

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC.....¹⁰³

MC 65 of 2022

In the matter between:

LE RENDEZVOUS CAFETERIA

(rep. by Joel Camille)

APPLICANT

and

MOISETTE CLYAH

(unrepresented)

RESPONDENT

Neutral Citation: Le Rendezvous Cafeteria (MC 65 of 2022) [2023] SCSC¹⁰³.....(8th February 2023).

Before: Pillay J

Summary: An order to grant leave to the Applicant to file its appeal out of time and allow its appeal to be heard on its merit

Heard:

Delivered: 8th February 2023

ORDER

The motion is dismissed.

JUDGMENT

PILLAY J:

[1] By way of Motion filed on 29th September 2022 seeks an order granting leave for the Applicant to file its Appeal out of time and allow its appeal to be heard on its merits.

[2] The Motion is supported by the affidavit of Wilson Nancy who states as follows:

(1) ... I state that I am duly authorized to make and swear this affidavit of behalf of the Applicant in this matter.

(2) *I state that the matter was heard before this Employment Tribunal and judgment given on the 27th May 2022 whereupon it was decided that the Respondent's termination by the Applicant had been unlawful and an award of the sum of Rs23, 829 was made in favour of the Respondent.*

(3) *I state that despite the same judgment having been made in May 2022, a copy of the final judgment was only sent to my attorney after many request made by my attorney only on 18th July 2022. There is bow shown to me and marked as **Exhibit A1**, copy of the same judgment with the Tribunal stamp thereon.*

(4) *I state that up to the date of me being served with the judgment referred in Paragraph 3 above, the fourteen days appealable period has lapsed and that accordingly I am desirous to appeal against the judgment of the Tribunal as the Tribunal has clearly misapplied the law. There is shown to me and marked as Exhibit A2, a copy of the Notice of Appeal prepared by my attorney, ready to be filed.*

(5) *I state that I am advised and verily believe that this appeal involves an important point of law which needs to be heard before the Court. I further aver that given the delay to obtain the judgment was not within my control, that leave be granted for me to appeal out of time so that my appeal can be filed and heard.*

[3] On 23rd November 2022 the Learned counsel for the Applicant agreed to proceed by way of submissions. However up to the time of writing this decision no submissions were forthcoming.

[4] The procedure for filing of appeals from a decision of the Employment Tribunal is found in section 4 of Schedule 6 of the Employment Act which provides that:

Any person against whom judgment has been given by the Tribunal may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates Court.

[5] Rule 6 (1) of the Appeal Rules (Court's Act) is clear and unambiguous:

Every appeal shall be commenced by a notice of appeal.

- [6] Rule 6 (2) of the Appeal rules (Court's Act) which provides for civil appeals from the Magistrates Court 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.

- [7] It is clear that the appeal from a decision of the Employment Tribunal is to be commenced by way of a Notice of Appeal delivered within fourteen days of the date of the judgment appealed against. There is no requirement that a copy of the decision appealed against has to be attached to the Notice of Appeal.
- [8] With the Applicant being outside the time limit, the issue for the Court is whether the time limit should be extended in order to allow the Applicant to file its appeal.
- [9] In the case of ***Public Utilities Corporation v Elisa [2011] SLR 100***, the Court of Appeal remarked that "...the trend today is that so long as there is substantial compliance..., adherence precisely to time element should not be fatal to the claim." The Court of Appeal however went on to find that "A court before which such the Limitation period is raised should proceed on a case to case basis and examine the facts and circumstances to decide whether justice would be better served by upholding the procedural objection or overruling it."
- [10] In the case of ***Jean vs Inter Island Boat Ltd (Civil Appeal No. 44 of 2012) [2013] SCSC 6 (31 January 2013)*** His Lordship the Learned Chief Justice N'tende in "enforcing the time standards established by the rules" relied on the case of ***Algae v Attorney General SCA No. 35 of 2010 [unreported]*** where the Court of Appeal cited the words of the Privy Council in *Ratnam v Curmarasamy [1964] All ER 933*, 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.'

His Lordship Chief Justice N'tende went on to refer to the case of *Revici v. Prentice Hall Incorporated*, [1969] 1 All E.R. 772 wherein 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.'

As did Edmund Davies, L.J., who 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.'

- [11] In the case of *Mondon v Mondon (MA 181 of 2020) [2021] SCSC 296 (09 June 2021)* his Lordship Dodin J “respectfully differed” from the views of his Lordship Domah JA in the case of *Gill & Ors v Film Ansalt [2013] SLR 137* wherein his Lordship Domah JA stated that:

the Court should not be a slave to procedures as procedures, “hand-maids” are meant to be of assistance and not necessarily for strict and unwavering compliance.

His Lordship Dodin J was of the opinion that:

some procedures are designed to assist the parties and the Court.

He went on to add that:

whilst it is not agreeable for “hand-maids” who aspire to be “mistresses” to be always accorded such ambition, it is also not acceptable to reduce “mistresses” to the position of “hand-maids” and thus create uncertainty in what should otherwise be an organised state of affairs.

- [12] What I can glean from the above authorities is that the rules are there to be obeyed in order to ensure fairness and justice. Where there is non-compliance, sufficient cause has to be shown as to why the Court should exercise its discretion to condone the non-compliance.

- [13] That said, the Applicant has to satisfy this Court that there is sufficient cause to excuse the delay in filing the appeal. According to Mr. Nancy *“despite the same judgment having been made in May 2022, a copy of the final judgment was only sent to my attorney after many request made by my attorney only on 18th July 2022”*
- [14] His reason for the delay in filing the appeal is due to the delay in being served with a copy of the judgment by the Court’s Registry. Essentially his excuse is that the Court is responsible for the delay he encountered in filing the appeal.
- [15] With respect it was the choice of the Applicant to await being served a copy of the judgment instead of filing a Notice of Appeal as required by the rules.
- [16] With that in mind I find that the reason provided is not sufficient cause to convince this Court to condone the delay and exercise its discretion to extend the time in order for the Applicant to file its appeal.
- [17] Accordingly, the Motion is dismissed.

Signed, dated and delivered at Ile du Port on 8th February 2025

