

IN THE SEYCHELLES COURT OF APPEAL

DANIEL AUGUSTE

APPELLANT

Versus

MARIE-MAY HOAREAU

FIRST RESPONDENT

KARL PAYET

SECOND RESPONDENT

SEYCHELLES HOUSING

DEVELOPMENT CORPORATION

THIRD RESPONDENT

Civil Appeal No:28 of 1997

[Before: Goburdhun P., Ayoola & Adam, JJ.A]

Mr. B. Georges for the Appellant

Mr. K. Shah & Mr. J. Renaud for the Respondent



RULING OF THE COURT

(Delivered by Adam, JA)

The appellant filed his Notice of Motion whereby he sought leave of this Court to extend time within which to file his Memorandum of Appeal. The attached proposed Memorandum of Appeal to the motion proceedings only relate to the first and third respondents which meant that there was no appeal against the second respondent. During the hearing Mr. Georges for the appellant conceded that the only grounds of appeal he could argue were grounds 1(b)(ii) and (iii) which only concerned the first respondent. This meant again that there was no appeal against the third respondent.

The grounds under 1(b) (ii) and (iii) concerned notices received from the third respondent not being sent by the first respondent to the appellant and generally inform the third respondent she was not the agent of the appellant.

In his judgment Perera J dealt with the appellant's ownership of the property that was mortgaged to the third respondent, that when

he left Seychelles in September 1986 the arrears were SR26648.40, that the appellant had negotiated the monthly instalments reduced to SR508.80 effective from 1st May 1986, that the appellant left the house with the first respondent on condition she made monthly payments of SR900 to the third respondent, that the first respondent began payment in November 1986 by paying SR900, then she paid SR508 for 2 months, then again SR900 for another 2 months, then SR700 for another 4 months, for 31 months amounts varying from SR508 to SR600. Payments had been made by her until September 1990. A perusal of loan records indicated to Perera J that the first respondent had consistently paid the loan instalment as required by the third respondent. He accepted that the third respondent wrote to the appellant at the address in Seychelles on 7th May 1987 showed the arrears on 30th April 1987 as being SR30515, that she telephoned the appellant in England who said "let them take it as it belongs to them." Perera J also said that the application for repossession had been filed on 20th October 1989 on existing arrears and well before September 1990. He found that no fault had been committed by the first respondent in not advising him that the third respondent was taking repossession. The appellant admitted that the first respondent informed him but did not indicate the reason, but Perera J found that the appellant was aware that he was in arrears and the reason would have been obvious to him. In April 1991 the first respondent informed the appellant in England about the application in Court. The Court made the order of repossession on 7th May 1991. Perera J maintained that the appellant did nothing. It was on 9th March 1992 that a letter was written on his behalf to the third respondent. He returned to the Seychelles in April 1992. Perera J did not believe the appellant when he stated that he was unaware of any repossession action proposed to be taken by the third respondent. He said that the arrears were not caused by any act or omission of the first respondent as far as the third respondent was concerned and so any action taken by the third respondent was beyond her control as she was not a party to the mortgage and was not an agent of the appellant except for limited purpose of paying the loan instalments and looking after the house. He did not find any ulterior motive when she defaulted in making loan payments in September 1990. This in his view was immaterial to the action commenced by the third respondent.

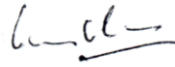
The only notice that was sent according to the evidence concerned arrears sent on 7th May 1987 and there was no evidence led to indicate that any other notices were ever sent by the third respondent. Further it could not be asserted by the appellant that the first respondent had any obligation to communicate with the third respondent about the appellant.


In *Confiance & Another v Hoareau*, Civil Appeal No. 39 of 1994, it was stated that good cause must be shown before this Court would give an extension of time. The factors that may be taken into account included length of delay, reasons for delay, degree of prejudice to other party should time be extended and whether there is an arguable case to be considered on appeal.


It is clear to us that from the foregoing findings of Perera J on the credibility of the appellant and having accepted the evidence of the first respondent it has not been established (were we minded to hold that the other factors had been satisfactorily accounted for) that there is an arguable case on appeal.

Accordingly the application for an extension of time within which to file his Memorandum of Appeal is dismissed with costs.

Dated at Victoria, Mahe this ^{9th}..... day of **April** 1998.


H. GOBURDHUN
PRESIDENT


E.O. AYoola
JUSTICE OF APPEAL


M. A. ADAM
JUSTICE OF APPEAL

*Handed down
Adam JA*