IN THE COURT OF APPEAL

GRENADA

Motion No. 1 of 1970

IN THE MATTER OF THE COMPANIES ORDINANCE CAP. 47
and
IN THE MATTER OF THE GRENADA BAKING COMPANY LIMITED

Between: LENNOX SLINGER — Applicant

and

W. E. JULIEN
ESTATE OF W. S. MITCHELL
ESTATE OF A.W. LEWIS
GRENADA BAKING COMPANY LIMITED — Respondents

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice P. Cecil Lewis

A. Williams for Applicant
C. St. Bernard for Respondents

1970, November 3

JUDGMENT

LEWIS, C.J.:

This is an application on behalf of one Lennox Slinger who wishes to appeal against a decision of the High Court ordering the winding up of a company given on the 23rd of July, 1970. Under rule 14 (1) of the Court of Appeal Rules Notice of Appeal should have been filed within 21 days from the date of the judgment. That time would have expired on the 13th of August.

On the 26th of August, 1970, the applicant tendered at the Registry a notice of appeal and this was erroneously accepted and entered as a proper notice of appeal. Subsequently in October the applicant, by his solicitor, went before a Justice of Appeal with an application for extension of time. He purported to go under rule 14 (3) which says that a judge of the Court may by order extend the time prescribed in paragraph (1) of this rule within which an appeal may be brought provided an application for this purpose is made within one month of the expiration of the time so prescribed. The time allowed for filing that application, one month, had already expired and it was dismissed. Thereafter, on the 26th of October, this motion

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was filed. It was supported by an affidavit in which the solicitor, Mr. Derek Knight, takes upon himself the whole blame for the lateness of the filing of the notice of appeal and of these proceedings. He said he made an error in advising himself that the time limit for the bringing of the appeal was 6 weeks after the order. Apparently he also made an error in advising himself that he should go before a single judge for an extension of time after the period of one month. Both he and the Registrar made a further error, which of course was only discovered during the course of this hearing, in that although his application had been rejected by a single judge and there was in fact no appeal properly lodged he was able to persuade the Registrar to settle the record.

The rule under which this appeal was brought, rule 14 (4), says -

> "In exceptional circumstances the Court having power to hear and determine an appeal, may on application extend the time within which an appeal may be brought although the period delimited for an application to a Judge of the Court under this rule has expired."

Rule 14 (5) says -

> "Every application for enlargement of time when made to a Judge of the Court shall be made by summons, and when made to the Court shall be made by motion. Every summons or notice of motion filed shall be supported by an affidavit setting forth good and substantial reasons for the application and by grounds of appeal which prima facie show good cause therefor."

Now in his affidavit the solicitor says that "I verily believe that the appellant has good grounds of appeal and that great hardship will be caused to him if he is not allowed to proceed with his appeal." He has attached to the papers with which the Court has been supplied a document marked "Civil Appeal No. 6 of 1970" which purports to be a notice of appeal and sets out the grounds of appeal.

Counsel for the applicant has urged the Court to accept the mistake of the solicitor as being "exceptional circumstances" and "good and substantial reasons" for which the Court should exercise its discretion to grant his application and extend the time. He has referred the Court to the well-known case of Gatti v. Shoosmith (1939) 3 All E.R. 916 in which the Court of Appeal in England held, on the interpretation of Order 64 rule 7, that the Court had an unfettered discretion to grant an extension of time, and, in a case where there was a

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misinterpretation by a solicitor's clerk as to the time within which notice of appeal should be lodged under Order 58, rule 15, held that this was a proper ground on which the Court would grant an extension.

Order 58, rule 15 of the English Supreme Court Rules was re-worded some time in 1909 because the attention of the Court had been drawn in more than one case to the fact that the rule as it stood required special leave to appeal and that there must be special circumstances which would enable the Court to grant an extension of time: it had been held in several cases, and particularly in the case of Re Coles & Ravenshear, (1907) 1 K.B. 1 that a mistake by a solicitor did not constitute a special circumstance, and the Court would not, on the ground that lateness was due to a solicitor's mistake, exercise its discretion in favour of an applicant.

Ever since the days of the Federal Supreme Court the fact that a solicitor has made a mistake has been put forward as a ground for applying for an extension of time to file an appeal under what is now rule 14 (4) and (5), and indeed, as I said during the course of the argument, this was one of the very first matters that came before the Court in 1959 shortly after I joined that Court; and ever since then that Court, and the British Caribbean Court of Appeal, the predecessors of the present court, always construed the rule in the same sense as the decision in Coles & Ravenshear, that a mistake by a solicitor does not constitute an exceptional circumstance and is not a good ground for exercising the discretion of the Court.

There is a recent case from Trinidad which was not cited to the Court, in which a similar rule came up for construction, and, although there was some difference of opinion between the two judges who delivered judgments, it was held that a solicitor's inadvertence extending over a period of some two years did not constitute exceptional circumstances or a good and substantial reason upon which the Court might exercise its discretion. The case to which I refer is Vidale v. Mayor, Aldermen and Citizens of Port-of-Spain reported in (1968) 13 W.I.R. 299. In that case McShine, J.A., in a judgment with which Phillips, J.A. agreed, referred to Collyer v. Dring (1952) 2 All E.R. 1004, a criminal case in which an applicant sought leave of the Court to enter an appeal out of time on the ground that the solicitor's inadvertence constituted a special

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circumstance for the granting of such leave, and quoted Slade, J.'s statement that "The court will deal with the application on the basis that such inadvertence or negligence may constitute 'special circumstances' and on the facts of the case it holds that such 'special circumstances' have been shown. That must not be taken to mean that an extension of time will always be granted in case of inadvertence or negligence of professional clients."

McShine, J.A. then said (at p. 302) -

> "This judgment must I think have been based on the fact that it was a criminal case to which was attached a penal sanction. A different approach however was made in Edwards v. Edwards where under the Matrimonial Causes Rules 1957 (U.K.) notice of appeal had to be served within 21 days from the date of the order.....The court made the observation that 'the stipulations which Parliament has laid down or sanctioned as to time are to be observed unless justice clearly indicates that they should be relaxed'.
>
> I see no such reason or need for relaxation of the rules in this case: see also Cassimir v. Shillingford and Pinard."

Now Cassimir v. Shillingford and Pinard (1967 10 W.I.R. 269 was one of the first cases in which this Court had to construe this rule. In that case the solicitor also took the blame for the lateness of the proceedings and in his affidavit he stated that it was due to pressure of work in his Chambers. He conceded in the course of the argument that this did not constitute "exceptional circumstances" within the meaning of the rule and the Court said it did not consider pressure of work in a solicitor's office as being an exceptional circumstance. This was a Dominica case.

Later in the same year the matter came up again, this time in Antigua, in the case of Murray and Jacobs (1967) 10 W.I.R. 490. In that case counsel who had argued the case fell ill between the period when judgment was reserved and the date when judgment was delivered. Counsel did the proper thing in that she advised her client to brief other counsel to take the judgment and to advise on the question of an appeal. On account of her illness she had to leave the island. The solicitor who was retained formed the impression that he ought not to file notice of appeal until he had received the notes of evidence from the Registrar, and when the Registrar informed him that this was incorrect he dropped out of the case, so when the original counsel returned to the island she found that the time

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for filing the notice had expired and she brought an application for extension of time. The Court said that -

> "Had there then been some circumstances affecting the appellant herself which prevented her from following the advice which her solicitor had given her, those might have been exceptional circumstances. But here she followed that advice, and the only ground we have heard today is that the solicitor made a mistake in that he thought he must have the notes of evidence before filing a notice of appeal. The Court is not satisfied that any exceptional circumstances have been shown or any good or substantial grounds have been advanced."

The application was refused.

The present case is no different. The solicitor wrongly advised himself, and continued wrongly to advise himself for more than two months. His mistake in my opinion does not make the case an exceptional one and I hold that no good and substantial reasons for the application have been established. Accordingly I would dismiss the motion with costs.

(Allen Lewis)
Chief Justice

GORDON, J.A.

I agree.

(K. L. Gordon)
Justice of Appeal

CECIL LEWIS, J.A.

I agree.

(P. Cecil Lewis)
Justice of Appeal