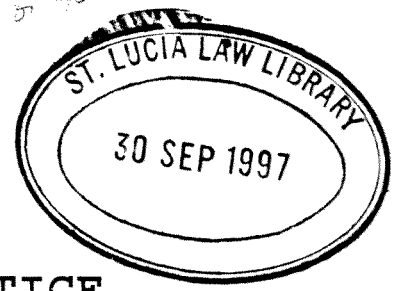


SAINT LUCIA



**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Consolidated
Suit No. 439 of 1993
Suit No. 92 of 1995

Between:

(1) GEORGE OCTAVE
(2) IVENIA OCTAVE

- Plaintiffs

VS

FRANCIS MAURICE

- Defendant

Mr. P. I. Foster & Mrs. Malaykhan for Plaintiffs
Mr. Martinus Francois for Defendant

1997: March 12th
April 22nd

JUDGMENT

d'Auvergne, J

These two matters were consolidated by order dated 21st February, 1996 and entered on the 9th of April, 1996.

There are various applications on file to be heard in this action, but the application being argued is for the granting of leave in order to file an Order for an extension of time to file an Order which was granted on the 20th of July, 1994.

The Affidavit in Support of application is hereby reproduced:

OCIAVE, GEORGE d
al
v
FRANCIS MAURICE

AFFIDAVIT

I, **FRANCIS MAURICE** of Forestierre in the Quarter of Castries in the said State make oath and say as follows:-

1. That I am the Defendant in this action.
2. That a certain interlocutory order in this action was made in Chambers by the Honourable Madam Justice d'Auvergne on July 20, 1994.
3. That I was informed by my Solicitor and verily believe that the said Order had to be drawn up and lodged not later than fourteen (14) days from the date when it was made in accordance with Order 42 Rule 5 of the Rules of the Supreme Court.
4. That in compliance with the said Order 42 Rule 5 the said Order was drawn up and lodged on July 25th 1994 and approved on July 27, 1994 (produced and exhibited herewith marked "A").
5. That I have been informed and verily believe that due to an omission on the part of my Solicitor, the said Order was not filed and/or entered until July 23, 1996 (produced and exhibited herewith marked "B").
6. I now therefore respectfully apply to this honourable court for an extension of time to file and enter the said Order.

The matter was heard on the 12th of March, 1997, and at the hearing, Learned Counsel for the Defendant/Applicant contended that an extension of time was not necessary to file the order granted on 20th July, 1994 since he had complied with Order 42 Rule 5 of the Rules of the Supreme Court.

He said that the said order was drawn up and lodged within the required fourteen (14) days as stated by the Rules of the Supreme Court.

He said that Counsel for the Plaintiff/Respondents confused the **Subsections 5(1) and 5(3) of Order 42.**

He said that the order of 20th July, 1994 filed on the 23rd of July, 1996 was in compliance with Order 42 Rule 5(3).

Learned Counsel for the Respondents commenced his arguments by giving a history of the Order of 20th July, 1994. He told the Court that on the 19th June, 1996 when the application for a variation of court order dated 20th July, 1994 for the removal of a caution on property **Matthew J** pointed out that there was no order on file, draft or otherwise; that again on the 27th day of September, 1996 the same Judge pointed out that the order on file was not proper since it had been filed without leave for an extension.

Learned Counsel for the Respondents emphasised that a draft order was not an 'Order of the Court' and therefore Counsel for the Applicant should not be allowed to argue that his draft order filed on the 25th of July, 1994 and approved on the 27th of July, 1994 was an Order of the Court referred to by Order 42 Rule 5(1) of the Rules of the Supreme Court.

He contended further that the application for leave to extend the time to file an order should be based on the Court's discretion as to whether or not to grant the extension and that in the exercise of the Court's discretion the Court should take cognisance of all the circumstances of the case.

He said that since that order was made, another Suit No. 92 of 1995 had been filed and consolidated with Suit No. 439 of 1993; that in

the last filed Suit, namely, Suit 92 of 1995 the Plaintiffs contend that the consideration for the contract between the parties had wholly failed and that the contract should be rescinded.

He concluded that there was no valid excuse for the late filing of the order and urged the Court to refuse the application.

Learned Counsel for the Applicant replied by urging the Court to take into consideration the reason for the late filing of the order.

CONCLUSION

Order 42 Rule 5

Drawing up of judgment or order states:

1. Every judgment or order shall, unless otherwise ordered, be drawn up and lodged with the Registrar by the party having the conduct of the suit or the carriage of the order not later than fourteen days from the date when the judgment was pronounced or the order made, according to the circumstances of the case.
2. Every judgment or order when drawn up shall be dated as of the day when such judgment is pronounced or order made, unless the Court or a judge shall otherwise direct, and shall take effect from that date:
Provided that by special leave of the Court or a judge a judgment or order may be ante-dated or post-dated.
3. A draft of every judgment or order shall be left with the Registrar to be settled before the judgment or order is signed and sealed. If the Registrar deems it necessary he may summon the parties before he settles the draft.
4. After the draft has been settled by the Registrar the judgment or order shall be signed sealed and filed by him

and the date of such filing shall be entered on the judgment or order as the date of entry.

As was stated by Learned Counsel for the Respondents, the application sought is based on the Court's discretion. This discretion however, can only be properly exercised after all the circumstances of the case have been carefully considered.

Learned Counsel for the Applicant has argued that the draft order was drawn up and approved within fourteen (14) days, but "due to an omission" it was not lodged until two years later, viz July 23rd, 1996.

While I would be willing to allow an omission of a few days, weeks or even months, I cannot say the same for two years, especially since another Suit, viz 92 of 1995 has been filed regarding the same subject matter.

It is necessary to emphasise the importance of care with regard to the application of the Rules of the Supreme Court. A subsection of a rule should not be read in isolation, but in conjunction with the entire rule.

The section is explicit. **Order 42 Rule 5(1)** and **(2)** refer to "judgment or order". **Order 42 Rule 5(3)** and **(4)** refer to "a draft order" therefore a draft order and a judgment or order cannot by any stretch of the imagination mean the same thing.

Based upon the above the application is refused.

My order is as follows:

The application is dismissed.

There will be no order as to Costs.

.....
SUZIE d'Auvergne
HIGH COURT JUDGE