(10)

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1981

BETWEEN:

JOSEPH CHOULOUTTE - Defendant/Appellant

and

CARL DONALD GEORGE LA CORBINIERE - Plaintiff/Respondent

Appearances: H. Deterville for Defendant/Appellant
Jean Raynold for Plaintiff/Respondent

1981 July, 31
~~Sept.~~
Oct. 2

JUDGMENT

In Chambers

PETERKIN, C.J.

This is an application by the Defendant in a Supreme Court suit for an extension of time to appeal against a judgment delivered by Glasgow, J., on April, 13th, 1981. The time for filing the appeal expired on May 26th, 1981, 6 weeks after the delivery of the judgment. This application by way of Summons was filed in the Registry on 23rd June, 1981, notice of appeal having been filed on 29th May, 1981.

Order 64, Rule 5(1) provides that no appeal shall be brought after the expiration of six weeks from the date of judgment delivered or order made against which the appeal is brought. Rule 6(1) provides that a Judge of the Court may by order extend the time prescribed in Rule 5(1) within which an appeal may be

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brought, provided an application for this purpose is made within one month of the expiration of the time so prescribed. Rule 6(2) however goes on to provide as follows:-

> "Every application for extension 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 substantial reasons for the application and by grounds of appeal which prima facie show good cause therefor."

Two prerequisites which are set out in the words of this Rule are required of the applicant. The Court must therefore first look at the affidavit which has been filed in support of the summons to see what are the reasons for the delay in filing the appeal, and whether they may be considered as being good and substantial reasons. The Court must also next pay regard to the grounds of appeal.

The first six paragraphs of the applicant's affidavit read:

> "1. That I was the defendant in suit number 65 of 1975.
>
> 2. That a judgment was delivered in the said suit on the 13th day of April, 1981.
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> 3. That I informed my then solicitor that I wished to enter an appeal against the said judgment.
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> 4. That I wished to secure the services of another solicitor to act for me in the appeal.
>
> 5. That I was asked to secure a copy of the said judgment for perusal by my intending solicitors.
>
> 6. That there was some delay in securing the said judgment."

/They.....

They divulge very little detail. It is not known for instance, whether the applicant actually instructed his former solicitor to lodge an appeal, apart from informing him that he wished to engage the services of another solicitor to act for him in the appeal. Nor for that matter does he state the date on which he first approached his present solicitor. We do know however, because it has been conceded by his solicitor in the course of his arguments, that it was only a few days before the time for appealing had expired. He could hardly then, as he seems to do, have attached any blame to the tardiness in securing a copy of the judgment. He has in my view only himself to blame for his unreasonable delay, and I do not consider the reasons given in his affidavit as being good and substantial reasons for the delay in filing the appeal.

But the matter does not rest there. The applicant has stated but one ground of appeal, namely, that the decision is against the weight of the evidence. The claim was one of trespass in which the plaintiff alleged that the defendant, (the applicant in this summons), had trespassed upon his land and cut a road measuring 620 ft., after which he had placed a chain across it thereby depriving the plaintiff of its use. I have had an opportunity of reading the judgment of the learned trial Judge, and I have formed the impression that he has given this matter a patient and fair hearing which included a visit to the locus. He concluded as follows at page 3 of his judgment:

> "The boundaries stated by Mr. Pierre are, in my opinion correct. Although it is stated in the plaintiff's deed of sale that River Sallee Estate is part of the western boundary of the plaintiff's land, it is clear that River Sallee was intended. Mr. Pierre stated that the road in question does not run through the plaintiff's land.
>
> After considering all the evidence, visiting the locus and hearing the addresses of counsel, I am quite satisfied that the road in question starts on Fayol where it bounds with the plaintiff's land, then crosses the plaintiff's land to get to the beach. I am satisfied that the road over the plaintiff's land was cut by the defendant in September, 1974 as alleged by the plaintiff. I also find that the defendant placed a chain or caused a chain to be placed across the said road and that the defendant continues to trespass upon the plaintiff's land."

I think it extremely unlikely that any Court would wish to interfere with those findings.

If I were to grant the application as a matter of indulgence it would be tantamount to doing away with the rule, and it would open the way to a flood of similar applications.

I regret that I do not see my way to accede to this request, and this summons is accordingly dismissed with costs to be taxed.

N. PETERKIN,
Chief Justice.