

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA

Miscellaneous Application No. 173 of 2012

[Arising from Civil Appeal No. 44 of 2012 from Employment Tribunal No.134 of 2011]

Simon Jean=====Applicant/Appellant

Versus

Inter Island Boat Ltd=====Respondent

Rene Durup for the Applicant

Teresa Micock for the Respondent

RULING

Egonda-Ntende, CJ

1 The Applicant was the applicant in the court below. He is now seeking leave to appeal out of time and has set out his grounds in an affidavit in support of this application. I will set out the relevant parts of the affidavit below.

‘2. The ruling of the Employment Tribunal was delivered on the 25th day of April 2002.

3. At the time I was being represented at the Tribunal by Mr. William Cadeau who could not represent me in this appeal since he is not a legal practitioner and therefore has no right of audience before the Supreme Court.

4. I made an application for legal aid at the Supreme Court and received approval to my application on 20th August 2012.

5. As soon as I was notified of the approval of my legal aid, I went to see the lawyer on Wednesday 29th August 2012 and immediately lodged this Notice of Appeal on Friday 31 August 2012.

6. The circumstances whereby the notice of appeal was not lodged within 14 days of the Ruling was in no way a result of my fault since I was not advised beforehand and it was only after I had seen the lawyer that I realized so.

7. I have good chances of succeeding in my appeal since the Employment Tribunal made errors with respect to the calculation of my benefits.

8. It would be in the interests of justice that my appeal be heard out of time.'

- 2 The respondent opposes this application and filed an affidavit in that regard. I shall set out the relevant parts of that affidavit.

'2. I am the human resource manager of the Respondent. 3. The judgment was delivered and read in its entirety on 25th April 2012. 3. Mr Jean and his representative were present at the reading of the judgment. 4. On 16 May 2012, the case was reviewed by the Employment Tribunal and it was confirmed that the payment the Respondent was ordered to pay in the sum of SR6,250 had been duly accepted and paid by the Applicant. 5. I am informed and duly believe that the Applicant made the legal aid application on 8 August 2012, four months after the date of judgment and three months after accepting payment. Had the applicant intended to appeal the order of the Employment tribunal as the time of judgment, he should have sought advice immediately after the judgment was delivered in April, either by the Employment Tribunal, who is aware of the appeal procedures from the Employment Tribunal and can advise on this or through his representative, whom I believe would be aware. 6. The Respondent objects to the Applicant's motion for extension of time for that reason that the Applicant took an excessive amount of time to make legal aid application and issue a notice of appeal. 7. I also believe the Applicant's chances of success in the appeal are low as no relevant evidence was produced by the Applicant with respect to the alleged errors on the part of the Employment Tribunal with respect to calculation of his benefits.'

- 3 This matter is governed by Rule 5 of the Appeal Rules [SI 11 of 1961] which states,

'Any party desiring an extension of 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.'

- 4 The ground advanced by the applicant is basically that he obtained legal aid out of time and therefore ought to be granted leave to file the appeal out of time. The applicant has failed to explain what he was doing for the months of May, June, and July with regard to his appeal. He took time to collect the decretal amount that had been ordered and then, three months later, considered the possibility of an appeal and applied for legal aid. This appears to have come as an after thought.

- 5 As was noted by the Court of Appeal in Algae v Attorney General SCA No. 35 of 2010 [unreported] and citing with approval the words of the Privy Council in Ratnam v Curmarasamy [1964] All ER 933,

‘The 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 requires otherwise a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.’

- 6 In an English case, Revici v. Prentice Hall Incorporated, [1969] 1 All E.R. 772 Lord Denning M.R. made the same point when he said at p.774:

‘Counsel for the plaintiff referred us to the old cases in the last century of Eaton v. Storer (1) and Atwood v. Chichester (2), and urged that time does not matter as long as the costs are paid. Nowadays we regard time very differently from what they did in the nineteenth century. We insist on the rules as to time being observed.’

- 7 And Edmund Davies, L.J., similarly opined at p.774:

‘On the contrary, the rules are there to be observed; and if there is non compliance (other than of a minimal kind), that is something which has to be explained away. *Prima facie*, if no excuse is offered, no indulgence should be granted.’

- 8 The applicant has not explained the 3 month delay in failing to take any step with regard to a possible appeal against the decision of the Employment Tribunal. This is fatal to this application. Parties and their legal advisors must understand that this court will enforce the time standards established by the rules. I dismiss the application with no order as to costs.

Signed, dated and delivered at Victoria this 31st January 2013

FMS Egonda-Ntende
Chief Justice