

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2024] (19 August 2024)

Civil Appeal SCA 02/2024

(Arising in MA 184/2023 Out of CA
19/2022) SCSC 568

In the matter Between

Nichol Jean Russel Gabriel

(Self represented)

Appellant

And

The Registrar of the Supreme Court

(rep. by Mr. Olivier Chang-Leng)

Respondent

Neutral Citation: *Gabriel v The Registrar of the Supreme Court* (Civil Appeal SCA 02/2024)
[2024] (19 August 2024) (Arising in MA 184/2023 Out of CA 19/2022)
SCSC 568

Before: F. Robinson, Dr. L. Tibatemwa-Ekirikubinza, S. Andre JJA

Summary: Appeal against a decision of the Supreme Court – plea in limine- Appeal out of time – (Procedure) Filing leave to appeal out of time- *Legal Practitioners Act as read with Section 57 (1) (a) of the Interpretation and General Clauses Act (Cap 103)* – Legal practitioners Act (Cap 111)

Heard: 6 August 2024

Delivered: 19 August 2024

ORDERS

The Court makes the following Orders:

The appeal is dismissed.

Costs are awarded for the Respondent as prayed.

JUDGMENT

ANDRE, JA

INTRODUCTION

[1] This is an appeal arising from a decision of the Supreme Court in CA 19 of 2022 by virtue of the notice of appeal filed on the 5 January 2024 by Nichol Jean Russel Gabriel (Appellant) against The Registrar of the Supreme Court (Respondent), being dissatisfied with the decision of Judge D, Esparon given at the Supreme Court on the 20 November 2023 whereby the trial court upheld a preliminary objection raised by the Respondent and dismissed the appeal lodged before it by the Appellant.

[2] The basis of the decision by the trial Court was that the Appellant had been out of time to lodge his appeal and an application to condone such lateness was also found to have no merit in so far as it was filed after the issue of prescription was raised by the other party. As the learned trial Judge put it, the Appellant had put the cart before the ox.¹

[3] Dissatisfied with this, the Appellant is before this court with two grounds of appeal that read as follows:

1. *The learned trial Judge erred in law in dismissing the appeal of the Appellant by failing to take into account and/or ignoring the provisions of the Interpretation of General Provision Act as amended by the Civil Code (Consequence of Enactment) Act of 2021 when computing the time for filing an appeal.*

2. *The learned trial Judge erred in law when he dismissed the Appellant's appeal on the grounds that the Appellant was out of time by three days when the Appellant filed his Notice of Appeal in that the Appellant was within time.*

[4] The appellant further seeks that this Court allows the appeal and order that the appeal against the order of the Respondent was filed in time.

¹ See paragraph [29] of the impugned judgment.

SUBMISSIONS ON GROUND 1

- [5] Learned counsel submitted their respective heads of arguments. The Appellant for his part starts off by giving a background that he was a licensed attorney since 2009 and in October 2020, his license was not renewed by the Respondent on account of Audited Clients' Account of his chambers not being in order. Although this was rectified in May 2022, he submits, the license to practice was later revoked in July 2022 on grounds that the Appellant had previously been convicted for the offences of money laundering and failure to report a suspicious transaction. According to the Appellant, that sentence was not made to run from the date that the license was not renewed in October 2020. The Appellant lodged an appeal against the decision of the Respondent in the Supreme Court on 24 August 2022, slightly over a month since the revocation letter was received. The matter was mentioned in February 2023 and a preliminary objection was raised by the Respondent that the Appellant was out of time. The Appellant replied to the preliminary objection on 22 March 2022 and in the same month, filed for leave to appeal out of time on 29 March 2022.
- [6] Apart from the background, the essence of the submissions by the Appellant, at least on Ground 1, is that the learned Judge in his computation of time failed to take cognisance of the Interpretation of General Provision Act (IGPA) which was amended by the Civil Code (Consequence of Enactment) Act of 2021. It is his submission, that based on the amendments of 2021, Saturday, Sunday and all public holidays are excluded days for purposes of computation. The Appellant also submitted that the new Section 57 (7) (g) of the IGPA as amended stated that Saturdays and public holidays are to be counted when calculating the time limit and this is a conflict with what is provided for in Section 57 (4) of the IGPA. On this basis, it was his further submission that as per the law, there are eight excluded days including Saturdays, Sundays, one public holiday, the day of the decision itself and the day of the filing of the appeal which ought to not be considered.
- [7] The Appellant has referred this Court to the authorities in *Oceanic Motors v Savy* CA25/2024 and *Sai-Fu Enterprise v Mohammed Bashir* CA09/2022 where in both cases, according to the Appellant, the court found that Saturdays, Sundays and public holidays must not be counted for the purpose of computing time for an appeal.

[8] The Respondent's counsel submits that Ground 1 of the Appellant is vague and therefore in breach of Rules 18 (3) and (7) of the Court of Appeal Rules. Notwithstanding this, counsel addresses the merits of Ground 1. It is submitted that the Appellant had conceded that his appeal was out of time by three days, which is why he filed a Motion for Leave to Appeal out of time. Therefore the learned Judge did not need to have considered the computation of time in detail as it was not a matter in dispute. Counsel refers us to paragraph [17] of the impugned judgment. On the computation of time in particular, the Respondent maintains the same arguments advanced in the court a quo. These are essentially that one does not count the day on which the act of thing happens, where the last day of a period is an excluded day, the period includes the next following day and Saturdays and public holidays are to be counted when calculating a time limit.

ANALYSIS BY THE COURT

[9] To recap, the appeal that the Appellant sought to have determined in the court a quo was supposed to have been lodged within 30 days from the decision by the Registrar. For ease of reference, the relevant provision is Section 6A (8) of the Legal Practitioners Act (Cap 111) (LPA) which provides that:

An attorney-at-law whose licence has been suspended or revoked or whose application for renewal of licence has been refused may appeal to the Supreme Court within 30 days of notification of the decision of the Registrar.

[10] What Section 6A (8) of the LPA essentially provides is that there is a time limit of 30 days within which an appeal challenging the decision of the Registrar to revoke a license as it were in the present case. After the lapse of such a time, then one would have to apply for leave to file an appeal out of time for the indulgence of the court.

[11] The IGPA for its part, provides principles or rules of computation of time – including the 2021 amendments. The most relevant provisions for this appeal are reproduced below for ease of reference:

57. Rules for computing time
(1) In computing time for the purposes of an Act

(a) a period reckoned by days from the happening of an event or the doing of any act or thing is exclusive of the day on which the event happens or the act or thing is done;

...

(d) where the last day of a period is an excluded day, the period includes the next following day (not being an excluded day)

...

(4) In this section “excluded day” means a Saturday, a public holiday, or a bank holiday declared under section 64 of the Financial Institutions Act 2004.

...

7) (a) Time limits expressed in days, weeks, months or years run from midnight on the day on which the time limit begins to run, until midnight on the day on which the time limit expires.

(b) Notwithstanding paragraph (a), an act which is to be performed before the expiry of a time limit may, in accordance with the particular business practice, only be performed before the end of normal business hours on the day of expiry of the time limit.

...

(g) Saturdays and public holidays are included when calculating a time limit.

[12] In view of the above provision, it is clear to me that the 30 days referred to in Section 6A (8) of the LPA are counted from 22 July 2022, the day after the decision of the Registrar which was made 21 July 2022. This would be in accordance with Section 57 (1) (a) of the IGPA. If the appeal is required to be made within 30 days, and say the 30th day is an excluded day – then the appeal can be made on the next day which is not an excluded day. This would be in line with Section 57 (1) (d) of the IGPA. The next consideration is what is an excluded day? According to Section 57 (4) of the IGPA as amended by the Civil Code (Consequence of Enactment) Act of 2021, an excluded day is Saturday, a public holiday, or a bank holiday. However, the analysis does not end there, because there is now Section 57 (7) (g) of the IGPA to take full cognisance of which provides that Saturdays and public holidays are included when counting a time limit. The salient point to be made in the present case is – Section 6A (8) of the LPA provides a time limit when it says an appeal must be lodged within 30 days. Therefore, Saturdays and public holidays are included when computing the 30 days’ time in Section 6A of the LPA.

[13] The Appellant has argued that Section 57 (4) of the IGPA is in conflict with Section 57 (7) (g) of the IGPA. On a plain reading of these provisions, there is not necessarily a conflict. In fact, what Section 57 (4) of the IGPA does is provide a definition of ‘excluded day’ for purposes of Section 57 holistically. As the words of that subsection provides, “In this section, ‘excluded day’ means...” Section 57 (4) of the IGPA is therefore an interpretation clause for the word ‘excluded day’.

[14] In consideration of the above, it means the Appellant must have filed his appeal by 20 August 2022. However, this was a Saturday and an excluded day as contemplated by Section 57 (4) of the IGPA. The next day was Sunday 21 August 2022, which is a public holiday as provided by section 27 of the IGPA and read with section 2 of the Public Holidays Act. Therefore, Monday 22 August 2022 would have been the 30th day by which an appeal could be lodged within 30 days. To his own admission in his submissions and as the records in the brief show, the Appellant filed his application on 24 August 2022, two days after the 30 days period. The learned Judge was correct to have upheld the Respondents objection that the Appellant was out of time. Therefore, ground 1 in the present proceedings has no merits.

SUBMISSIONS ON GROUND 2

[15] In substantiating the merits of ground 2, the Appellant delves into how the learned Judge failed to appreciate that the appeal raised serious questions of law and fact. The Appellant placed reliance on *PUC v Elisa* (2011) SLR 100, *Cointy v Beau Vallon Properties SCA* 20 of 2013 and *Eden Holistic Spa v Woodlands Holdings CA* 13/2020 which support the position that being out of time is not fatal to one’s suit and the Court should ordinarily allow leave to appeal out of time. The Appellant also relied on the English case of *Denton & Ors v TH White Limited* (2014) 1 WLR 3926 and stated that the Court of Appeal of England identified a 3 stage approach to applications to determine whether to grant leave to appeal out of time. The Appellant did not explain the said 3 state approach to this Court.

[16] The Respondent submits that ground 2 is vague and therefore contrary to Rules 18 (3) and (7) of the Court of Appeal Rules. It was further submitted that the ground of appeal is disingenuous and misleading. It is submitted that the learned Judge not only dismissed the appeal for being out of time, but also the motion for leave to appeal out of time on the basis that it was procedurally incorrect as the Appellant sought leave after he had filed his appeal and that the said motion was devoid of merits.

ANALYSIS BY THE COURT

[17] The Court was put at pain to try and understand the essence of ground 2. On one end, the Appellant seems to suggest that the learned Judge was wrong to have concluded that he was out of time – which is the essence of ground 1 and therefore repetitive. On the other hand, the Appellant submits quite a handful supporting his case on this Ground - substantiating that the learned Judge failed to appreciate that there are serious points of law and facts to be canvassed in the appeal. The Appellant is essentially challenging the court a quo's *ratio decidendi* on the leave to appeal out of time.

[18] This Court is bound by the pleadings of the parties. To plead one thing in the Notice of Appeal and then submit on another point is misleading. The Court will not take cognisance of these submissions as they are outside the bounds of the pleadings set forth. Ground 2 as per the notice of appeal is repeating the essence of ground 1 that the Appellant was not out of time to file his appeal against the decision of the Registrar. I have already made a determination on this point – the Appellant was out of time. Therefore, ground 2 has no merits.

CONCLUSION AND ORDER

[19] In consideration of the above, the appeal is dismissed.

[20] Costs are awarded for the Respondent as prayed.

Signed, dated, and delivered at Ile du Port on 19 August 2024.

.....

S. Andre, JA

I concur

.....

F Robinson, JA

I concur

.....

Dr. L Tibatemwa-Ekirikubinza, JA