

SAINT LUCIA

IN THE COURT OF APPEAL

Civil Appeal No.19 of 1998

BETWEEN:

PARRY HUSBANDS

Applicant

and

KENNETH LOUISON

Respondent

Before:      The Hon. Mr. Satrohan Singh      Justice of Appeal  
                 The Hon. Mr. Albert Redhead      Justice of Appeal  
                 The Hon. Mr. Albert Matthew      Justice of Appeal [Ag.]

Appearances:

Applicant Parry Husbands in person: Absent:  
Mr. Kenneth Foster, QC; Mr. Patrick Straughn with  
him for the respondent

-----  
1999:      January 27;  
-----

JUDGMENT

SATROHAN SINGH, J. A.

On April 3<sup>rd</sup> 1998, the applicant Parry Husbands, a Queens Counsel, was granted leave to appeal from a judgment of the High Court. Upon the grant of such leave, the applicant had 14 days within which to file his notice of appeal. [O.64 R.4[2] of the Rules of the Supreme Court 1970]. He did not file his notice of appeal within that time or at all. On December 17, 1998, some eight months after the 14 days afforded by O.64 R.4[2], had expired, the applicant applied to the Court for an extension of time to file the notice of appeal. In support of his application, the applicant Queens Counsel gave us as the reason for the default, inadvertence on his part. The

application does not state the date of the judgment or what it was all about.

Power to hear such an application is given to this Court by **03R5 of the rules of the Supreme Court [Revision] 1970** and the Court may do so on such terms as it thinks fit. For the applicant to benefit from this power, he had to show by affidavit, substantial reasons for his application and grounds of appeal which prima facie show good cause therefore [See **064R 6[2]** of the said rules]. The application therefore calls for the exercise by this Court of a judicial discretion based on good cause. In exercising this discretion, the matters to be considered would be [1] the length of the delay [2] the reasons for the delay [3] the chances of the appeal succeeding if the application is granted and [4] the degree of prejudice to the respondent if the application is granted. The discretion to be exercised is unfettered and should be exercised flexibly with regard to the facts of the particular case and with the main concern being to ensure justice for both sides. If prima facie the proposed appeal appears hopeless, the application should be denied despite the fact that there may have been substantial reasons for the delay in bringing the application. On the other hand, if there were no substantial reasons to justify an inordinate delay, but prima facie there appeared to some merit in the proposed appeal, the application should be granted. [See **Harold Simon - v - Carol Henry and Tracey Joseph, Civil Appeal Antigua No. 1 of 1995**].

On the facts above stated, we consider the delay inordinate. We also do not regard the bald statement of inadvertence of the applicant, without more, as satisfying the requirement of substantial reason for such delay. We do not consider that the applicant has given this Court any legally acceptable reason for his delay. We were not permitted to consider the chance of success of the appeal because the applicant did not provide us with the grounds of appeal or any material whatsoever telling us what the appeal was all about. On the issue of prejudice, the respondent has a judgment in his

favour lying stagnant because of leave to appeal being granted to and ignored by the applicant for over 8 months now. The applicant has not shown prejudice to himself. I therefore conclude that there is obvious prejudice to the respondent and no evidence of prejudice to the applicant.

For these reasons, in the exercise of our judicial discretion, we are compelled as a matter of law to refuse the application. We observe that before the application was heard the applicant filed an application to extend the time to file the record of appeal. We consider this application misconceived, premature and presumptuous and order that it be struck out. The respondent will have his costs of these applications to be taxed if not agreed and paid by the applicant Parry Husbands.

This motion had come on for hearing on January 25, 1999 at the request of the applicant. On that day it was discovered that the motion was not served on the respondent. At the applicant's request, the matter was adjourned for service to be effected on the respondent and for the matter to be heard on January 27, 1999 at 9.00 am. On this day up to 9.25 am, the applicant did not appear. There was no communication to the Court regarding his absence. At the insistence of Mr. Foster for the respondent, the matter was proceeded with and heard on its merits and the decision was given in accordance with this judgment.

SATROHAN SINGH  
Justice of Appeal

I Concur

ALBERT REDHEAD  
Justice of Appeal

I Concur

ALBERT MATTHEW  
Justice of Appeal [Ag.]