

SUPREME COURT OF SEYCHELLES

Reportable
CA 01/2023

In the matter between:

ROBIN NASSIB

1st Appellant

and

INESE FOSTEL

2nd Appellant

Both

Of Union Vale, Mahe, Seychelles
(Represented by Mr Joshua Revera)

v/s

FLORY ROSETTE

Respondent

Also

Of Union Vale, Mahe, Seychelles
(Represented by Ms Vanessa Gill)

Neutral Citation: *Nassib & Or vs Rosette* (CA 01/2023) (19 June 2024).

Before: Adeline J

Summary: Notice of Appeal filed in court/Preliminary objection grounded on the proposition that it has been filed out of the prescriptive limitation period of 14 days.

Heard: 20th March 2024 and 4th April 2024

Delivered: 19 June 2024

RULING ON PRELIMINARY OBJECTION

Adeline J,

[1] By way of a joint Notice of Appeal filed in court on the 6th of January 2023, the Appellants who were the Defendants in the court of first instance, appeal to the Supreme Court against the decision of his Worship, Senior Magistrate Vipin Benjamin in a judgment delivered on the 9th December 2022 in CS 115 of 2016.

[2] Objecting to the Notice of Appeal, the Respondent who was the Plaintiff in the court of first instance, through learned counsel, raises a *plea in limine litis* that reads as follows;

“1. The 1st and 2nd Appellants have filed their Notice of Appeal outside the prescribed time limit provided for under rule 6(2) of the Appeal Rules for the Civil Appeals from Magistrates Court read with Section 57 of the Interpretation and General Provisions Act. Consequently, the Appeal is therefore rendered defective and the Respondent prays for its dismissal with costs.

2. The Respondent otherwise reserves a reply to the merits of the Appeal”.

[3] The preliminary objection to the appeal raised by learned counsel for the Respondent is centred around the provisions of rule 6(2) of the Appeal Rules (SI 11 of 1961) regulating Civil Appeals from the Magistrates’ Court.

[4] Rule 6(2) of the Appeal Rules is couched in the following terms;

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

[5] The factual basis for the preliminary objection, stems from the fact, that the decision which the Appellants are appealing against was delivered by the learned Magistrate on the 9th December 2022, and the Appellants filed their Notice of Appeal in court on the 6th January 2023. It is contended by learned counsel for the Respondent, that the 14 days had lapsed when the Appellants filed their Notice of Appeal, and therefore, the appeal is defective and ought to be dismissed.

[6] Learned counsel for the Respondent refers the court to Section 57 of the Interpretation and General Provisions Act in coming to the conclusion that the Appellants were out of time when they filed their Notice of Appeal in court on the 6th January 2023.

[7] Section 57 of the Interpretation and General Provisions Act, provides for “Rules for computing time for the purpose of an appeal”. Section 57(1) is replicated hereunder;

“57.

(1) In computing time for the purpose of an Act;

(a) A period reckoned by days from the happening of an event or the doing of any act or thing is exclusive of the day on which the event happens or the act or thing is done.

(b) Where a period is expressed to begin or end at, on or with a specified day or to continue to or until a specified day, the period shall include that day.

(c) Where a period is expressed to begin after or to be from a specified day, the period shall not include that day.

(d) Where the last day of a period is an excluded day, the period includes the next following day (not being an excluded day) and

(e) Where an act or proceeding may be or is required to be done or taken on a certain day, and that day is an excluded day, the act may be done or the proceeding taken on the next following day (not being an excluded day)

(2) Where no time limit is prescribed in an Act for the doing of any act or thing, it shall be done without unreasonable delay and as often as due occasion arises

(3) Where a court or an authority is empowered by an Act to extend the period of time within which any act or proceedings is permitted or required to be done or taken, the power may be exercised notwithstanding that the period of time has expired.

(4) For the purpose of this Section “excluded day” means a public holiday or a bank holiday declared under Section 51 of the Financial Institutions Act.

(5) The expression “a.m.” indicates the period between midnight and the following noon, and the expression “p.m.” indicates the period between noon and the following midnight.

(6) Where the two expressions referred to in subsection (5) occurs conjunctively in relation to any specified hour or in conjunction with the word “sunset” or “sunrise”, they are construed as relating to consecutive period of time”.

[8] In her written submissions on the law to support her preliminary objections to the appeal, learned counsel for the Respondent, contends, that in accordance with Rule 6(2) of the Appeal Rules read with Section 57 of the Interpretation and General Provisions Act, the Appellants should have filed their Notice of Appeal to the Supreme Court to initiate appeal proceedings 14 days from the date the judgment was delivered which was on the 9th December 2022.

[9] It is also contended by learned counsel for the Respondent, that the amendments to Section 57 of the Interpretation and General Provision Act by Section 4 of the Civil Code of Seychelles Act (Consequence of Enactment) Act, means that;

“(a) One does not count the date on which the act or thing happened.

(b) Where the last day of a period is excluded day, the period includes the next following day (not being excluded day, and

(c) Saturdays and public holidays are to be counted when calculating time limit”.

[10] Based on learned counsel’s understanding and interpretation of the law for calculating time in order to be in compliance with rule 6(2) of the Appeal Rules, learned counsel submits, that counting starts the following day after the date the judgment was delivered, and therefore, on the facts of the instant case, counting of the days should start on the 10th December 2022, and Saturdays and public holidays should be included in the counting. I will not comment on learned counsel’s interpretation of the law until later in this ruling. Suffice to say, however, that I have been unable to reconcile her interpretation of the law with the conclusive statements she makes in paragraphs 6 and 7 of her written submissions, given that the number of days, and the year are incorrect.

[11] In paragraph 6 of her written submissions, learned counsel makes the following conclusive statement;

“... the time limit of 14 days would start from 10th December 2022 (a Friday). As the law provides that we must also count Saturdays and public holidays, therefore, it is clear that 23 days lapsed from the 10th December 2022 until Tuesday 6th December 2023”.

My first observation, is that the 10th of December 2022 was not a Friday as it has been suggested by learned counsel for the Respondent but a Saturday. My second observation is that the Notice of Appeal was not filed on the 6th December 2023, but rather, on the 6 January 2023.

- [12] In paragraph 7 of her written submissions, learned counsel makes another conclusive statement that read as follows;

“... it is clear that the 1st and 2nd Appellants are grossly out of time as had they filed their Notice of Appeal by latest 26th December 2023 (the 14th day), they would have been within time for this Honourable court to consider their application for appeal”.

Clearly, therefore, based on learned counsel’s own interpretation of the law for computing time to file Notice of Appeal, this statement is incorrect. If, as learned counsel has suggested, counting should have started on the 10th December 2022 because the judgment was delivered on the 9th December 2022, then the latest date the Appellants could have filed their appeal within time was the 23rd December 2022 not 26 December 2023 as has been suggested by learned counsel.

- [13] It is also the contention of learned counsel, that the fact that at the time the Appellants filed their Notice of Appeal they were out of time, they should have sought for leave of the court to do so which they failed to do. learned counsel submits, that the law does allow the court to exercise its discretion, on application as to whether or not to extend the time limit. Learned counsel cites the case of *Weldom v De Bathe (1887) 3 TLR 445 (CA)* quoting from the case an extract of the judgment by Bowen LH.

- [14] It is also submitted by learned counsel for the Respondent, that the failure of the Appellants to seek for leave of this court for an extension of time to file Notice of Appeal is fatal for the intended appeal, given that such rule should have been obeyed as the law requires.

Learned counsel relies on the case of *Ratman vs Curmarasamy [1964] All ER 993* to emphasise the point, that rules of court are there to be obeyed.

[15] In his submissions in reply, learned counsel for the Appellants argues, that the Appellants were within time when they filed their Notice of Appeal on the 6th January, 2023 to appeal against the judgment of the learned Magistrate delivered on the 9th December 2022, and as such, there was no need to seek for leave of the court for an extension of time.

[16] Learned counsel refers the court to the provisions of Section 57 (1) – (6) of the Interpretation and General Provisions Act as per verbatim quoted above at paragraph [7]. Learned counsel for the Appellants then proceeds to add, that in 2021 an amendment was made to the Interpretation and General Provisions Act by the Civil Code of Seychelles (Consequence of Enactment) Act, 2021 (Act 24 of 2021). Learned counsel submits, that by virtue of Section 4 of the Civil Code of Seychelles (Consequence of Enactment) Act 2021, a Saturday, a public holiday or a bank holiday declared under Section 64 of the Financial Institution Act, are excluded days from the date of the judgment of the learned Magistrate.

[17] In essence, the contention of learned counsel for the Appellants is that as the law presently stands, Saturdays, Sundays, and public holidays are excluded days when computing time for filing Notice of Appeal to appeal against the decision of the Magistrate's court or the Tribunal to the Supreme court. It is also submitted by learned counsel, that the last day for the filing of an appeal should not be counted.

[18] Learned counsel for the Appellants brings to the attention of this court, the Court of Appeal case of *Cointy vs Beau Vallon Properties* in which case, the justices of appeal cited the case of *PUC vs Elisa SLR 2011, 100*. As per learned counsel's submissions, in the *PUC vs Elisa* case, the court did say, that so long as there is substantial compliance with the rules, non-adherence precisely to the time element should not be fatal to the claim.

DISCUSSION OF THE FACTS AND THE LAW

[19] The background facts that are undisputed by the parties in this proceeding, are that on the 9th December 2022, the learned Magistrate delivered a judgment against the Appellants who were Defendants in a suit. Aggrieved by the decision of the learned Magistrate, on the

6th January 2023, the Appellants filed in court a Notice of Appeal to commence appeal proceedings before the Supreme Court to appeal against the said judgment. The Respondent in this proceeding, who was the Plaintiff in the suit, through learned counsel, now raises a preliminary objection to the filing of the Notice of Appeal, contending, that the same was filed out of the prescriptive limitation period of 14 days from the date of the judgment, and the Appellants have not sought for leave of this court for an extension of time to file the same.

[20] Learned counsel for the Appellants disagrees, contending, that the Appellants were within the statutory time limitation period when they filed their Notice of Appeal on the 6th January 2023. Therefore, the vexed question is, does Learned counsel for the Respondent has a leg to stand on?

[21] The Civil Code of Seychelles (Consequence of Enactment) Act, 2021 (Act 24 of 2021) that came into force on the 1st July 2021, the same date the Civil Code of Seychelles Act 2020 came into force, under Section 4 of its Schedule, amends Section 57(4) of the Interpretation and General Provisions Act, Cap 103, which now reads;

“57(4) In this Section “excluded” day means, a Saturday, a public holiday, or a bank holiday declared under Section 64 of the Financial Institution Act 2004”.

[22] The judgment was delivered on the 9th December 2022. In accordance with Section 57 (1) (a) counting of the 14 days should start the following day the 10th of December 2022, which was a Saturday which is therefore excluded by virtue of Section 57(4) of the Interpretation and General Provisions Act. The following day, the 11th December 2022 was a Sunday and therefore a public holiday under the Schedule to Section 2 of the Public Holidays Act (Act 19 of 1976) thus excluded by virtue of Section 57 (4) of the Interpretation and General Provisions Act.

[23] Hence, the dates to be taken into account in computing the time is Monday 12th December 2022, Tuesday 13th December 2022, Wednesday 14th December 2022, Thursday the 15th December 2022 and Friday the 16th December 2022 adding up to a grand total of 5 counting days. For the reason given above, Saturday the 17th December 2022 and Sunday the 18th

December 2022, (the latter being a public holiday) are excluded. The dates that have to be counted or taken into account in the week that followed are, Monday 19th December 2022, Tuesday the 20th December 2022, Wednesday 21st December 2022, Thursday 22nd December 2022, and Friday the 23rd December 2022, adding up to another 5 working days making a grand total of 10 days by the 23rd December 2022.


[24] Saturday the 24th December 2022, is excluded by virtue of Section 57(4) of the Interpretation and General Provisions Act. Sunday the 25th December 2022 is also excluded under Section 57(4) of the Interpretation and General Provisions Act because it is a public holiday under the Schedule to Section 2 of the Public Holidays Act. The 25th December 2022 which was Christmas day is also prescribed as a public holiday under the Schedule to Section 2 of the Public Holidays Act. The following week starting with Monday the 26th December 2022 which by virtue of Section 4 of the Public Holidays Act was a public holiday because the previous Sunday was not only a public holiday, but also Christmas day prescribed as a public holiday under the Schedule to Section 2 of the Public Holidays Act and therefore excluded.

[25] Therefore, the counting of the dates in the week starting Monday 26th December 2022, starts with Tuesday the 27th December 2022, Wednesday the 28th December 2022, Thursday 29th December 2022 and Friday 30th December 2022 adding up to a total of 4 days making a grand total of 14 days. The fact that the 14 days was on Friday the 30th December 2022, and as learned counsel correctly submitted, because it was the last day due for the filing of the Notice of Appeal, it has to be excluded in the 14 days. Therefore, given that the Saturday the 31st of December 2022 is excluded by virtue of Section 57(4) of the Interpretation and General Provisions Act, and Sunday the 1st January 2023 and Monday the 2nd January 2023 excluded for being public holidays by virtue of Section 57 (4) of the Interpretation and General Provisions Act, the 14 days within which the Appellants had to file their Notice of Appeal lapsed on the 3rd January 2023.

[26] The Appellants were therefore out of time by 3 days when they filed their Notice of Appeal on the 6th January 2023 to commence appeal proceedings before the Supreme Court to appeal against the decision of the learned Magistrate delivered on the 9th December 2022.

- [27] Now that the Appellants have been found to have been out of time under statutory law, the question that now follows, is whether the court should allow the Notice of Appeal to stand based on case law. In its submissions, learned counsel for the Appellants refers the court to the Court of Appeal case of *Cointy vs Beau Vallon Properties*, in which case according to learned counsel, the court relied on the previous case of *PUC vs Elisa (2011) SLR 100* in which case the delay was 3 days and the court allowed the application.
- [28] It must be noted, that there are distinguishing features between the law applied in the Philip *Cointy* case (supra) and the instant case. In the *Cointy* case (Supra) the Court of Appeal acknowledged, that “*there was no provision for the Employment Tribunal to exercise and enlarge time for the Appellant, and therefore, he was out of time. The court further held, that no plausible explanation has been given to condone delay*”.
- [29] In the instant case, the Appellants having filed a Notice of Appeal to appeal to the Supreme Court against the decision of the learned Magistrate, could have made use of rule 5 of the Appeal Rules which provides, on application by way of motion, for the court to exercise its discretion as to whether or not to grant an extension of time to file Notice of Appeal. This, the Appellants have not only failed to do in order to invoke the court’s discretionary power under rule 5 of the Appeal Rules for an extension of time, but also, failed to give any explanation for the delay in filing the Notice of Appeal within time, that would warrant an extension of time.
- [30] In the circumstances, the preliminary objection raised by learned counsel for the Respondent is sustained, and accordingly, the Appellants’ appeal is dismissed.
- [31] Cost is granted in favour of the Respondent.

Signed, dated and delivered at Ile du Port on 19 June 2024.


Adeline J.