

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 29 7 June 2022

SCA MA 19/2021

In the Matter Between

Beoliere (Aqua) Pty Ltd

Applicant

(rep. by Mr Frank Elizabeth)

And

Revenue Commissioner

Respondent

(rep. by State Counsel

Miss Luthina Monthy)

Neutral Citation: *Beoliere (Aqua) Pty Ltd v Revenue Commissioner* (SCA MA 19/2021) [2022] SCCA 29 (7 May 2022)

Before: F. Robinson, Acting President of the Court of Appeal

Summary: Application for extension of time to file the notice of appeal outside the statutory period - Rules 18 (1) and 26 of the Seychelles Court of Appeal Rules, 2005, as amended - No good cause shown – Application dismissed

Heard: 24 May 2022

Delivered: 7 June 2022

ORDER

The application stands dismissed.

RULING

F. ROBINSON, ACTING PCA

1. This is an application by way of notice of motion, dated the 2 September 2021, seeking an extension of time for the Applicant to file its notice of appeal out of time against a judgment of the Supreme Court CS121/2017 dated the 2 August 2019. The application

seeking an extension of time to bring the appeal out of time was filed on the 6 September 2021.

2. Pursuant to Rule 18 (1) of the Seychelles Court of Appeal Rules 2005, as amended : "*[e]very appeal shall be brought by notice in writing ... which shall be lodged with the Registrar of the Supreme Court within thirty days after the date of the decision appealed against.*"
3. Rule 26 of the Seychelles Court of Appeal Rules 2005, as amended, stipulates that "*[t]he times fixed within these Rules may, on good cause shown, be extended by the President or a Judge designated by the President or may be extended by the Court*". Hence, it is a discretionary power vested in the President or a Judge designated by the President or the Court of Appeal, which may be exercised in favour of an applicant only on good cause shown.
4. The Applicant delayed by about two years in filing the notice of appeal. Paragraphs 5 and 6 of the affidavit in support of the application state the cause for delay in filing, as follows: "*5. I aver that I was under the impression that an appeal is automatic and that our appeal had been lodged immediately or soon after the judgment was given. 6. I aver that I only had knowledge that the appeal had not been filed when I received communication by way of a telephone call from the respondent two months ago seeking to enforce the judgment*". The representative of the Applicant also mentioned that he is sixty seven years, and that he had never been in any court before the present case.
5. In *Aglae v Attorney General (2011) SLR 44* the Court of Appeal guided by *Ratnam v Cumarasamy and Another [1964] 3 All ER 933*, stated: "*[t]he 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 of extension of time which would defeat the purpose of the rules which provide a timetable for the conduct of litigation*". In **Ratnam** supra the applicant for

extension of time had filed the notice of appeal and furnished security for costs of the appeal timeously, but had delayed by four days in filing the records of appeal which comprised the Memorandum of Appeal and other miscellaneous documents.

6. I apply the law and legal principles to this interlocutory matter.
7. Based on the evidence of the Applicant, I have to consider whether there was good cause for the failure to bring the appeal in time. I have carefully considered all the factual circumstances of the Applicant's case with care. If anything the evidence of the Applicant suggests that it took no action until it came to know that the Respondent was seeking to enforce the judgment. It is clear that the Applicant did not even seek the services of Counsel to prosecute its appeal after the judgment was delivered. Further, there is no evidence supporting the potential relevance of the age of the representative of the Applicant in causing the inordinate delay, or any part of the inordinate delay. Hence, I find that the Applicant did not have any good cause for failing to file the notice within the statutory thirty day period.
8. For the reasons given above, I am satisfied that the Applicant has failed to show good cause for me to consider exercising my discretion under Rule 26 of the Seychelles Court of Appeal Rules 2005, as amended, to extend the time to file the notice of appeal outside the statutory thirty day period. Thus, I dismiss the application and make no order as to costs.

F. Robinson

Acting President of the Court of Appeal

Signed, dated and delivered at Ile du Port on the 7 June 2022.

