenant was not paying rent but rather a contribution dependent on monthly

turnover. In this connection it was entirely reasonable for the Tribunal to point out that there was no documentary evidence to support this hearsay evidence.

23. Further, the key finding made by the Tribunal is that it preferred the evidence of Mr Jeetun to that of Mr Nundalalee on the issue of the rent paid for Kestrel Digital. The lack of documentary evidence to support Mr Nundalalee re-inforced that conclusion but was not critical to it.

24. For all these reasons Ground 1 does not raise a point of law and the Supreme Court was correct so to conclude.

Ground 2

25. In relation to this ground the Supreme Court held as follows:

> "…it is the contention of the appellant that the question of law to be determined by this Court is whether the Tribunal should have determined the market rental value of the premises 'in lite' as at the date of the application, that is July 2013. It is the submission of learned Counsel for the appellant that the Tribunal erred in considering the evidence of rental values obtained in 2017.
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> Now, the record of proceedings of the Tribunal shows that in fact the respondent, the then applicant, filed an amended application on 28 September 2017 before the Tribunal and the matter was heard thereafter. In the circumstances, we fail to see any merit in the submissions of counsel for the appellant that the Tribunal should have considered the year 2013 to determine the market value."

26. This ground was dismissed on the basis that it was devoid of merit rather than because it did not raise a point of law. The point being made by the Supreme Court is that if the date of the application is the relevant date for determination of the market rent, then the relevant date is 2017, when the 2017 application was made, rather than 2013. It was clearly open to the Supreme Court to decide that the relevant application was the 2017 application. It was the claim made in that application which was being determined and the valuation evidence supporting that claim which was being relied upon. If that was the relevant application, then there was no basis for the complaint that 2017 market evidence was being relied upon and the Supreme Court was correct so to conclude.

27. For the avoidance of doubt, the Board should make it clear that it is not holding that the date of the application (as opposed to the date of the determination) is the relevant date. Since, as was common ground, the Tribunal's determination of the market rent takes effect from the date of its decision, it would be logical for the determination to be of the current rather than the past market rent. That is not, however, an issue that needs to be decided on this appeal.

Conclusion

28. For all these reasons the appeal must be dismissed.