Barbe v The Commissioner of Police
(1997) SLR 92

Antony DERJAQUES for the Applicant
Anthony FERNANDO for the Respondent

Order delivered on 31 October 1997 by:

PERERA J: The instant application is to file a plaint which is time barred, out of time. In a supporting affidavit, the applicant avers that he "intends and wishes" to file a civil plaint against the Commissioner of Police in respect of assaults made on him by three police officers on 10 November 1994. He further avers that if the Commissioner of Police is to be considered a "public officer" and is protected by the Public Officers (Protection) Act (Cap. 192), he was out of time by about 8 months. However it is observed that if the alleged assaults took place on 10 November 1994, and as this instant application was filed only on 5 August 1996, he was 15 months out of time.

Section 3 of the Public Officers (Protection) Act (Cap 192) contains a statutory limitation period of six months for the institution of any action against a public officer acting in the exercise of his office or anyone aiding or assisting him in such circumstances. That provision is absolute and mandatory as the Court has not been granted any discretion to extend the limitation period. The applicant avers that he failed to file the action because he was ignorant of the law. He further avers thus –

> I was unable to visit my attorney-at-law because I was destitute and unable to meet my fees or court expenses, I therefore waited for some time in order to work and save money. I was also ignorant of the existence of the legal aid scheme.

The maxim "ignorantia legis neminem excusat" posits that it is no excuse to plead ignorance of law. In this respect West J in the case if *Sitaram v Nimba* 12 Bom 320 took the definite view that ignorance of the law cannot be considered as sufficient to condone a delay in timing for an action out of time, as specified in section 5 of the Limitation Act 1993, as to do so would put a premium on ignorance. It was also held that "there can be no such things as bona fide mistakes of law, for good faith implies due care and caution."

The instant application is perhaps the first of its kind in Seychelles. Under the provisions of the Code of Civil Procedure (Cap 213) this Court has jurisdiction to entertain an action originating upon a plaint or petition based on a cause of action. There is no provision in that Code or any other law "to file a plaint out of time", as in the case of applications for leave to appeal out of time. In the latter type of applications, the party is already before the court and has defaulted in following a rule of court or a statutory provision as regards filing an appeal. Such rules and provisions invariably provide discretion to the court to grant leave in appropriate cases. Section 3 of the Public

Officers (Protection) Act, however, does not grant the court any discretion.

Mr. Derjaques, counsel for the applicant, cited the case of *Secretary of State for Trade and Industry v Davies & Ors* [1996] 4 All ER 289. That case concerned the Company Directors Disqualification Act 1986 (UK),section 6 of which requires the court to make a disqualification order against any person, on an application made by the Secretary of Trade, where it is satisfied that such person is or has been a director of a company which has become insolvent and that his conduct as a director of that company makes him unfit to be concerned in the management of a company. Such an application is made in the public interest.

The limitation clause contained in section 7(2) of that Act is as follows

> Except with the leave of the court, an application for the making under section 6 of a disqualification order against any person shall not be made after the end of the period of 2 years beginning with the day on which the company of which that person is or has been a director became insolvent.

Rule 3(1) of SI 2023 of 1987 provided that the applicant should file at the same time evidence in support of the application for a disqualification order, and copies thereof should be served on the respondent.

In that case, the originating summons was filed within the statutory period of two years, but there was a failure to file the evidence within that time. Hence, the applicant sought an extension of time, and stated the reasons for being unable to obtain affidavits of certain officials.

The Court of Appeal, in granting an extension, stated (per Millett LJ) -

> The case is brought in the public interest to disqualify directors alleged to be unfit. The charges (particularly of false accounting and trading while insolvent) are particularly serious and there is an obvious public interest in having them determined. The delay was not minimal and the explanation for it is unsatisfactory, but it has not affected the timing of the hearings and has not caused prejudice to the first respondent. The proceedings were initiated in time, and the first respondent was made aware of the nature of the allegations intended to be made against him before the statutory period had expired.

The learned Judge further stated –

> One of the purposes which Parliament had in mind in enacting the two year time limit must have been to allow directors of companies which have become insolvent a reasonable degree of security from disqualification with the passage of time. If they had been notified within the time limit, not only of the Secretary of State's decision to bring disqualification proceedings against them but also of the nature of the allegations upon which they are to be

based., the statutory purpose has to this extent been fulfilled.

The ratio decidendi of that case is that where proceedings are not brought to enforce private rights, but are brought in the public interest in order to protect the public, the court should be liberal in using its discretion as the primary purpose of a disqualification was the protection of the public and not the punishment of the director.

With respect, I fail to see how this case would assist counsel for the plaintiff who in this unusual motion seeks leave to file a plaint in respect of an action which has been time barred under section 3 of the Public Officers (Protection) Act. As I stated in the case of *J Labrosse v S. Allisop & Or* (unreported) CS 285/1996.

> Section 3 of the Public Officers (Protection) Act (Cap. 192) contains a six month statutory limitation or a bar to the institution of an action. It merely puts an end to the accessory right of action. Hence it is inappropriate to refer to it as "prescribed" as prescription implies adverse possession against the true owner. There the substantive right ceases, while when an action is time barred, the judicial remedy cases, but the substantive right survives by other means. This section bars any action to enforce a claim in respect of any act done or omitted to be done by a public officer in execution of his office.

Hence this Court has no discretion to interfere with a statutory time limit fixed by Parliament, which perhaps may have been done, as Millett LJ stated in the case cited supra, to give public officers a reasonable degree of security from being sued with the passage of time.

In the circumstances the motion, being totally devoid of merit, is dismissed, but without costs.

Record: Civil Side No 218 of 1996