

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 71
(16 December 2022)
SCA 52/2020
(Arising in CS 53/2019)

THEOLENE AUGUSTE

(rep. by Guy Ferley)

Appellant

and

SINGH CONSTRUCTION

(rep. Karen Domingue)

Respondent

Neutral Citation: *Auguste v Singh Construction* (SCA 52/2020) [2022] SCCA 71
(16 December 2022)

(Arising in CS 53/2019) [2020] SCSC 788

Before: Twomey-Woods, Robinson, Tibatemwa-Ekirikunbinza, JJA

Summary: partnership, business registration, breach of Court of Appeal Rules and Practice Directions- delay in filing submissions

Heard: 7 December 2022

Delivered: 16 December 2022

ORDER

The appeal is dismissed with costs.

JUDGMENT

DR. M. TWOMEY-WOODS JA

(Tibatemwa-Ekirikunbinza concurring)

[1] On 23 October 2020, the Supreme Court ruled on a plea in limine litis relating to the suit filed by the appellant against the respondent in the present matter. The court ruled that in order to sue a partnership, a plaintiff had to show that there was, in fact, a partnership between the parties sued and that having failed to do so, the plaint could not be maintained. It was consequently struck out.

- [2] The appellant appealed to this court on 30 December 2020. The record of proceedings was served on the appellant’s counsel, Mr. Ferley, on 6 October 2022.
- [3] Rule 24 (1) of the Seychelles Court of Appeal Rules 2005 (SCAR) required that heads of argument be filed two months from the date of service of the record. Practice Direction 2 of 2019 superseded these rules, requiring parties to submit heads of argument at least 30 court days before roll call.
- [4] Rule 11 (1) (a) permits the President or the Court to condone delays when the parties apply to the Court.
- [5] In the present matter, the record was served on the parties on 6 October 2022. On 9 September 2022, a notice was served on the appellant, drawing his attention to the Practice Directions requiring heads of argument to be filed.
- [6] On 8 November 2022, a case management hearing was held in which Mr. Ferley was represented by Ms. Pillay, who stated: “My instructions from Mr. Ferley is that he will file the skeleton heads by next Friday” (11 November).
- [7] This undertaking was not complied with, and on 22 November, further notice was served on the appellant, again pointing out the breach of the Practice Directions.
- [8] The skeleton heads were finally filed in court on 28 November 2022, two days before roll call and with insufficient time for the Respondent to file an Answer.
- [9] No application was brought before this court to apply for an extension of time or to condone the delay.
- [10] In *Aglae v Attorney General (2011) SLR 44*, this court ruled an appeal abandoned for the breach of procedural time limits. The Court relied on the case of *Ratnam v Cumarasamy and Another [1964] 3 All ER 933* for the proposition that:

“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 of

extension of time which would defeat the purpose of the rules which provide a timetable for the conduct of litigation.”

[11] There is now settled jurisprudence on this point – most recently in the cases of *Commissioner of Police & Anor v Antonio Sullivan & Ors* (SCA 26 of 2015) [2018] SCCA 2 (10 May 2018) and *Laurette & Ors v Savy & Ors* (SCA 13 of 2019) [2019] SCCA 36 (21 October 2019).

[12] We cannot overemphasise the importance of rules of procedure. There is an apparent necessity for courts to adopt a tough stance on time limits. Parties are entitled to certainty and clarity in court proceedings and the taxpayer to a system that is cost-effective as possible.

[13] For all these reasons, we cannot condone the breaches of the rules and deem the present appeal abandoned.

Order

[14] The appeal is dismissed with costs.

Dr. M. Twomey-Woods, JA.

I concur

Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated and delivered at Ile du Port on 16 December 2022.