

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

SUIT NO. GDAHCV 2011/0310

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

Claimant/Applicant

and

JERRY SEALES

Defendant/Respondent

Appearances:

Mr. Christopher Nelson, the Director of Public Prosecutions for the
Claimant/Applicant

Mr. Nigel Stewart for the Defendant/Respondent

2012: November 29;

2013: January 30.

DECISION

[1] **MOHAMMED, J.:** The Defendant has applied to extend the time to make an application to appeal a decision of Price-Findlay J made on 4th April 2012 (“the decision”).

[2] I will briefly set out the history preceding the instant application in order to place it in its context. In July 2011 the Claimant obtained permission to apply for judicial review to quash a decision of the Defendant made on 12th May 2011 to discharge Curtis Bapiste on a charge of rape of a 13 year old female and to compel him to commit the said Curtis Baptiste to stand trial in the High Court.

- [3] The Fixed Date Claim was issued on 12th July 2011 and served on Mr. Dwight Horsford attorney for the Defendant on 14th July 2011. The first hearing of the Fixed Date Claim was on 3rd November 2011 where the Defendant was represented by Counsel who requested an adjournment. The hearing was adjourned to 27th February 2012 and a few dates before on 24th February 2012 Nigel D Stewart and Associates came on record for the Defendant. At the hearing on 27th February 2012 the Defendant was represented by Counsel, who obtained permission to make file a formal application for an extension of time to file his Defence. This application was filed on 8th March, 2012 and on 4th April 2012 the decision was rendered.
- [4] The issues to be determined by this court on the instant application are (a) whether there was delay in filing the application (b) are the reasons for the delay excusable; (c) if the extension is granted does the Defendant have a chance of his appeal succeeding and;(d) who would suffer any prejudice if the instant application is granted.
- [5] The power of the court to grant an extension of time is set out in CPR 26.9. The Court of Appeal in this jurisdiction has provided guidance in **Carleen v Mark Brantley**¹; **John Cecil Rose v Anne Marie Uralis Rose**² and the full court in **Spectrum Galaxy Fund Ltd v Xena Investments**³ on the principles to be applied by a court in exercising its discretion in the instant application.
- [6] Some of the factors which the court is guided by are: (a) the length of delay (b) the reasons for the delay (c) chances of the application/appeal succeeding if the extension is granted and (d) degree of prejudice to any party if the extension is granted.

¹ HCVAP 2011/0009 decision of Pereira JA

² Saint Lucia High Court Civil Appeal No. 19 of 2003 delivered 22nd September, 2003

³ Territory of the Virgin Islands High Court Civil Appeal No. 13 of 2011, (oral judgment of the court delivered on 27th September 2011.

Was there Delay in Filing the Instant Application?

- [7] The period prescribed by the CPR for filing the application for leave to appeal is 14 days after the decision and the instant application was filed some 26 days after that said deadline. There is no doubt by this court that there has been delay.

Are the Reasons for the Delay Excusable?

- [8] The Defendant's reasons for the delay are set out in paragraphs 2-4 of the affidavit of K. Mathurine filed on 14th May 2012. The reasons are: (a) delay in the receipt of the formal order containing the reasons of the judge's decision i.e. between 4th April 2012 to 11th April 2012; (b) delay by 3 weeks in taking instructions from the Defendant who is a Senior Magistrate assigned to three (3) Magisterial Districts in Grenada including Carriacou and Petite Martinique; and (c) the Defendant only became aware by a letter dated 3rd April 2012 and purportedly received on 10th April 2012 that the Attorney General had refused his request to engage Senior Counsel to represent him in the instant proceedings.
- [9] In my view all of the Defendant's reasons are unacceptable and inexcusable. Firstly, the judge's written order which contained her reasons was dated 11th April, 2012 and well within the time required for the application for leave to appeal to be filed. In any event the court records indicate that the Defendant was represented by Counsel on 4th April 2012 when the decision was rendered and at that date ought to have been apprised of the learned judge's reasons.
- [10] Secondly, while I appreciate that the Defendant may have a busy schedule presiding as a Senior Magistrate in three (3) districts in Grenada which include Carriacou and Petite Martinique, there is no reason why the Defendant could not make himself available to meet with his attorney on the weekend or outside of court hours for instructions to be obtained. In my view it ought to have been in the

interest of the Defendant in light of the Honourable Judge's ruling to pursue his application vigorously.

- [11] Thirdly, the letter dated 3rd April 2012 addressed to the Defendant's Counsel indicating the Government's refusal of the Defendant's request to provide him a Senior Counsel for his representation in this matter appears to have been received by Counsel for the Defendant by 10th April 2012 well within the time prescribed by the CPR to appeal the decision.

What is the Defendant's Prospect of Succeeding on Appeal?

- [12] I have not been persuaded that the grounds of appeal as set out in the draft notice annexed to the affidavit of K. Mathurine filed 14th May 2012, against the decision have demonstrated a prospect of success by the Defendant for the following reasons:

- (a) The delay by the Defendant in making his application to extend time to file his defence was at least 7 ½ months and excessive in the circumstances. He failed to act with diligence which is contrary to the underlying philosophy of the CPR for the timely determination of cases.
- (b) There was no good reason for the delay in making the application for the extension of time. According to Price- Findlay J the Defendant was waiting to see if the Attorney General will act for him. No reasons were stated in the application before the learned Judge.
- (c) The letter from the Defendant's Counsel to the Attorney General requesting representation was dated 28th March 2012 at least some 7½ months after service of the Fixed Date Claim. The Attorney General responded by letter dated 3rd April 2012.

- (d) The Claim is in the nature of judicial review proceedings against the Defendant and dealt with the performance of his statutory duty. Therefore the Defendant's submission that the Attorney General ought to have been made a party and served with the proceedings is without merit⁴.
- (e) There was no draft defence exhibited to the application before Price-Findlay J. There were some elements of a defence in the affidavit of K Mathurine filed 8th March 2012.
- (f) There is a dispute of fact based on the affidavit in support of the Fixed Date Claim by the prosecutor in the case, Inspector Anslem Joseph and the Defendant. The Claimant stated that the prosecution did not call its witnesses⁵ and the Defendant stated that it did⁶. The only person who could give evidence on what transpired before the Defendant in the prosecution of the case was Inspector Joseph who passed away on 4th January 2012 and it was in this context the learned Judge found that it would not have been fair to allow the extension sought by the Defendant.

Who would Suffer any Prejudice if the Application is Granted?

[13] In my view the Claimant would be prejudiced if the Defendant's application is granted. It is two years since the alleged commission of the rape and the commencement of the prosecution. The police prosecutor Inspector Joseph has passed away and he is the only person who could address any disputes of fact in this claim. In any event a criminal trial should take place within a reasonable time for the accused, the victim and the society as a whole.

⁴ HCVAP 2009/021 Quorum island (BVI) Limited v Virgin Island Environmental Council and anor.

⁵ Affidavit of Inspection Anslem Joseph filed July 12, 2011 and June 29, 2011

⁶ Paragraph 5 (ii) of affidavit of K Maturine filed March 8, 2012

Order

- [14] The Defendant's Application filed 14th May 2012 for an extension of time to appeal the decision of Price-Findlay J pronounced on 4th April 2012 is dismissed with cost to the Claimant to be assessed if not agreed.

Margaret Y. Mohammed
High Court Judge