

IN THE SUPREME COURT OF SEYCHELLES

TELECOM SEYCHELLES LTD

APPELLANT

VERSUS

THE COMMISSIONER OF TAXES

RESPONDENT

Civil Appeal No 8 of 2006

•

Mr K. Shah for the Appellant

Mr R. Govinden for the Respondent

RULING ON A PLEA IN LIMINE LITIS

Gaswaga, J

An objection has been raised by Mr Govinden under S. 108(2) of the Business Act Cap. 20 to the effect that after the owner of the business, the Appellant herein, had received a copy of Commissioner's submission (*respondent*) on 14/7/2006 did not deliver to the Supreme Court a written defence of its objection and forthwith serve a copy of the said defence on the Commissioner within the prescribed sixty days. He contends that indeed the appellant first filed the written defence of its objections on the 12/9/2006 well within the sixty days but that on the same day withdrew the written defence of objections, according to the appellant's lawyer's forwarding letter dated 13/9/2006 to effect corrections that existed in the submissions, and refiled at the Registry what was referred to as a corrected submission on the 13/9/2006. To this end, the affidavit of 13/9/2006 by Mr Jacques Robert, a Senior Assistant Registrar of the Supreme Court who received and filed the said submissions is pertinent.

Whatever the reason may-be for withdrawing the submissions on 12/9/2006 Mr Govinden's quarrel is with the filing of the same on the 13/9/2006 which he submits was clearly out of the 60 days time limit and as such the appeal is deemed to have been withdrawn under S. 116. Mr Shah contended that the Learned Chief Justice had made an order extending the time to the

13/9/2006 and therefore the appellant's submissions were properly before the Court.

I shall start by establishing whether the appellant filed the written defence within or outside the prescribed sixty days. From the facts it emerges that two acts or events i.e. the effecting of service on the owner of the business and the filing of the written defence form the points of time limits which, following the Rules for computing time, the time started running and also ended. It is beyond the region of dispute that a copy of the submissions was served on the owner of the business on the 14/7/2006 while the appellant's written defence was filed in the Supreme Court on the 13/9/2006.

When did time start running?

Section 108(1)(b) and (2) of the Business Tax Act (Cap 20) reads:-

(1) Subject to section 109, the Commissioner shall within ninety days after receiving the request of owner of the business made under section 106 -

(a).....

(b) forthwith serve a copy of the submission on the owner of the business or his authorized agent.

(2) The owner of the business shall within sixty days after receiving a copy of the Commissioner's submission deliver to the Supreme Court a written defence of his objection and shall forthwith serve a copy of the defence on the

Commissioner.

Section 57(c) of the Interpretation and General Provisions Act (Cap 103) is very relevant:

Section 57 In computing time for the purpose of an Act

- (c) Where a period is expressed to begin after or to be from a specified day, the period shall not include that day;

While considering the general rule of computation of time, the Court in **Pugh v. Duke of Leeds (1777), 2 Comp. 714** observed thus;

“Where a period of time from or after a given date or event is prescribed as the period within which an act is to be done, the day of that date or event is to be excluded in the computation of the period, and the act is to be done on or before the last day of the period”.

It was held in Thomas Vs Lambert, 4 L.J. KB 153; 3 A & E. 61 that;

“Where something is to be done ‘within’ a stated time ‘before’ a stated date, that means that it is to be done at sometime during the course of the stated time immediately preceding the stated date”.

The interpretation in the case of **Williams V. Burgess, 10 L.J. Q.B 10; 12 A&E** squarely covers the provisions of S. 108 (2) (supra). This is what the Court said:-

“ ‘within’ so may days ‘after’ an event, means, days exclusive of the day of the event”

It follows, from the above discourse, that the day on which service was effected on the owner of the business (being 14/7/2006) is excluded when computing the sixty days. Therefore the time (days) started running on the 15/7/2006, a day after the appellant receiving the Commissioner's submission and it ended on the 12/9/2006. I am in total agreement with Mr Govinden that by filing the written defence on the 13/9/2006 the appellant was clearly out of time. It is worthy noting that although the appellant was late by a day, time was of essence in proceedings governed by the Business Tax Act, Cap 20 and failure to observe time limits yielded fatal results to the non compliant party. (See. S. 116 thereof). However, the appellant is in possession of and waving a Court order that allowed him to file the submissions out of time.

This now brings me to the second grievance of the objections. Mr Govinden complained that the Chief Justice's order (*supra*) was wrong in law and in principle and that since the case was already out of time he should have granted leave for filing of documents out of time otherwise time which is prescribed cannot be extended. That it was null and void ab initio. Further, that the purported proceedings in chambers were devoid of the rules of natural justice and procedure as no motion and affidavit were filed nor served on the Commissioner and yet Article 19 of the Constitution, 1993 was not honoured when the Commissioner was neither notified nor heard. That the order was based on wrong reasons as no errors were corrected in the submissions

and the Commissioner was denied opportunity to contest it.

In response, Mr. Shah submitted that even if the respondents disagreed with the said order, arguing that it was made *exparte* in chambers and therefore in total disregard of the audi alteram partem rule, it was valid until or unless quashed by a Court of Competent Jurisdiction. He concluded by saying that this Court was not in a position to overrule an order made by that of the Chief Justice as both Courts enjoy concurrent jurisdiction.

In find it imperative to reproduce the forwarding letter written by the appellant's Counsel:

“13th September 2006

*The Master and Registrar
Supreme Court
Victoria
Mahe Seychelles*

Dear Sir

*Re: Telecom Seychelles Versus The
Commissioner of Taxes*

*Please find enclosed my corrected submission
for the Appellant in 2 originals.*

*The original (with errors) had been brought to
the Registry yesterday afternoon, 12th
September 2006 as per signed copy attached.*

Yours faithfully

KIERAN B SHAH

The following is the hand written endorsement on that letter by the Hon. Chief Justice:

Mr J. Robert

“Extension to file appellant’s submission granted to 13th September 2006, it is noted that same had been filed but returned to Appellants’ Counsel for correction on 12.09.2006”.

V. ALLEEAR

CJ
13/09/2006

The Seychelles Court of Appeal posed a question pertinent to the case at hand which I consider apposite to reiterate:

“Does a person have a right, either at common law or under the Constitution of Seychelles to ignore or defy an order of a Supreme Court Judge on the ground that it is void or illegal and therefore not binding on him?”

This was in the case of **Mr Roger Mancienne Vs. The Government of Seychelles SCA No. 10 of 2004.** After answering this question in the negative, Ramodibedi, P further ruled thus “.....as a Court of unlimited jurisdiction, the orders of the Supreme Court stand until they are set aside by this Court whether they are right or wrong”.

This being a Court of equal jurisdiction I cannot open up the

Learned Chief Justice's order to look into the reasoning and procedure that led him to that conclusion, then uphold or find fault with it. The question whether the Learned Chief Justice's endorsement amounted to a Court order or not is not for this Court to answer. The aggrieved party lambasting and perceiving the order to be wrong is well aware of the procedure to pursue for a remedy, if he so wishes. The Commissioner cannot also be entertained under S.108(3) as suggested by Mr Govinden since the fourteen days within which he should have filed a written reply to the defence have long elapsed.

Accordingly the objection is overruled for lack of merit leaving the appellant's submissions as being properly filed before this Court.

.....

D. GASWAGA

JUDGE

Dated this 29th day of January 2007