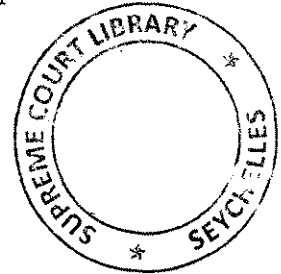


IN THE SEYCHELLES COURT OF APPEAL

- 1. MR. JULIEN PARCOU
- 2. JULIEN (PROP) LTD
- 3. MR. AND MRS. OCTAVE TIRANT

v.

- 1. J. KAVEN PARCOU
- 2. MRS. THELMA PARCOU
- 3. MRS. MARINA PARCOU
- 4. HEDRIC PARCOU



CIVIL APPEAL NO. 32 OF 1994

(BEFORE: Silungwe, Ayoola, Adam JJ.A)

Mr. B. Georges for the appellants
 Mr. R. Valabhji for the respondents

RULING OF THE COURT DELIVERED BY AYOOLA, J.A.

On 2nd November 1994 the Supreme Court (Amerasinghe, J.) having found that the plaintiffs before him (now "the respondents") are entitled to an undivided 1/4th share and two of the defendants (now "the appellants") to an undivided 3/4th share of the parcel of land V5553 granted the respondents' application for licitation. Dissatisfied with the decision the appellants filed a notice of appeal pursuant to and within the time prescribed by rule 54(1) and (2) of the Seychelles Court of Appeal Rules 1978 ("the Rules"). In terms of rule 58(1) of the Rules they duly gave security in respect of the appeal on 7th December 1994. However, they filed a memorandum of appeal outside the time prescribed by rule 59(1). The appellants now seek an extension of time within which to file the memorandum of appeal.

The respondents by a document dated 7th June 1996 filed pursuant to rule 66 of the Rules gave notice of intention to object to the "intended appeal" on the grounds that (1) the appellants had not filed a memorandum of appeal; (2) the appellants have accepted that the respondents are entitled to a quarter share of the property; (3) the proceedings in licitation have been stayed and the respondents have already commenced an action against the appellants claiming their share of rent; and (4) it would be oppressive to allow the appeal to continue.

Rule 59(6) of the Rules provide that:

"If the memorandum is not filed within the time prescribed by this rule the appeal shall be deemed to have been withdrawn and the appellant shall pay to the respondent of the abortive appeal."

However, by a proviso ^{to} that rule "nothing in this sub-rule shall be deemed to limit or restrict the power of the Court to extend time." The limited question, therefore, in these proceedings is whether the undoubted discretion which this court has to extend time should, on the materials placed before the Court, be exercised in the appellants' favour.

The factors that may be taken into account in exercise of the jurisdiction to extend time pursuant to rule 11 of the Rules have been succinctly stated in the judgment of Adam, J.A. in Roger Confiance & Anor. v. Beryl Hoareau (Civil App No. 39 of 1994: delivered on 9th November 1995) as follows:

"According to rule 11 this Court must have sufficient reason to extend the time. Put in another way good cause must be shown by the Applicants. The factors that may be taken into account include the length of delay, the reasons for the delay, the degree of prejudice to the respondent if time is extended and whether there is an arguable case on the appeal."

The authorities are clear that the court would "not fetter its discretion as to extending time for appealing on laying any strict definition on the point, but would always exercise its discretion for the purpose of doing justice." (See Weldon v. De Bathe (1887) 3 TLR 445-446). The discretion of the court is exercised in the circumstances and on the facts of each case.

In the instant case, the appellants, have filed their memorandum of appeal but they did so 28 days late and needed an order extending time to regularise the position. At all material times not only have they evinced an intention to appeal but they have also carried that intention into manifestation by filing a notice of appeal and giving security for costs within time. And, filing a memorandum of appeal, albeit outside the time prescribed by the Rules. Counsel for the appellants gave as reason for not filing the memorandum within time, his reliance on what he claimed to be "an unwritten understanding among counsel which existed at the time that memorandum of appeal could be prepared and filed only upon receipt of the record of the case." It is manifest that the operation of the rules of court cannot be suspended by an unwritten (or even written) understanding among counsel, even though where the rules permit, counsel for parties may by consent abridge or extend the time for taking a step in the proceedings. However, the appellants should not be penalised for the pardonable error of counsel in relying on an understanding which turns out to have no legal significance.

In the course of the present proceedings, there have been some argument as to the propriety of the only ground of appeal on which, as at now, the appellants intend to rely on that ground being whether the period of prescription applicable to the respondents' claim is 10 years, or as the trial judge held, 20 years. At this stage of the proceedings, we are unable, on the argument advanced, which at this stage must be limited, to hold that that ground is not available or that it is not a substantial ground. Without in anyway limiting the right of the respondents to raise the point as to the propriety of the ground or contest its merits at the hearing of the appeal, it suffices for the purpose of this application to hold that there is a prima facie arguable case on the appeal.

The materials placed before the court does not show that the respondents have altered their position in any way as to make a grant of an extension of time prejudicial to them. On the facts disclosed in these proceedings we are unable to hold that the respondents would suffer any degree of prejudice if time is extended.

In the result, we overrule the respondents' objection to the intended appeal and grant the appellants' application. Accordingly, it is ordered that time within which to file the memorandum of appeal in this case be

extended till today. It is further ordered that the memorandum of appeal filed by the appellants on 18th January 1995 be deemed properly filed within the extended time.

Dated this day of 1996.



A.M. SILUNGWE
JUSTICE OF APPEAL



E.O. AYoola
JUSTICE OF APPEAL



M.A. ADAM
JUSTICE OF APPEAL

Handed down on
5th July 1996

Adam JA