

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 361/2016

(arising in CS30/2016)

[2017] SCSC 219

MICHELINE DINGWALL
Applicant

versus

HARRISON MICHEL
Respondent

Heard: 10 and 15 February 2017
Counsel: Mr. J. Camille for applicant
Ms. K. Kim-Koon for respondent

Delivered: 10 March 2017

ORDER ON MOTION

Vidot J

- [1] The Applicant has filed a Notice of Motion supported by affidavit, seeking leave of the court to file an appeal out of time and allow the appeal to be heard on the merits. A Notice of Appeal was filed together with the Notice of Motion. At that point no


- Memorandum of Appeal was filed therewith. However, subsequently on 09th February 2017, the Memorandum of Appeal was filed. The Respondent opposed the application.
- [2] The Notice of Appeal though dated 05th October 2016, was filed on 24th November 2016 and I note that the attached Notice of Appeal filed on the same date, is dated 26th September 2016.
- [3] The case was heard before the Magistrate Court at first instance. Judgment was delivered on the 06th September 2016. The Applicant was represented in the Magistrate Court. In fact she was granted legal aid to prosecute the case. If I follow from the date of the Notice of Motion and the attached affidavit, they were signed and prepared about a month after the judgment. This was respectively the 05th and 07th October 2016. The Notice of Appeal is dated only the 26th September 2016. As stated they were all filed on 24th November 2016, about 2½ months after the judgment.
- [4] The discretion to allow an appeal out of time rests with the court. This discretion has to be exercised equitably. It was held in **Parcou v Parcou SCA 32/1884 LC 93** that in exercising that discretion, factors to be taken into consideration include the length of delay, reasons for the delay, degree of prejudice to the defendant, and whether there is an arguable case on appeal.
- [5] In the affidavit dated 07th October 2016, there is no expressed reason given for the delay in filing the appeal. What is clear is that she was fully aware of her right to appeal against the judgment of the Learned Magistrate. She states that she has applied for legal aid to do that. At that time she was already aware that she was out of time since the prescribed 14 day period had already lapsed. There is apart from that, no explanation for the delay and why it should be condoned.
- [6] It was held in **Randolph Jean-Louis v Marie Jennifer Rosette SCA 15 of 2010**, quoting from **Ratnam v Cumarasamy (1964) 3 ALL ER 933**, that “rules of court must prima facie, be obeyed, and in order to justify a court in extending the time which some step in procedure require to be taken, there must be some material on which the court can exercise its discretion.” Therefore it is necessary that to succeed in this application, the

Applicant needed to show good cause to allow the appeal out of time; see **Jean-Louis v Rosette** (supra). I have verified with the Supreme Court Registry and it was discovered that the legal aid application was only submitted on 04th October 2016. The application was approved on 07th October 2016 and the certificate was issued immediately after to Ms. A. Madeleine, Attorney-at-Law. What is not clear and the Applicant fails to explain, is why the Notice of Motion was only filed on 24th November 2016, more than a month after the legal aid application was approved. Surprisingly at that time the Applicant paid court filing fees for the same. On the same day the Applicant filed and paid filing fees for the Notice of Appeal. In her affidavit attached to the Notice of Motion she has failed to explain her failure to file her application sooner after the approval of the legal aid application, especially since the same notice and the Notice of Appeal were prepared on 05th October 2016 and 26th September 2016 respectively.

[7] The Applicant has failed to provide court with reasonable cause as to why the delay should be condoned. The Appellant has not shown any reason for the delay caused from the date of approval of the legal aid application (07th October 2016) to the filing of the Notice of Motion on 24th November 2016. In exercising the discretion whether or not to grant leave to appeal out of time, the Court must act fairly and evaluate the degree of prejudice to be caused to the Respondent if time is extended. I find that for a while the Applicant just sat of her right and did not do anything. The judgment was delivered on 06th September 2016 and the Applicant's application for legal was dated 05th October 2016. This is not acceptable. In the circumstances this court feels that to accede to the Notice of Motion would be unfair and prejudicial to the Respondent.

[8] Therefore, the application is hereby denied.

Signed, dated and delivered at Ile du Port on 10 March 2017


M Vidot
Judge of the Supreme Court