

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 862 OF 1998

BETWEEN

CLETUS CHANGOO

Plaintiff

And

**IGNATIUS GABRIEL
TREVOR JULES**

Defendants

Appearances:

Miss Heather Franklyn for the Plaintiff/Applicant

2000: January 14, 21

JUDGMENT

[1] **d'AUVERGNE, J.:** On the 26th day of August 1998 the Plaintiff filed a Writ of Summons endorsed with a Statement of Claim against the Defendants claiming the following.

- (1) Damages
- (2) Interest thereon at such rate and for such period as the Court shall think fit
- (3) Costs

[2] On the 26th day of November 1999 the Plaintiff filed against the first Defendant a notice captioned. **Advertisement Pursuant to order.**

First Publication

That notice was to indicate to the Defendants that the Plaintiff was petitioning the court to settle a claim for unliquidated damages for negligence of the second Defendant which led to a collision with the Plaintiff's motor car Registration Number 694 and that the service of the writ was to be affected by advertisement in two issues of a newspaper circulating in the state and that he should enter an appearance within twenty-eight (28) days after the last publication.

[3] This application of Notice was supported by an affidavit the heading of which reads **Affidavit in Support of Application for renewal of Writ and Substituted Service.**

The affidavit was sworn to by Process Server Victor Maurice. The gist of the affidavit is that, the said Process Server on the 31st August 1998 attempted to serve the said writ on the first Defendant at his last known work place, Halcyon Beach Hotel and on the second Defendant at his last known residence at La Toc Castries but that his enquires disclosed that both of the Defendants are overseas, the first Defendant being a Sailor and that the other resides out of the state.

A perusal of the Court file shows that this application was never heard.

[4] On the 9th December 1999 an application was filed headed:
Notice of exparte application for renewal of Writ and Substituted service by Advertisement under (Order Rule 7 and Order 50R4) which sought the following:

- (1) The validity of the Writ of Summons herein be extended by one year or by such other period as to this Honourable Court seems just.

- (2) Service of a copy of the order made pursuant to this application and a copy of the writ of summons in this action by inserting an advertisement of such order and writ in two consecutive week-end publications of a newspaper circulating in Saint Lucia shall be good and sufficient service of the writ, and that service shall be deemed to have been effected on the day of the publication of the second of the said advertisements and that the time of appearance be within 28 days from such date.

The matter was heard in chambers on the 14th of January 2000.

[5] **ARGUMENT**

Learned Counsel argued that the period of 12 months stated by law does not affect the validity of the Writ and quoted order 12 Rule 8/3 Rules of the Supreme Court of England 1995 Edition which deals with **Irregularity in Issues or Service of Writ** and which states:

Notwithstanding the wording of the amended Note at the end of the prescribed Forms of the Writ of Summons and Originating Summons. (App. A, Form Nos. 1-5, and Forms Nos. 8-10; App. B, Form No. 1, Vol. 2, Part 2, *infra*), which appears to be in imperative terms, that the writ “may not be served later than twelve months beginning with the “ date of its issue, or other renewal period is not a nullity but must be treated as an irregularity (See O.2, r. 1 (1))

- [6] Learned Counsel further quoted a case from Australian Supreme Court viz Rowatt Haga No 336 of 1985 Judgment 2942 which states that such an application is within the discretion of the trial Judge and that factors to be considered are:

- (1) the length of the delay
- (2) the explanation for the delay
- (3) the hardship to the Plaintiff if the writ is not renewed
- (4) the prejudice to the Defendant
- (5) the conduct of the Defendant

[7] **CONCLUSION**

Order 2 Rule 2 of the Rules of the Supreme Court 1970 Order 2 Rule 2 provides that:

(1) An application to set aside for irregularity any proceedings, any step taken in any proceeding or any document, judgment or order shall not be allowed unless it is made within a **reasonable time** and before the party applying has taken any fresh step after becoming aware of the irregularity.

[My emphasis]

[8] As I see it the operative words are reasonable time.

The writ was first filed on the 26th day of August 1998 and would therefore expire on the 26th day of August 1999. The application for renewal was filed on the 9th December 1999, which by the application of simple mathematics will show that the writ at date of renewal was approximately fifteen months old, three months over the twelve calendar months.

In my considered opinion this is reasonable time.

[9] **In Dagnell and Another vs J L Freedman & Company (a firm) and others 1993 2 ALLER Page 161 Lord Browne-Wilkinson** re-iterated the principles applicable to the extension of the validity of a writ. He said

at Page 165 letter g “The starting point is that a Defendant has a right to be sued, if at all, by means of a writ issued within the statutory period of limitation and served within the period of the initial validity which at the relevant time, was 12 months. R.S.C Order 6 Rule 8 (2) confers on the Court a discretion to extend the period of the writ is validity.....” at Letter J. he said “On the construction of Order 6 Rule 8 the power to extend the validity of a writ should only be exercised for good reason.” He went on further to quote at page 166 **Battersby v Anglo – American Oil Co Ltd 1944 2 All E R 387 at 391 [1945] KB 23 at 32** where Lord Goddard delivering the judgment of the Court of Appeal said:

“In every case care should be taken to see that the renewal will not prejudice any right of defence then existing, and in any case it should only be granted where the Court is satisfied that good reasons appear to excuse the delay in service, as indeed is laid down in the order. The best reason, of course, would be that the Defendant has been avoiding service, or that his address is unknown.”

In the present case the addresses of both Defendants are unknown. Consequently applying the principle stated above, a very good reason for granting the renewal of the said writ.

[10] The application before me is twofold (1) for renewal of the writ and for substituted service by advertisement upon the Defendants.

My order is therefore as follows:

- (1) The validity of the writ of summons be and is hereby extended to a further twelve months namely to 26th August 2000.
- (2) that leave be and is hereby granted to the Plaintiff to serve the Defendants by substituted service through advertisement by the publication of this order and the writ

in two consecutive weekend issues of a local newspaper circulating in Saint Lucia and in two consecutive issues of the official gazette.

- (3) That time limited for appearance be twenty eight days (28) after the last publication.

That there will be no order as to costs.

Suzie d' Auvergne
High Court Judge