

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 40/2015

(arising in CS 07/2015)

[2015] SCSC 64

**MONIQUE HERMITTE
(OF ANSE POULE BLEU, BAIE LAZARE, MAHE)**

Applicant

versus

**FAIR TRADING COMMISSION
(BLOCK B, 3RD FLOOR, ROOM 301-306, UNITY HOUSE)**

Respondent

Heard: 6th day of March 2015

Counsel: Mr. E. Chetty for applicant

Delivered: 11th day of March 2015

RULING ON MOTION

Govinden J

[1] This is an application by way of notice of motion for leave to appeal out of time from a Judgment of the Fair Trading Appeal Tribunal (hereinafter referred to as the “Tribunal”).

[2] The Fair Trading Commission (hereinafter referred to as the “Commission”) cited as Respondent was duly served with notice of motion as per returns of service on the 2nd day

of March 2015 but failed to appear before Court for the hearing thereof hence the matter proceeding in their absence.

[3] In essence, Learned Counsel for the Applicant submitted in support of the notice of motion as per the averments in his affidavit in support attached to the notice of motion of the 17th day of February 2015.

[4] In a gist Learned Counsel's submissions was to the following effect:

(i) That the Judgment of the Tribunal was delivered on the 11th of December 2014 but was dated 30th of November 2014.

(ii) The Tribunal was notified by Learned Counsel that the Judgment must be dated on the date it was delivered and the Tribunal stated that they would seek advise from their chairwoman and thereafter notify Counsel.

(iii) That on the 11th December 2014, the Chairwoman of the Tribunal was not present.

(iv) That an amended copy of the Judgment was received by Counsel on the 2nd of February 2015 and copy of receipt attesting to the same was attached for the purpose of this motion.

(v) That on the amended copy of the Judgment, the date had been amended from 30th November 2014 to the 11th December 2014.

(vi) That there is a high probability of the appeal being allowed if leave is granted.

(vii) That moreover no prejudice would be caused to the Respondent.

[5] Based on the motion before Court, it is clear that the "notice of appeal" has been instituted out of time, for the notice of appeal was filed only on the 17th day of February 2015 exactly 14 days after date of receipt of notice received by Learned Counsel of the amended Judgment of the Tribunal and therefore two months and six days after the date of the final (amended) Judgment of the Tribunal.

[6] Now, Rule 6 (1) of the Appeal Rules as read in conjunction with Rule 27 (1) latter with reference to application of Rules on appeals from other Tribunals provide that:-

“every appeal shall be commenced by notice of appeal.”

[7] Rule 6 (2) further provides that:-

“the notice of appeal shall be delivered to the clerk of the court within fourteen days from the date of the decision appealed against unless some other period is expressly provided by the law which authorises the appeal”.

[8] In this case the later exception does not apply.

[9] It is trite that as noted by the Court of Appeal in the matter of **Algae v/s Attorney General SCA No. 35 of 2010 [unreported]**,and citing with approval the words of the **Privy Council in Ratman v/s Curmarasamy [1964] ALL ER 93**, that

“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”.

[10] Further, in the local case of **Rodolph Harry Jean Louise v/s Marie Jenifer Rosette SCA No. 15 of 2010 at paragraph 6 thereof, Fernando JA** held that:-

“There must be a finality to judicial decisions and for this purpose there must be strict compliance with procedural requirements setting out the time period for filing of appeals unless the non compliance is shown not to be caused by acts and omissions of the applicant or his counsel”.

[11] Now, in the light of the above-cited observations and guidelines, it is evident to this Court as viewed from the averments in the affidavit and submissions of Learned Counsel for the Applicant and in the absence of any evidence to the contrary on the Respondent's behalf (latter having been duly served and absent for reasons unknown to Court), that the Applicant has raised substantial reasons as to why this order should be granted and in saying so it is clear that the delay in service of the Tribunal's final Judgment was due to reasons not attributable to the Applicant and or his Learned Counsel and considered thus by this Court "beyond their control".

[12] In furtherance to paragraph [11] above, this Court does not lose sight of the fact that it does not suffice that because a party is litigious, the Court ought to allow it to abuse the process with unmeritorious litigation which would cause hardship to the other party. However, at the same time, it is crucial that a litigant ought not to be deprived of the opportunity to be heard on good cause and or cause beyond his control and it is the opinion of this Court that in not granting this application the Applicant will perceive herself having been denied justice in this case.

[13] For the reasons as stated above, I am satisfied that the delay was not caused, by acts or omissions of the Applicant and or her Counsel, hence I hereby grant leave for the Applicant to proceed with the appeal out of time.

Signed, dated and delivered at Ile du Port on 11th March 2015.

S.Govinden J
Judge of the Supreme Court