

AGLAE v ATTORNEY-GENERAL

(2011) SLR 44

B Hoareau for the appellant
D Cesare for the respondent

Ruling delivered on 2 March 2011 by

FERNANDO J:

This is an application seeking an extension of time for the applicant to file his notice of appeal against the judgment of the Supreme Court dated the 30 September 2010 in SC Civil Side Case No 278 of 2009. The application requesting an extension of time was filed on the 19 November 2010. According to The Seychelles Court of Appeal Rules 2005, a notice of appeal shall be filed within 30 days after the decision appealed against. The applicant correctly admits "I was supposed to file my appeal at the latest by the 12 November 2010", which means a delay of 5 days. This is in view of the fact that in the computation of time "days" means court days, and "court day" means any day other than a Saturday, Sunday or public holiday. Therefore the respondent's contention in her reply to the notice of motion that the application is six weeks out of time is misconceived.

According to rule 26 -

The times fixed within these Rules may, on good cause shown, be extended by the President or a Judge designated by the President or may be extended by the Court.

Thus it is a discretionary power vested in the Court and can be exercised in favour of an applicant only on good cause shown.

The applicant, in his affidavit filed in support of his notice of motion shows, cause for the delay in filing in the following terms:

5. Unfortunately, the Notice of Appeal was not filed by that date, due to the fact that I did not have the necessary means to pay the filing fees of the R7,215. I work as a bus driver with the Mason Travel Company and I earn R3,700 per month. I also have family to support which means I could not raise the required amount of money to pay the necessary filing fees in respect of the Notice of Appeal

6. However I am now in a position to pay the filing fee to file the Notice of Appeal. On the basis of all the above bearing in mind that I am only one week outside the period within which to file the appeal, I humbly pray that this Honourable court extend the time within which I may file my Notice of Appeal.

The other grounds urged as "on the basis of all the above" are that:

1) He was awarded only the sum of R10,000 as damages for illegal and unlawful imprisonment.

2) That his notice of appeal had already been drafted and is ready to be filed.

The respondent has objected to the application for an extension of time to file the notice of appeal. At the hearing of this application counsel for the applicant was asked when the applicant receives his monthly salary to which he replied that it was at the end of the month. There is nothing in the affidavit of the applicant to state as to how he came to be in a position to pay the filing fee on the 19 November which he did not have on the 12 November. Counsel for the applicant was unable to offer any explanation to the Court when the same issue was raised. It could have been said that some cause has been shown if the applicant had taken up the position that he was waiting for his salary to pay the filing fee. The facts that the applicant is a bus driver, that he has a family to support, that he was awarded only the sum of R10,000 as damages for illegal and unlawful imprisonment or that his notice of appeal had already been drafted and is ready to be filed are of no relevance in the absence of a reasonable explanation from the applicant as to how he came to be in a position to pay the filing fee on the 19 November which he did not have on the 12 November. This shows a lack of seriousness on the part of the applicant in making this application. There is no mention in the application that there is an arguable case on the appeal.

In the case of *Ratnam Vs Cumarasamy* [1964] 3 All ER 933 (PC) a judgment of the Privy Council from an appeal from the Court of Appeal of the Supreme Court of Malaysia, in dismissing an application to extend the time for filing the memorandum of appeal, stated:

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.

This was a case where the applicant for extension of time had filed the notice of appeal on time, furnished security for the costs of the appeal on time but delayed by four days in filing the record of appeal which comprised the Memorandum of appeal and certain other documents.

This Court is of the view that the applicant has failed to show good cause for the court to consider exercising its discretion to extend the time to file the notice of appeal and therefore dismisses the application. No order is made as to costs.