

IN THE SEYCHELLES COURT OF APPEAL

[Coram: M. Twomey (J.A) Renaud JA Robinson JA

Civil Appeal SCA 26/2015 (Appeal from Supreme Court Decision 183/2010)

1. Commissioner of Police	Appellants
2. Henry Forte	

Versus

1. Antonio Sullivan	Respondents
2. Jack Ah-Time	
3. Michel Alcindor	

Heard: 04 May 2018

Counsel: Mr. Hermanth Kumar for Appellants
Mrs. Alexia Amesbury for First Respondent
Mr. France Bonte for Second Respondent
Mr. Michel Alcindor absent and unrepresented

Delivered: 11 May 2018

JUDGMENT

Twomey JA

Background Facts

[1] Mr. Antonio Sullivan, the first Respondent in this appeal, brought an amended plaint in October 2010 in the Supreme Court against all the other parties in this case in which he claimed that the police (First and Second Appellants in the present appeal) had unlawfully taken possession of his earth moving vehicle, a mini-dozer, and had given it to the Second Respondent, Mr. Jack Ah Time.

[2] The learned trial judge in a decision delivered on 10 November 2015 found that the Plaintiff, Mr. Sullivan, had supported his claim of ownership of the vehicle by a receipt which comprehensively identified the same whereas the Second Defendant, Mr. Ah Time and his witness, who had allegedly sold him the vehicle, were not certain about the colour or the identity of the vehicle. He ordered Mr. Ah Time together with the present Appellants to jointly and severally pay Mr. Sullivan the value of the mini dozer, being SR 38,000 and the sum of SR75, 000 as moral damages.

Grounds of Appeal

[3] The Appellants being “satisfied” (sic) with the decision of the learned trial judge lodged three grounds of appeal which can be conveniently summarised as follows: the learned trial judge was wrong to hold that the Second Respondent was not the lawful owner of the mini dozer and consequently wrong to hold the defendants (now Respondents) jointly and severally liable for the damages awarded.

[4] The First Respondent has filed a preliminary objection to the appeal claiming that the appeal is out of time and also that the appeal is improperly captioned and brought against the wrong parties as no order was made against the Fourth Defendant (Third Respondent in the present appeal).

[5] The Second Respondent’s Counsel, Mr. Bonté, filed a motion on 27 April 2018, barely a week before the hearing of the appeal asking for leave to file submissions on the appeal out of time. He relied on averments in his affidavit that his heavy work load precluded him from filing his documents on time.

[6] We shall attend to these preliminary issues first.

Preliminary issues

[7] The appeal process in the present matter has been dogged with delay issues from its inception. The decision in this matter was dated 30 October 2015 but delivered on 10 November 2015. The appeal was filed on 24 December 2015. Mrs. Amesbury for the First Respondent has submitted that the appeal is out of time.

[8] Insofar as submissions of delay are concerned, we are guided by the Seychelles Court of Appeal Rules and by the Practice Directions issued by the President of the Court of Appeal in respect of the lodging of arguments. These Rules have of late been so disregarded that we find it necessary to comprehensively reproduce them where appropriate.

[9] With respect to the lodging of notices of appeal, Rule 18 provides in relevant form:

“18. (1) Every appeal shall be brought by notice in writing (hereinafter called “the notice of appeal”) which shall be lodged with the Registrar of the Supreme Court within thirty days after the date of the decision appealed against.

[10] Rule 2 with respect to computation of time, defines days as meaning “court days” which excludes *dies non* and the first and last days and month as meaning a “calendar month”.

[11] Given that the decision though dated 30 October 2015 was only delivered in open court on 10 November 2015, the thirty days for the lodging of the appeal would have ended on 27 December 2015 as the 8 December is a public holiday. The appeal is therefore filed within time and Mrs. Amesbury’s submission on this preliminary issue is therefore dismissed.

[12] Similarly, the Court does not find favour with her second point in regard to the captioning of the appeal. It is trite that a party may appeal a decision given by the Court of first instance against any part or all other parties even when an order is not made by the Court in respect of a particular party in the trial.

[13] As regards, the parties’ heads of arguments in respect of this appeal, Rule 24(1) provides in relevant part:

“Heads of argument

24. (1) *Unless the President otherwise directs* -*

*(a) The appellant shall lodge with the Registrar five copies of the appellant’s main heads of argument within **two months** from the date of*

service of the record. Two copies of such main heads of argument shall be served one each respondent.

*(b) The respondent shall lodge with the Registrar five copies of the respondent's main heads of argument **within one month** from the receipt of the appellant's heads of argument. Two copies of such main heads of argument shall be served on the appellant.*

(2) (a) The heads of argument shall be set out in separate paragraphs for each head, stating when evidence is to be referred to, the page and lines where such evidence appears in the record.

(b) The heads of argument shall be clear, succinct and shall not contain unnecessary elaboration.

(c) The heads of argument shall not contain lengthy quotations from the record or authorities.

(d) Reference to authorities and the record shall not be general but to specific pages and paragraphs.

(e) (i) The appellant's heads of argument shall be accompanied by a written chronology of events relevant to the appeal and duly cross referenced but without argument;

(ii) if the respondent disputes the correctness of the chronology of events in a material respect, the respondent's heads of argument shall be accompanied by the respondent's version of the chronology of events.

(f) The heads of argument shall be accompanied by a list of authorities to be cited in support of the argument and shall indicate the authorities to which particular reference will be made during argument.

(g) The heads of argument shall define the form of order sought from the Court.

(h) All heads of argument shall be accompanied by five copies of the front page and relevant portions of all statutory provisions, regulations, rules and unreported decisions to which reference is made.

(i) Where at the date fixed for hearing of the appeal the appellant has not lodged heads of argument in terms of this Rule, the appeal shall be deemed to be abandoned and shall accordingly be struck out unless the Court otherwise directs on good cause shown.

(j) Where at the date fixed for hearing of the appeal the respondent has not lodged heads of argument in terms of this Rule, the respondent shall not be entitled to be heard unless the Court otherwise directs on good cause shown.

(k) Nothing in this Rule shall be deemed to limit the discretion of the Court to hear an appeal or application notwithstanding that heads of argument have not been filed.

*[*Note: The President has issued Practice directions No 1 and 2 of 2014 in relation to heads of argument, No 1 of which states that heads of argument should be submitted at the registry of the Court of Appeal **at least 30 court days before** Roll Call as per schedule of sessions, failing which the hearing of the appeal which requires those heads of argument will not be heard in the session it is listed for]. (Emphasis added).*

The Court’s consideration of “Good Cause”.

[14] In the present appeal, the record (transcript of proceedings) was served on all parties concerned on the 6 and 7 February 2018. Mr, Kumar, Counsel for the Appellants filed his heads of argument on 23 March 2018, Mrs. Amesbury for the First Respondent on 25 April 2018, Mr. Bonté for the Second Respondent filed a “one liner” on 27 April 2018 and Mr. Alcindor not at all.

[15] It is true that the Rule 26 provides that the times fixed within the rules may on “good cause” shown be extended by the Court. This seems of late to be interpreted by parties as a rule of general application to excuse all delays on their part.

[16] The record in the present case reflects a substantial, undeniable and unacceptable lack of diligence by all parties. The Court was harsher with Mr. Bonté and his submission was rejected out of hand on the day of the hearing of the appeal as his heads were filed the latest and his explanation for his delay was the lamest of all three and his “one liner” did not comply with the Rules. He claimed to have had a “heavy workload”, in other words, he had been too busy. The Court still has to consider the “laches” of the other parties in this appeal.

[17] Mr. Kumar has not even asked for leave to file his heads out of time. He has presumed his delay is excused. Mrs. Amesbury has supported her application for leave to file out of

time with an irrelevant medical report of her client dated 19 September 2012 in which it is stated that Mr. Sullivan cannot attend court because of ill-health. Are any of the above reasons “good cause” for not filing heads within the time allocated?

[18] The term “good cause” has not been defined in law but has been interpreted by the Courts in a number of cases. In *Aglae v Attorney-General* [2011] SCCA 3 (02 March 2011) Fernando JA relied on the authority of *Ratnam v Cumarasamy and Another* [1964] 3 ALL ER 933 to dismiss an appeal where the notice of appeal therein was filed four days out of time for the insufficient explanation by the appellant as to why he could not pay the filing fee.

[19] Order 3 Rule 4 of the United Kingdom Supreme Court Practice 1997 on a similar provision provides in part:

"The object of the rule is to give the court a discretion to extend time with a view to the avoidance of injustice to the parties [Schafer v. Blyth [1920] 3 K.B. 143, p. 143 Saunders v. Pawley [1885] 14 Q.B.D. 234, p.237] 'When an irreparable mischief would be done by acceding to a tardy application, it being a departure from the ordinary practice, the person who has failed to act within the proper time ought to be the sufferer, but in other cases the objection of lateness ought not to be listened to and any injury caused by delay may be compensated for by the payment of costs.' [per Bramwell L.J. in Atwood v. Chichester [1878]3 Q.B.D. 722, p.723, C.A.]

[20] Lord Guest in the case of *Ratnam v Cumarasamy and Another* [1964] 3 ALL ER 933 provided some useful guidelines in dealing with delay. At page 935 he states –

"The rules of Court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the Court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a timetable for the

conduct of litigation.”

[21] In *Norwich and Peterborough Building Society v Steed* CA ([1991] 2 AER 880, the Court stated that the matters it takes into account in deciding whether to grant an extension of time are the following: 1. the length of the delay; 2. the reasons for the delay; 3. the chances

of the appeal succeeding if the application is granted; and 4. the degree of prejudice to the respondent.

[22] In applying these principles we do not find that the delay in the filing of documents in the present appeal is excusable. We find that that there is on the side of Mr. Kumar no explanation and on the part of Mrs. Amesbury no plausible explanation for the delay in filing their documents.

[23] In any case we do not see any chances of the appeal succeeding. We do not find that the trial judge could be faulted in his decision. We state in passing that no regard was paid by the Appellants in terms of Article 2279 of the Civil Code which raises a presumption of ownership in the possession of movables. We are also unable to understand why the Appellants without a court order removed the vehicle from the possession of the First Respondent and placed it with the Second Respondent. In our view the Appellants got off lightly in terms of the ultimate orders of the Supreme Court.

[24] We state in the strongest possible terms that this Court will almost invariably dismiss an application to extend time in the appeal process. Where there is a permissive statutory provision allowing condonation of delay, the Court will interpret the statutory provision as to read that applications for condonation of delay should be rejected *unless* good reason is shown.

[25] Litigants and their counsel are not at liberty to ignore legal provisions at their discretion. The deadlines imposed by the Rules and Practice Directions of this Court are designed for

orderly case management, and counsel who ignore those deadlines do so at their and, more importantly, their clients' peril.

Conclusion and Order

For these reasons we are unable to condone the delay by the Appellants and Respondents in this appeal and have no hesitation in dismissing it in its entirety.

M. Twomey (J.A)

I concur:.

B. Renaud JA

I concur:.

F. Robinson JA

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018