

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 11 (29 April 2022)
SCA 57/2019
(Appeal from CC 03/2014)

In the matter between

O’Nivo Construction (Pty) Ltd
(rep. by Mr. Clifford Andre)

Appellant

and

Mr. Paul Hermitte

1st Respondent

Mrs. Monique Hermitte
(rep. by Mrs. Alexia Amesbury)

2nd Respondent

Neutral Citation: *O’Nivo Construction (Pty) Ltd v Hermitte and Anor* (SCA 57/2019) [2022]
(Arising in CC 03/2014) (29 April 2022)

Before: Twomey, Robinson, Tibatemwa-Ekirikubinza, JJA

Summary: Appeal filed out of time

Heard: 13 April 2022

Delivered: 29 April 2022

ORDER

The appeal is dismissed with costs to the respondent.

JUDGMENT

Dr. L. Tibatemwa-Ekirikubinza (JA)

1. On 20/07/2011, the appellant company entered into a building contract with the 1st and 2nd respondents for the construction of three blocks of one storey apartments at Santa Maria, Anse Royale, Mahe on parcel No.C186. The contract price which was

originally SR 6,799,368.00 was subsequently revised upward to SR 7, 993, 536.96. It was agreed by the parties that the construction would be completed by 28th July 2013.

2. Through a letter dated 22nd October 2013 the respondent informed the appellant that the contract had been terminated because the construction was not completed within the agreed period. Furthermore, it was stated that the quality of the appellant's completed works was poor compared to when the construction project started
3. Subsequently, the appellant company filed a suit before the Supreme Court wherein it claimed from the respondents an unpaid sum of SR 1, 679, 163.7 for the work done. The respondents denied the appellant's claim.
4. The respondents also raised a counter-claim of SR 988, 910.00 from the appellant company as penalty charges and damages for failure to complete the construction within the agreed period as well as for defective work. The appellant denied the counter-claim in total.
5. On the 11th September 2019, the Trial Court made various orders in favour of each party and ordered that each side shall bear their own costs.
6. Dissatisfied with the decision of the trial Court, the appellant company appealed to this Court.
7. The record of the Court indicates that the Notice of Appeal was filed on 25th October 2019.

Preliminary Objection.

In his written submission as well as at the hearing, Counsel for the respondent submitted that the appeal had been filed outside the time limit prescribed by Rule 18

(1) of the Seychelles Court of Appeal Rules. That the Notice of Appeal was filed on 25th October 2019 whereas the decision of the Supreme Court appealed against was delivered on 11th September 2019 – 32 days after judgment delivery.

8. Counsel concluded that the appeal was therefore bad in law and ought to be dismissed with costs.
9. On the other hand, Counsel for the appellant submitted that the appeal had been filed within the prescribed time, that computation of the prescribed period of time excluded the first day as well as the last day in question.

Consideration of Court.

10. Rule 18 (1) of the Rules of Court provides that every appeal shall be lodged with the Registrar of the Supreme Court within 30 days after the date of the decision appealed against.
11. According to Rule 2 (3), in the computation of time, days mean court days. And Rule 2 (4) provides that in computing the number of days, the first day as well as the last day shall be excluded.
12. I have computed the period between the relevant dates (11th September 2019 and 25th October 2019) in line with Rule 2 (3) and Rule 2 (4). I find that the appeal was filed 31 days after the date of the decision appealed against.
13. The Court is not empowered to act on its own and grant leave where none has been sought and where facts have not been deponed to before it, showing sufficient reasons to extend time.

14. Consequently, the appeal is hereby dismissed with costs to the respondent.

Dr. L. Tibatemwa- Ekirikubinza (JA)

I concur:

Dr. M. Twomey (JA)

I concur:

F. Robinson (JA)

Signed, dated and delivered at Ile du Port on 29 April 2022