

IN THE SEYCHELLES COURT OF APPEAL

S. Soomery & Ors

Appellant

v

M. Celestine

Respondent

SCA 25 of 2011

[Before: MacGregor P, Fernando and Msoffe JJA]

*Counsel: Mr Joel Camille for the Appellant
Mr Anthony Derjacques for the Respondent*

Date of hearing: 25th April 2013

Date of judgment: 3rd May 2013

RULING

F. MacGregor, P

This appeal was fixed for hearing for the 25th April 2013, the records of proceedings having been served on Appellant's Counsel on 8th March 2013 on a notice of appeal filed on the 1st July 2011.

By the time the case was called at Roll Call in the Court of Appeal on the 22nd April 2013, no heads of argument had been filed by the Appellant, as per the Seychelles Court of Appeal Rules.

Counsel for Respondent protested at this, and argued that pursuant to Rules 24(a) (f) and (i) the Appellant is not entitled to be heard, as no heads of argument had been served on the Respondent's counsel by 1300 hrs on the 23rd April 2013.

He pursued this with a Plea in Limine Litis.

By the date fixed for hearing of the plea on 25th April 2013, the Appellant had apparently lodged a very late head of argument dated 22nd April 2013, recorded received by the Registry of the Court of Appeal on 23rd April 2013 at 12.45 p.m.

This indicates that Respondent's Counsel could have been served either between the afternoon of the 23rd of April and the 24th of April or in the early hours of the morning of the dates fixed for hearing.

All this is evidence of very late filing of the heads of argument, which is becoming a bad habit of recent times. This particular case is further compounded by Counsel for Appellant actually stating from the bar in open court when asked to show cause for the very late filing that the delay was due to his client settling his fees late, and that he had done the same at the trial in the Supreme Court.

This excuse is unacceptable to us. Counsel had every right to withdraw for non payment of fees and in such circumstances, which we find justifiable should have alerted the court to this delay for that reason.

We remind Counsel who file late heads of arguments that unlike computers we are unable to digest information and heads of arguments at very short notice and be expected to be fair and comprehensive in our analysis of the arguments raised.

Such behaviour by Counsel also displays a lack of respect for the Court and its procedures. An extreme and audacious example of this behaviour was a recent filing of heads of argument as judges of the Court of Appeal walked through the corridor to the court room to hear the appeal. We wonder whether we were expected to gobble and digest the information and remain fair and just to the issues raised.

In the circumstances of this present case we could have relied on Rule 24 (2) (i) of the SCAR, and the Practice Direction No 2 of 2011 issued by the President of the Court of Appeal to all Legal Practitioners which directed that as per Rule 3 and 11 (b) of the SCAR, Heads of Arguments should be submitted at the Registry of the Court of Appeal at least 7 court days before Roll Call.

We could have deemed the appeal abandoned and accordingly struck out as no good cause for the late filing of heads of argument has been shown.

However, in view of the fact that there has been similar late filing of heads of argument in other appeals this session we do not wish to single out this case for more severe punishment and impose a lesser sanction for this misconduct; the consequence of which being that this appeal will not be heard in this session, but at the next with costs for the Respondent.

F. MacGregor
Justice of Appeal

T. Fernando
Justice of Appeal

J. Msoffe
Justice of Appeal

Dated this 29th April 2013, at Victoria.