

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2019] SCSC 103

MA 270/2018

(Arising in CA NO. 42/2018)

In the matter between:

**JIM DOMINGUE**

*(rep. by Joel Camille)*

**Petitioner**

and

**HUNT DELTEL CO. LTD**

*(rep. by Amanda Faure)*

**Respondent**

**Neutral Citation:** *Domingue Jim v Hunt Deltel Co. (Pty) Ltd* MA 270/2018 [2019] SCSC 103  
14<sup>th</sup> February 2019.

**Before:** ANDRE J

**Summary:** Ruling– Appeal out of time – Legal/ practical Considerations - Rule 6  
Court’s Act (cap 52)

**Heard:** 23<sup>rd</sup> January 2019

**Delivered:** 14<sup>th</sup> February 2019

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**RULING**

The Motion is dismissed.

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**RULING**

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**ANDRE J**

[1] This Ruling arises out of a Notice of motion of Jim Domingue filed on the 7<sup>th</sup> November 2018 and supported by affidavit thereof of the 17<sup>th</sup> October 2018 (hereinafter referred to as the “Applicant”). The Notice of motion seeks for *leave of the court to file an appeal out of time and allow the appeal to be heard on the merits against a decision of the Employment Tribunal of the 18<sup>th</sup> September 2018 (hereinafter referred to as the “impugned decision”)*.

*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] Our domestic Courts has on several occasions interpreted provisions of the Rules in relation to Motions such as the current one and applications for extension of time have been considered based on stringent conditions namely, ‘non-compliance with the Rules when it is shown not to be have been caused by the acts and omissions of the Applicant or his counsel’. (Reference made to the case of **(Rodolph Harry Jean Louis v Marie Jennifer Rosette SCA No. 15 of 2010)**). It was further held in the **Rodolph case** that, ‘the Rules must prima facie be obeyed, and in order to justify a court 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 were 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.’

[9] Further, in the matter of **(Farm Ag v Barclays Bank SSC 36/2000)**, it was held that, *‘the court has an unfettered discretion in matters of delay and extension of the time of appeal. That the court will exercise its discretion for the purpose of doing justice to the aggrieved, given the particular facts of the case.’* As rightly pointed out by Learned Counsel for the Applicant, in the **Farm Ag case**, it was further held that, *‘leave to appeal out of time may be granted if the nature of the mistake that caused the delay and the circumstances under which it arise, justify an exercise of the court’s discretion.’*

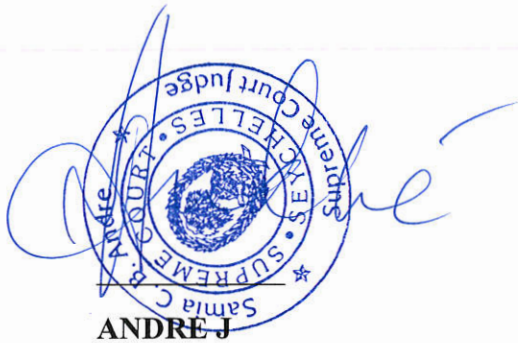
[10] Now, in this case, it remains undisputed that the impugned decision was delivered on the 18<sup>th</sup> September 2018 in the presence and hearing of all parties and their respective Counsels, thus the Applicant having been appraised of the contents of the impugned decision on that date itself (albeit not having obtained a written copy thereof), and which same was allegedly obtained received on the 12<sup>th</sup> October 2018.

[11] Going back to the provisions of the Rules as cited, the Applicant has clearly surpassed the fourteen days prescribed from the date of the impugned decision to file his Notice of appeal. The Notice of appeal was filed almost thirty five days after the expiry of the fourteen days prescribed as per the Rules. Reason given by Applicant for such failure is simply non

[16] It follows that I find no reasonable and or justifiable grounds for the granting of the extension of time to appeal as sought by the Applicant and the Notice of motion is dismissed accordingly.

[17] No Order is made as to costs.

Signed, dated and delivered at Ile du Port Victoria on the 14<sup>th</sup> day of February 2019.



The image shows a handwritten signature in blue ink over a circular official seal. The seal contains the text "Supreme Court Judge" at the top, "SEYCHELLES" in the middle, and "SUPREME COURT" at the bottom. The name "Andre" is written vertically on the left side of the seal. Below the seal, the name "ANDRE J" is printed in bold, black, uppercase letters.

**ANDRE J**