

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2024] (30 January 2024)

SCA CR MA 10/2023

(Arising in CO 101/2021)

In the matter Between

Steven Wilfred Marie
(rep. by Mr. France Bonte)

Applicant

And

The Republic
(rep by Ms. Corrine Rose)

Respondent

Neutral Citation: *Marie v R* (SCA CR MA 10/2023) [2024] (Arising in CO 101/2021)
30 January 2024

Before: F. Robinson JA

Summary: Interlocutory application for extension of time to lodge a 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: 12 January 2024

Delivered: 30 January 2024

ORDER

The interlocutory application stands dismissed.

RULING

F. Robinson, JA

1. The Supreme Court convicted the Applicant (convict) of the offence of sexual assault contrary to section 130 (1) of the Penal Code read with section 130 (2) (d) of the same

Code on the 7 June 2023 in case reference number CO 101/2021. This offence is punishable under section 130 (1) of the Penal Code read with section 130 (4) (a) and (b) of the same Code, as amended by Act 5 of 2012. On 7 June 2023, the Supreme Court sentenced the Applicant to seven years imprisonment. The Supreme Court also ordered that the time spent on remand be deducted from this period of seven years imprisonment.

2. This is an application by way of motion, dated 29 November 2023, supported by an affidavit sworn to by the Applicant on the same date. The Applicant is seeking an extension of time to lodge a notice of appeal outside the statutory period against the judgment in case reference number CO 101/2021. The only explanation advanced for the delay was a statement made by the Applicant in his supporting affidavit that he was unable to contact his lawyer after the judgment was delivered to discuss the matter further. The Applicant also averred in his supporting affidavit that he was dissatisfied with the judgment.
3. Doris Oreddy, a police constable of the Seychelles Police Force, has sworn to an affidavit in reply on behalf of the Respondent, on 11 January 2024, resisting the application. The affidavit in reply, exhibited a letter dated 27 December 2023, written by Miss Mary-Bridget Sopha, a court liaison officer of the Correctional Records Management Unit of the Prison Authority. The said letter stated that on 12 June 2023, Miss Mary-Bridget Sopha had informed the Applicant that he had thirty days to lodge a notice of appeal. Despite being informed of the time limit, the Applicant refused to lodge a notice of appeal. The letter also stated that the Applicant requested to lodge a notice of appeal in late September but was informed that he was out of time to lodge it.
4. Rules 18 (1) and 26 of The Seychelles Court of Appeal Rules, 2005, as amended, apply to this application. The Seychelles Court of Appeal Rules 2005, as amended, is hereinafter referred to as "*The Rules*". Pursuant to Rule 18 (1) of The Rules — "*[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.*" Rule 26 of The Rules 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". On its face, therefore, The Rules confer a discretion on the Court of Appeal to extend time to appeal. So far as the exercise of the discretion is concerned, no specific criteria are identified in The Rules. It has been left to the Court of Appeal to establish a principled approach in order that the discretion may be exercised consistently and fairly.

5. I carefully consider the evidence of the Applicant and that of the police constable, Doris Oreddy, to determine whether there is good cause for the failure to bring the appeal in time. It is unclear to what extent this Court can rely on the letter written by Miss Mary-Bridget Sopha without more. On the other hand, it is noted that the Applicant, in his affidavit explaining the delay, did not explain why he could not contact his lawyer. It is also noted that the supporting affidavit of the Applicant did not explain why he was dissatisfied with the judgment. Merely averring that he could not contact his lawyer and expressing dissatisfaction with the judgment is insufficient.
6. 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 the following concerning extensions of time — "*[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*".
7. Moreover, in *Islands Development Company Limited v EME Management Services Limited SCA 31/09 (delivered on 11 December 2009)*, Fernando then JA stated the following — "*[m]aking broad statements in an affidavit without substantiating them, in a case which has to be decided purely based on the averments contained in the affidavit, does not espouse the cause of the party relying on such affidavit*".
8. After considering the reason provided, I conclude that the Applicant has not demonstrated any justifiable cause for the delay. Therefore, I decline to use my discretion under Rule 26

of The Rules to extend the time limit for filing a notice of appeal outside the thirty-day statutory period.

9. The application stands dismissed.

A handwritten signature in dark ink, appearing to read 'F. Robinson', written in a cursive style.

F. Robinson
Justice of Appeal

Signed, dated and delivered at Ile du Port on the 30 January 2024.