

IN THE COURT OF APPEAL

Civil Appeal No.11 of 1991

BETWEEN:

1. JOHN MARTIN
2. LEONARD HECTOR
3. HAROLD LOVELL

Appellants

and

1. BERNICE LAKE
2. CUTHWIN LAKE

Respondents

Before: The Honourable Mr. C.M. Dennis Byron, President
The Honourable Dr. Nicholas J.O. Liverpool, Justice of Appeal
The Honourable Mr. Satrohan Singh, Justice of Appeal

Appearances: Mr. John Martin in person - Appellant
Mr. F. Clarke for the Respondents

1993: February 22;
June 7.

JUDGMENT

BYRON J.A.

On 28th November 1992 the first named appellant filed an application for leave to extend the time limited to file the Notice of Appeal against a judgment of Redhead J. delivered on 31st October 1991 awarding damages for libel against him. This application was necessary because the appellant had deposited a Notice of Appeal in the Court Registry on 27th December, 1991, the time having expired on 12th December 1991, and consequently was in default of Order 64 Rule 5(1) of the Rules of the Supreme Court 1970 which stipulates that : -

"No appeal shall be brought after the expiration of six weeks from the date of judgment delivered or order made."

The significance of this default was rather forcefully brought to his attention because on 18th November 1992 the appellant had applied for leave to extend the time for filing the record of appeal and on 24th November 1992 that application was dismissed on the ground that the failure to file the Notice of Appeal in time meant that there was no pending appeal.

The court has power under Order 3 Rule 5 of the Rules of the Supreme Court to make an order extending the time for bringing this

appeal. This power, however, is exercised in keeping with the sobering caution of the judicial committee of the Privy Council in **RATHNAM v CUMARASAMY** [1965] 1 W.L.R. 8: -

"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 upon 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."

In brief, leave will not be granted if there is inordinate delay, there is no good or substantial reason for the delay, the chances of the appeal succeeding are not good or there would be undue prejudice to the respondent if the extension of time were granted. See **NORWICH and PETERBOROUGH BUILDING SOCIETY v STEED** [1991] 2 All E.R. 880.

In considering the extent of the delay the Court has to look at the date on which the application for an extension of time is filed. Intermediate dates, such as the date on which a futile attempt was made to file the notice after the time for such had already expired does not affect the calculation of the duration of delay. See **JOELL v MADURO** and **STOUT** Civil Appeal, B.V.I. No.3 of 1989. The delay in this case therefore exceeded 11 months. In **CENTRAL WATER COMMISSION v CECIL ANTHONY BUXO** Civil Appeal Grenada No.2 of 1992 this Court ruled that a delay of 18 weeks was inordinately long in the context of the period of seven days prescribed for the service of a Notice of Appeal. In my view delay of 11 months is inordinately long in relation to the six week period for bringing the appeal.

The reason advanced for the delay was stated as being a mistake made in the calculation of the time limited for appealing.

The first named appellant, a layman, acted on his own and not through a Solicitor. His affidavit in support of this application sets out the reason for the default in these words: -

"I humbly ask this Honourable Court to grant me the time to file the said Notice of Appeal in order that I may get a fair trial. The reason why the Notice of Appeal was filed out of time is because I am representing myself in this matter and I did not know that Saturdays and Sundays were included in the time. I was previously misinformed that Saturdays and Sundays were not included in the time."

In the case of *JOELL v MADURO* and *STOUT* this Court considered a similar reason. In that case the time limited for appealing against the judgment had expired on the 24th August, 1989 and the appellant's solicitor had deposited in the Court Registry on 28th August, 1989 a Notice of Appeal dated 26th August, 1989. It was on 18th December, 1989 at the hearing of an application for the enlargement of the time within which the record in the proposed appeal should be filed that it was pointed out that the deposit of the Notice of Appeal was out of time. So on 22nd December, 1989 the application for the enlargement of the time was filed with supporting affidavits which alleged inter alia: -

"There was an honest and mistaken belief on the part of the applicant and his solicitor that the time limited to the filing of the appeal expired on the 31st August 1989."

Hoe J.A. after considering the facts concluded: -

"I would hold that in the particular circumstances of this case the applicant has not satisfactorily shown that the failure to comply with the rules was due to the mistaken belief of the solicitor or himself. On this ground I think that the application ought to be refused with costs."

In my view the mere fact that the appellant is a layman conducting his own litigation without having retained professional legal counsel is only one factor to be taken into account in assessing whether on the facts of this case the reason advanced is proved or is good and substantial. I do not think that we should adopt the approach that there should be a less stringent application of the requirements to comply with the time limits imposed by the Rules of Court because the appellant is not professionally qualified as a lawyer and is acting on his own behalf.

His alleged mistake is that he thought Saturdays and Sundays were not included when counting the time. The fact that the time limited is stated as "six weeks" makes it difficult for me to fathom the process of reasoning which would allow a calculation by "days" so that 6 weeks could have been expanded to the extent that the appellant said he had believed. It is also difficult to understand that such a belief if it existed could have occasioned the failure to comply with the rules. One does not readily conceive a litigant who had decided to appeal consulting his calendar to ensure that he could file his notice at the last possible legitimate date unless there was a reason why he was

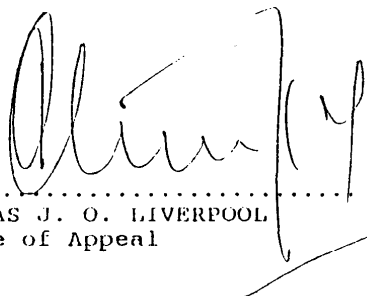
waiting. I would assume that there were undisclosed factors which accounted for the appellant's delay in depositing the Notice of Appeal with the Court Registry. Lack of knowledge that a default had occurred could explain the delay after 27th December 1991, but could not account for the original default.

The appellant, in my opinion, like his predecessor in Joell's case above, has not been able to discharge his burden of proving that the failure to comply with the rules was due to any good or substantial reason.

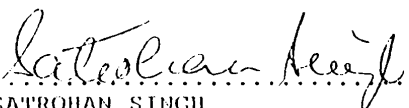
I would therefore order that the application be dismissed with costs.


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C. H. DENNIS BYRON
President

I concur.


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NICHOLAS J. O. LIVERPOOL
Justice of Appeal

I concur.


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SATROHAN SINGH
Justice of Appeal