

**Seychelles Marketing Board v Bingham
(2001) SLR 84**

France BONTE for the applicant
Jacques HODOUL for the respondent

Ruling delivered on 12 November 2001 by:

KARUNAKARAN J: This is an application by way of motion for leave to appeal out of time against a judgment of the Magistrate's Court. This application is made in terms of rule 5 of the Appeal Rules under the Courts Act (Cap 52), which reads thus:

Any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient.

The background facts of this case are as follows:

The respondent herein sued the applicant before the Magistrate's Court in Civil Side 290/2000 claiming delictual damages from the applicant. The Magistrate, having heard the case on merits, found the applicant liable and gave judgment for the respondent in the sum of R25,000 with interest and cost. The judgment was delivered in open Court. That was on 30 May 2001 in the presence of the respondent's counsel, Mr Hodoul. However, a careful perusal of the record reveals that neither the applicant nor its attorney, Mr Freminot, was present at the time it was delivered. Be that as it may, following the said judgment the registrar issued a notice to Mr Freminot requesting him to attend the taxation proceeding before him on 13 July 2001. Although I see a copy of that notice in the file, I find no proof on record to show that it was in fact served either on the applicant or on its attorney, Mr Freminot. It only shows that the taxation of the bill of costs was held ex parte in the absence of the applicant.

In the circumstances, the applicant has now come before this Court seeking leave to appeal out of time as he could not file the notice of appeal within the statutory period of 14 days from the date of the judgment. According to the affidavit filed by the applicant's counsel, due to lack of instructions it was not possible to appeal within the time prescribed. Therefore, the applicant moves this Court for an order granting leave to file this appeal out of time.

The respondent on the other side resists this motion on the ground that the applicant cannot benefit from its own laches. Moreover, it is the contention of the respondent that the applicant's attempt herein is frivolous, vexatious and groundless. Therefore, the respondent urges this Court to dismiss the applicant's motion in this matter.

I carefully perused the record of the proceedings in the Court below. I went through the

affidavits filed by the parties in support of and opposing this motion. Whatever be the arguments advanced for and against this motion, the fact remains that the judgment in question has been delivered in the absence of the applicant. In the circumstances, one cannot safely presume that the applicant was aware of the judgment soon after it had been delivered in Court. Obviously, the applicant wouldn't be able to know about the judgment within 14 days unless notified by the Registry or through other means if any, available to the applicant. Indeed, had the judgment been delivered in the presence of the applicant and had the applicant been aggrieved thereof, in the normal circumstances it should have filed the notice of appeal on or before 13 June 2001. However, in this case the applicant has filed this notice of motion on 8 August 2001 after a delay of 55 days from the due date. In my view, the applicant has taken immediate steps to lodge an intended appeal as soon as he learnt about the judgment. In the given circumstances, it appears to me that the applicant has acted within a reasonable time by filing this motion for leave to appeal out of time. The intention to appeal seems to be genuine as the applicant has filed this motion prior to the receipt of the letter dated 14 September 2001 issued by the respondent demanding payment of the judgment debt.

For these reasons, I am satisfied that there exist sufficient grounds for treating this case as an exceptional one and therefore grant the applicant leave to appeal out of time. Accordingly, I extend the time until 26 November 2001 for the applicant to file the notice of appeal in this matter. Thus, I allow the motion but on condition that the applicant should pay a sum of R1000 to the respondent as exemplary costs before filing the notice of appeal.

Record: In Re Magistrate's Court Civil Side No 290 of 2000