

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 3 of 1991

BETWEEN:

MICHAEL ALEXANDER - Appellant
and
1) THE ATTORNEY GENERAL
2) THE DIRECTOR OF PUBLIC PROSECUTIONS - Respondents

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Miss Justice Joseph (Acting)

Appearances: Marcus Foster of the firm of Foster and Foster
for the Appellant
Parry Husbands, Q.C. for the Respondents - with
him Lydia Elliott, and Dane Hamilton, Director
of Public Prosecutions.

1991; May 28.

JUDGMENT

ROBOTHAM, C.J.

On 28th May, 1991 this Court in the exercise of its discretion refused an application by the appellant Michael Alexander for an extension of time within which to file his record of appeal and, in accordance with the provisions of Order 64 rule 13(2) of the Rules of the Supreme Court 1970 (the Rules) the appeal was dismissed for want of prosecution.

Under rule 11(1) of Order 64, an appellant is allowed a period of six (6) weeks from the date on which the appeal is filed, or within such extended time as the Court or a Judge may grant, to file the record of appeal. Thereafter, it becomes the duty of the Registrar upon receiving the record, to set the appeal down for hearing in accordance with rule 12.

Default in the filing of the record and documents is covered by rule 13 which reads:-

/"13(1) It shall.....

"13(1) It shall be the duty of the Registrar to see that the appellant complies with the provisions of rule 11, and before the conclusion of each sitting he shall report to the Court any failure on the part of the appellant so to comply, and the Court of its own motion may make such order as it might make upon an application by the respondent under para. (2) of this rule.

13(2) If the appellant has failed to comply with the requirements of paragraph (1) of rule 11 the respondent may apply to the Court to dismiss the appeal for want of prosecution and the Court if satisfied that the appellant has so failed may dismiss the appeal or make such order as the justice of the case may require."

The decision under appeal was a refusal by Matthew J. on the 25th February, 1991 of a motion brought by the appellant in which he alleged that by reason of the undue publicity given in the press and otherwise to events leading up to his committal for trial before the Assize Court, he could not get a fair trial.

The incidents leading up to his committal for trial arose out of gang warfare which erupted on the Chaussee Road, in the heart of the capital city of Castries, on the morning of 13th March, 1990.

In dismissing the appeal for want of prosecution, the Court found that no attempt whatsoever had been made by the appellant's Counsel, to have the record of appeal filed in time for the scheduled sitting of the Court on 27th May.

The trial of the appellant was due to commence before d'Auvergne J. in the Assize Court for the State of St. Lucia on 5th February, 1991. The sittings of the Assize Court are regulated by Order 48 of the Rules, to dates commencing on the first Tuesday in the months of February, June and October.

When Counsel informed the presiding Judge at the Assize Court that the motion had been brought, the trial was promptly adjourned pending an expeditious hearing thereof.

This was done on 12th February, the hearing lasting only one day. A judgment refusing the application was handed down by Matthew J. on 25th February, 1991. It was always understood by all concerned that there should be no delay in dealing with this motion, as the appellant was remanded in custody and awaiting trial on an indictment charging him in one count with burglary, two counts with causing grievous bodily harm with a cutlass, and two counts with causing grievous bodily harm.....
/harm.....

harm with a firearm. He has since been released on bail.

It is revealing to examine a chronological table of the subsequent events leading up to the refusal of this application.

The hearing having lasted one day and a judgment having been given on 25th February, 1991, notice of appeal was promptly filed on 27th February, 1991. Under Order 64 rule 11(1) the appellant should have filed his record of appeal within 6 weeks thereof i.e., by 9th April, 1991.

Due to pressure of work in the Registry of the Court, the notes of evidence were not ready until the 25th April, 1991. If Counsel had been observing the rules, his application for an extension of time should have been filed before or shortly after this date. Nothing towards this end was done, until 13th May, 1991 when this application was filed.

Counsel was advised by telephone on the said 25th April that the notes were ready. They were not collected although his office is within short walking distance of the Registry.

On 29th April, the Registrar wrote to Counsel as follows:-

"I would like to remind you (since Miss Charles has already spoken to you over the telephone on the 25th April, 1991) that notes of evidence and summation in the above-named appeal have already been prepared."

The notes were not collected until 3rd May, 1991. The scheduled sitting of the Court of Appeal was the 27th May, 1991. This Court is an itinerant Court, and the scheduled sittings for 1991 are in the months of January, May and October.

When these notes were collected on 3rd May, the appellant had a clear three weeks within which to have the record prepared and ready for the Court of Appeal sitting on 27th May, 1991, and as the hearing of the motion lasted one day only, the record could by no means be voluminous.

Instead of going ahead with the preparation of the record bearing in mind the seriousness of the charges pending in the Assize Court against the appellant, we find that on 13th May, that is, ten days after the receipt of the notes, and fourteen days before the sitting of the Court of Appeal an application for an extension of time is filed in the Registry. It came through to the Court quite clearly that no effort whatsoever was made by Counsel to have the record prepared, with the result that the criminal trial was being inordinately delayed.

/In any.....

In any event the application for extension of time was supported by an affidavit sworn to by the appellant which was totally and pathetically inadequate.

It reads:-

- "(1) That the notes of evidence were delivered herein on 3rd May, 1991. Mr. Kenneth Foster of Chambers is Counsel in the matter.
- (2) Notice of appeal was filed on 27th February, 1991.
- (3) On 2nd April, 1991 application in writing was made for a certified copy of the notes of evidence so as to prepare the appeal record.
- (4) My solicitor Mr. Kenneth Foster has been out of the State from 12th April, 1991 on High Court matters and is due back on or about 17th May, 1991.

The protracted absence from the State of Kenneth Foster the senior member of the firm of Foster and Foster on other matters outside the jurisdiction of the St. Lucia Supreme Court could hardly be urged as a ground on which to grant an extension of time when the junior member of the firm Marcus Foster who filed and presented this application for extension of time before us, was associated with the senior member at the hearing before Matthew J. and at all other times.

Although the supporting affidavit showed in para. 4 that Kenneth Foster the senior member should have been in the State when this application was heard, he was not present in Court nor was any explanation offered to the Court for his absence by the junior member.

At the hearing of the application the Honourable Attorney General was strong in his opposition to the extension of time being granted and urged the dismissal of the appeal. He recognized (as indeed did this Court) that every assistance should be given to an appellant who cannot meet the deadline within which to file his record of appeal, but some good and sufficient ground should be advanced to account for the failure. None he submitted was advanced here and with this submission the Court was in agreement.

It certainly cannot be in the best interest of justice that any criminal trial should be unduly delayed unless there is reasonable cause for the delay. This Court is only too well aware that key witnesses in criminal trials sometimes "disappear" during the process of lengthy adjournments, thereby frustrating the trial.

/A Court.....

A Court should always be on guard against any attempt to have its process misused or manipulated in a manner which could prove adverse to the proper administration of justice. There was a flagrant disregard by Counsel of the Rules of Court regulating the conduct of appeals, and such disregard generally of the rules regrettably occurs much too frequently within this jurisdiction.

As was said by Lord Guest in *Ratnam v Cumarasamy* (1964) 3 All E.R. 933 at 935:

"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 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. The only material before the Court of Appeal was the affidavit of the appellant. The grounds there stated were that he did not instruct his solicitor until a day before the record of appeal was due to be lodged, and that his reason for this delay was that he hoped for a compromise. Their lordships are satisfied that the Court of Appeal were entitled to take the view that this did not constitute material on which they could exercise their discretion in favour of the appellant. In these circumstances, their lordships find it impossible to say that the discretion of the Court of Appeal was exercised on any wrong principle."

The delay in this case was only four days.

This opinion of the Privy Council as given by Lord Guest was adopted in Barbados in *Barrow v. Caribbean Publishing Co. Ltd.* (No.2) 1967 - 11 W.I.R. 176, and in Jamaica in *City Printery Ltd. v Gleaner Co. Ltd.* 1968, 13 W.I.R. 126.

In all the circumstances no good cause having been shown this Court declined to exercise its discretion in favour of granting an extension of time, and dismissed the appeal for want of prosecution.

L.L. ROBOTHAM,
Chief Justice

/G.C.R.....

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G.G.R. MOE,
Justice of Appeal

MONICA JOSEPH,
Justice of Appeal