

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 53/2016  
(arising in CA03/2016)**

**[2016] SCSC**

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**DIRECTOR OF SOCIAL SERVICES HEREIN REPRESENTED BY THE  
ATTORNEY GENERAL  
Appellant**

**ANNABELLE VALENTIN OF PORT GLAUD  
1<sup>st</sup> Respondent**

**AND**

**KISNAN LOUISE OF PERSEVERANCE  
2<sup>nd</sup> Respondent**

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Heard: 2<sup>nd</sup> day of March 2016  
Counsel: State Counsel K. Karunakaran for Appellant  
Mr. M. Vidot for Respondents  
Delivered: 4<sup>th</sup> day of March 2016

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**ORDER ON MOTION  
FOR LEAVE TO APPEAL OUT OF TIME**

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Govinden J

- [1] This is a Motion dated and filed by Learned State Counsel for the Appellant on the 29<sup>th</sup> day of February 2016 seeking “leave to appeal out of time” against a final Ruling of the Family Tribunal (hereinafter referred to as the Ruling”), delivered on the 3<sup>rd</sup> day of February 2016.
- [2] The Ruling being impugned is with regards to an Application by the Director of Social Services (hereinafter referred to as the “DSS”) under Section 80 (1) of the Children Act, 1982 (hereinafter referred to as “the Act”, by which Application, the DSS , prayed the Family Tribunal, to exercise its Statutory Jurisdiction under Section 78 (1) (b) of the Act, as amended by Act 14 of 1998, to make a compulsory measure of care Order in favour of one Shani Louise, a minor for the DSS to take her in their care in a place of safety.

The conclusion of the Tribunal in issue is found more particularly at paragraphs 23 to 26 of the Ruling of which I shall not reproduce at this stage of the proceedings for this is but a Motion for leave to appeal out of time only but the contents of which is duly noted for the purpose of this Motion.

- [3] According to the extract of the Ruling, present at the time of its delivery was the representative of DSS as well as the Respondents and their named legal representative.
- [4] Now, Learned Counsel for the Appellant Mr. K. Karunakaran, submitted on an Affidavit attached in support of the Motion duly sworn by one Michelle Marguerite Senior Legal Officer with the Ministry of the Social Affairs, Community Development and Sports on behalf of the DSS, which in a gist relates to information and evidence collected by the DSS in respect of the subject matter of the Ruling more particularly as averred at paragraphs 2 to 6 of the Affidavit.

- [5] At paragraph 7 thereof, Ms Marguerite avers specific to this Motion that on the 3<sup>rd</sup> day of February 2016, the Family Tribunal gave a Ruling dismissing the Application made by DSS on the 6<sup>th</sup> day of July 2015 for an Order of compulsory measure of care in favour of the second minor Shani Louise, and further ruled that the Order of the 31<sup>st</sup> December 2014 be varied, in that the minor Rebecca Louise be returned to the care and supervision of Annabelle Valentin, the first Respondent.
- [6] She further avers that a copy of the Ruling was made available by the Tribunal to the DSS only on the 24<sup>th</sup> day of February 2016, resulting in the current delay in being able to appeal against the Ruling. Furthermore, that this provided little time for the Appellant to reach a decision and instruct Counsel. That the appeal filed by the Appellant, if entertained, has a great chance of success and would be in the interest of the children that is, the two female minors being the victims of sexual assault.
- [7] Reference has been made to the matter of **(Hawkins (1997) Cr App. R P 234)** wherein the Court of Appeal commented that *“the practice of the Court has in the past, in this and comparable situations, been to eschew undue technicality and ask whether any substantial injustice has been done.”*
- [8] The said deponent has further urged the Court to be pleased to condone the delay for the filing of the notice of appeal and to allow the appeal to be heard out of time in the interest of fairness and justice.
- [9] Learned Counsel for the Appellant emphasized that the main delay in filing of the said notice of appeal was primarily due to the fact that the copies of the Ruling and related documents were made available to the DSS on the 24<sup>th</sup> of February 2016 as attested by the stamps inserted on the Ruling and that in fact the notice of appeal and memorandum of

appeal together with notice of Motion for all ancillary matters to be heard as a matter of urgency more particularly the Current motion, the Motion for stay of execution, were filed before the Registry of the Supreme Court on the 29<sup>th</sup> February 2016 the earliest possible delay after obtention of the Ruling and date of the 2<sup>nd</sup> March 2016 given for hearing.

- [10] Learned Counsel Mr. M. Vidot on behalf of the Respondents chose to submit *viva voce* in the absence of a written reply to the current Motion and submitted in a gist as follows.
- [11] Learned Counsel submitted that the Ruling was delivered on the 3<sup>rd</sup> day of February 2016 when representative of the DSS was present and hence knew of the Ruling and they maybe did not make an effort to get a copy of the Ruling in time. That he was able to get one even before 14 days and he was just wondering as to why DSS did not manage to do so. and the Ruling of the Tribunal by the DSS only indicates the date that the report was sought by the DSS.
- [12] Further, that DSS could have at least filed a notice of Appeal pending obtention of the copy of the Ruling within 14 days of its delivery and then sought time form the Court to file a memorandum upon obtention of all other relevant Rulings and documents.
- [13] It was admitted that there is a pending Criminal charge of sexual assault as against the 2<sup>nd</sup> Respondent and Anor. before the Supreme Court in CR. No. 79/2015 vis-a vis the relevant children.
- [14] It was neither denied that the Family Tribunal did not serve a copy of the Ruling on the Respondents within 14 days of the delivering of the Ruling but rather it is the Respondents themselves who went to search for a copy of same hence their objections.

[15] Now, the governing legislation pertinent to this Application is the Courts Act (The Appeal Rules) (Cap 52), more particularly its Rules 5 and 6 as read with Rule 27 thereof.

***Rule 6 (1) provides as follows:***

***“Every appeal shall be commenced by a notice of appeal***

***Rule 6 (2) provides as follows:***

***“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.”***

***Rule 5 provides as follows:***

***“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.”***

***Rule 27 (1) in turn provides as follows:***

***“Where an Act allows an appeal to the Supreme Court from an order or decision of any commissioner or other tribunal or officer the procedure in such an appeal be in accordance with such Act and regulations thereunder and subject thereto, and in respect of all matters for which they do not provide, in accordance with these rules.”***

(Emphasis mine)

- [16] Now, the latter Rule applies in this case in view of absence of specific procedures under the Act.
- [17] The main reason adduced by the Appellant in seeking an extension of time as per Affidavit of the deponent on behalf of the DSS hence justifying this Motion is in a gist that a copy of the Ruling was made available by the Tribunal to DSS only on the 24<sup>th</sup> day of February 2016, resulting in the current delay in being able to appeal against the Ruling. Further, that this provided little time for the Appellant to reach a decision and instruct Counsel. That the appeal filed by the Appellant, if entertained, has a great chance of success and would be in the interest of the children that is, the two female minors being the victims of alleged sexual assault.
- [18] The Court notes also the Motion that the appeal is to be heard out of time in the interest of fairness and justice in view of the averments at paragraphs 2 to 7 of the Affidavit in support of the Motion which relate to a brief but succinct history of the matter leading to the impugned Ruling of the Tribunal.
- [19] I have in the light of the above background which has not been denied by the Respondents (excepted the obligation falling on the Applicant to obtain a copy of the Ruling from the Tribunal within fourteen days of its delivery as above-illustrated) and consideration of submissions of both Counsels vis-à-vis this Motion, found that this Motion was filed on the 29<sup>th</sup> day of February 2016, **26 days after the delivery of the Ruling of the 3<sup>rd</sup> February 2016 hence 12 days in excess of the fourteen days provided for appeal by the provisions of Rule 6 (2) (supra).**
- [20] I note further that in the case of **(Howard v Bodington (1877) Pro. Div. 302) Lord Penzance** stated that *“the continuance of a suit itself*

*was a harm which cause prejudice, and that disabilities of the petitioner are not what the court is called upon to consider, but material prejudice caused to the respondent. The Learned Judge further stated that:*

**“if we desert the 21 days, the question arises how long may the matter hang over the head of the respondent”.**

[21] In line with the above statement, the following passage from Maxwell on Interpretation of Statutes (11<sup>th</sup> Edition) at page 367 is relevant and provides as follows:

“Enactments regulating the procedure in Courts seem usually to be imperative and not merely directory. If, for instance, a right of appeal from provisions requiring the fulfilment of certain conditions, such as giving notice of appeal and entering into recognisances or transmitting documents within a certain time, a strict compliance would be imperative and non-compliance would be fatal to the appeal.”

[22] Now, Rule 5 of the Appeal Rules (supra), gives this Court a wide discretion in the matter of granting an extension of time. And to depart from the set out procedures, the Court needs to have good reasons to do so. Albeit the overriding consideration being the prejudice caused to the respondent by such a delay as above-enunciated, at the same time a Court should also be prepared in the interest of justice and fairness to consider circumstances peculiar to each case and not apply the time limits rigidly in all cases.

[23] Now, in this case, as it is transpired from the Records of proceedings and documents filed in support of this Motion, the Tribunal Secretariat did not provide the Parties with the relevant copies of the Ruling within the prescribed time limit for filing of a notice appeal as provided under Rule 6 (supra) and this is apparent as duly attested due by the very

stamps on the Ruling attached to the Motion whereon the Secretary to the Tribunal only certified a true copy of the original Order of the Tribunal (delivered on the 3<sup>rd</sup> day of February 2016), on the 23<sup>rd</sup> day of February 2016 and delivered to the DSS as attested by stamp on the Ruling, on the 24<sup>th</sup> day of February 2016. It is in my opinion the administrative duty and obligation of the Tribunal Secretariat to ensure that copies of proceedings are certified on the same date the Ruling is delivered and served on the relevant parties within reasonable time standards hence the shifting of the administrative duty and obligation of the Tribunal on a party is with due respect to Learned Counsel for the Respondent's arguments, untenable in all the circumstances of this case.

- [24] Further, the practice of the Court in comparable situations shall be to rather eschew undue technicality and ask based on peculiar circumstances of each case as to whether any substantial injustice has been, is being or likely to be done to the Respondent hence justifying the exercise of the discretionary powers of the Court under Rule 5.
- [25] In the instant case, the Court is making it clear that it is not in any way condoning the delay for the filing of the notice of appeal by the DSS but noting that there is a pending criminal charge against the 2<sup>nd</sup> Respondent *vis a vis* the minors subject matter of the appeal proper and also the lapse of only 26 days out of time per se for reasons as clearly illustrated and analysed above, I find that in the instant case, the delay has not been too long and the reasons adduced for the delay is sufficient for this Court to grant an extension of time.
- [26] Further, the Court considers that a motion that the intended notice of appeal and appeal proper to be heard as a matter of urgency has already been granted by this Court on the 2<sup>nd</sup> day of March 2016,



hence no material prejudice is being or likely to be caused to the Respondents by such a delay.

[27] Leave to appeal is therefore granted.

Signed, dated and delivered at Ile du Port on the 4<sup>th</sup> day of March 2016.

Govinden J  
Judge of the Supreme Court