

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.10 OF 2002

BETWEEN:

[1] MARY AMBROSE  
[2] FLAVIUS DARIUS

Appellants

and

[1] FELIX SMITH  
[2] TENNYSON GAJADHAR

Respondents

Before:

The Hon. Mr. Brian Alleyne, SC

Justice of Appeal

The Hon. Mr. Michael Gordon, QC

Justice of Appeal

The Hon. Madame Suzie d'Auvergne

Justice of Appeal [Ag.]

Appearances:

Mrs. Wauneen Louis-Harris for the Appellants

Mr. Dexter Theodore for the Respondent

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2004: November 22;  
November 25.  
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**JUDGMENT**

[1] **ALLEYNE, J.A.[Ag.]**: This is an application by the Appellants seeking an order of the Court setting aside the decision of a single Judge of the Court made on the 10<sup>th</sup> June 2003 dismissing the appeal, and a further order that the time be extended for the Appellants to prepare and complete the record of appeal. The factual basis of the Appellants' application has been detailed in an affidavit as set out hereunder.

[2] By Suit No.310 of 1995 the appellants sought certain remedies against the Respondents. The matter came on for trial in the High Court on 16<sup>th</sup> April 2002. The Appellants and the Respondents were present in Court. The Respondents'

lawyer was also present but the Appellants' lawyer was absent. The learned trial Judge refused the Appellants' request for an adjournment and proceeded to trial. At the conclusion of the trial the learned Judge gave judgment for the Defendants/Respondents who gave oral notice of appeal.

- [3] The Appellants then went to their lawyer and gave instructions for the appeal. The lawyer assured them that he would pursue the appeal with due dispatch. They paid him for his services. The next they heard was in November 2003 when they were served with an application in the High Court for assessment of damages against them. They went in search of their lawyer, as they deduced from the documents that the appeal had been dismissed for non-appearance of themselves and their lawyer. Based on his response they sought the services of another lawyer, who has filed this application on 13<sup>th</sup> February 2004.
- [4] It appears from the Court's records that the Appellants' former lawyer collected the transcript of the proceedings in the High Court on 5<sup>th</sup> June 2002. Part 62.12(3) requires the record of appeal to be filed within 42 days of the receipt by the Appellant of notice that the transcript is ready. Clearly the record should have been filed by the middle of July 2002. The delay is grossly inordinate.
- [5] The reason for the delay offered by the Appellants is the negligence of their former lawyer. This Court has ruled on more than one occasion that that is not an acceptable excuse for delay.
- [6] Learned Counsel for the Appellant submitted that the Respondents would not have suffered prejudice as a result of the delay. The Respondents have stated in an affidavit that they have been prevented by the appeal from selling parts of the subject land to raise capital and also from developing the land as a business venture. We have no doubt that the Respondents have been prejudiced by the delay.

[7] Learned Counsel for the Respondent says, however, that he is not opposing the exercise of the Court's discretion to grant an extension of time on any of these grounds. He depends on the ground that the Appellants have no chance of success on appeal, and that to grant an extension of time will only delay the inevitable and result in additional costs.

[8] Learned Counsel submitted that in order to succeed in their claim the Appellants would have had to prove that they inherited an interest in the land. This they had failed to do. Indeed Counsel claimed, and demonstrated, that the Respondents had established at trial, with a multiplicity of documentary evidence, that the Appellants have no interest in the subject land and that their claim was and is without merit. Learned Counsel produced to the Court the bundle of documents that were entered into evidence at the trial in opposition to the Appellants' claim. In contrast, the Appellants depended on mere assertions unsupported by evidence of any sort.

[9] We are satisfied that the Appellants would have little if any chance of success on appeal. On the grounds of inordinate delay, inadequate reasons for delay, prejudice to the Respondents, negligible chance of success, the applications are denied and the order that the appeal is dismissed affirmed.

[10] Costs to the Respondents in the sum of \$1,000.00.

**Brian Alleyne, SC**  
Justice of Appeal

I concur.

**Michael Gordon, QC**  
Justice of Appeal

I concur.

**Suzie d'Auvergne**  
Justice of Appeal [Ag.]