

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.19 OF 2003

BETWEEN:

JOHN CECIL ROSE

Appellant

and

ANNE MARIE URALIS ROSE

Respondent

Before:

The Hon. Sir Dennis Byron

Chief Justice

Appearances:

Mr. Rudolph Francis for the Appellant

Mr. Anthony McNamara, Q.C. for the Respondent

2003: July 29;
September 22

JUDGMENT

[1] **BYRON, C.J.:** On 31st October 2002, the learned trial Judge awarded one-half share of the matrimonial property totaling \$165,520.00 to Mrs. Rose. On 17th March 2003, Mr. Rose applied for leave for an extension of time to appeal against that Order. Part 62.5(c) of the Civil Procedure Rules 2000 gave him 42 days to appeal. More than three months had elapsed since the 42 days given by Pat 62.5 of the Civil Procedure Rules 2000 had expired. Part 62.16(1)(c) of the Civil Procedure Rules 2000 empowers a single Judge to hear the application.

The Law

[2] Granting the extension of time is a discretionary power of the Court, which will be exercised in favour of the applicant for good and substantial reasons. The matters which

the Court will consider in the exercise of its discretion are: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if the extension is granted; and (4) the degree of prejudice to the Respondent if the Application is granted.¹

The Length of the Delay

- [3] In this case the delay was more than three months. In my view such a delay would be inordinate if there was no acceptable reason for it. There have been several cases decided on this point.²

The Reason for the Delay

- [4] The reason that Mr. Rose gave for the delay was that he had difficulty in communicating with his attorney. Details of Mr. Rose's failed efforts to communicate with his attorney were not adduced in evidence, and the attorneys involved in the Application for leave for an extension of time did not adduce any evidence on that issue. Mr. Rose subsequently retained a new attorney but only after he was already out of time to file his appeal. The first issue that it is necessary to emphasize is that in matters of this nature, the points being made must be proved by evidence.³ Even if one could say that the attorney had been less than diligent in response to Mr. Rose's enquiries about appealing, we have expressed the view on many occasions that the lack of diligence of an attorney is not a good reason for delay⁴, whether it is explained in terms of the volume of work the attorney is maintaining, or as in this case the difficulties experienced in communications. Mr. Rose's new Counsel complained that if this were the U.S.A. or Canada or the UK, his client would have been able to initiate proceedings for redress against the former attorney. The suggestion that similar relief was not available in St. Lucia is ill-informed, and it may be time that the legal profession was made accountable in this jurisdiction. In my judgment therefore there was no acceptable reason for the inordinate delay.

¹ **Harold Simon v Carol Henry and Tracey Joseph**, Court of Appeal, Antigua and Barbuda, Civil Suit No. 1 of 1995; **Monica Patsy Greuner v Carl Eugene Greuner**, Court of Appeal, Grenada, Motion No. 13 of 1999

² **Harold Simon v Carol Henry and Tracey Joseph, Monica Patsy Greuner v Carl Eugene Greuner**

³ **Aggraram Maharaj v Dhanraj Jagroo and Another** (1985) 37 WIR 398, **Evelyn v Williams** (1962) 4 WIR 265

⁴ **Casimir v Shillingford** (1967) 10 WIR 269, **Evelyn v Williams**

Chance of Success

[5] The intended Appellant did not adduce any evidence to show the merits of the appeal, nor did he file any skeleton arguments or the grounds on which the appeal would be argued. Counsel was allowed to describe the basis of the appeal from the Bar. It was disclosed in this manner that the couple were of mature age when they married. They had been living abroad. Mr. Rose had a house in St. Lucia which was on rent and Mrs. Rose had a house in England which she sold. There was a dispute at the trial as to the value of the Mrs. Rose's house and whether she invested the proceeds of sale into renovating the property. The learned trial Judge was influenced by the evidence that Mrs. Rose took her capital savings and invested it in Mr. Rose's property. The learned trial Judge was also influenced by the evidence that Mrs. Rose surrendered her pensionable rights, as a nurse in the UK to return to St. Lucia, and that when the marriage broke down, and she was evicted from the home, she had to return to work to maintain herself. The parties were the only witnesses and the documentary evidence was sparse. The learned trial Judge believed Mrs. Rose and found that it was her investment that pushed the value of the property to over \$300,000.00. Counsel represented that the basis of the appeal would be seeking to reverse that finding of fact. In all of the circumstances, Mrs. Rose lost a home, and if justice was to be done, it was only fair that she be given back a portion of what she had invested in the home. The Court has often applied the principle that a Court of Appeal would be reluctant to overturn a finding of fact that was based on the credibility of the witnesses before the Court⁵. I therefore hold the view that this is not a case where there is any apparent miscarriage of justice which should influence the exercise of my discretion in favour of extending the time for appealing.

Degree of Prejudice

[6] The Court must ask itself what is the extent to which the Respondent will be prejudiced if leave is granted⁶. In this case the degree of prejudice is obviously substantial. Divorce

⁵ **Leonard Yates Construction Co. Limited v Edward Silver**, Court of Appeal, British Virgin Islands, Civil Appeal No. 8 of 2001

⁶ **Norwich and Peter Borough B.S. v Steed** [1991] 2 All ER 880 (per Lord Donaldson MR p. 885). See also **Albinus Powlette v Gordon Nash**, Court of Appeal, Grenada, Motion No. 1 of 1998

proceedings were filed in 1994, some eleven years ago. All this time Mrs. Rose has been out of a home and has suffered an uncertainty about her entitlement to share in the matrimonial home which is more likely than not, to have inhibited the arrangements she could have made for her own living arrangements over all these years. The adage "justice delayed is justice denied" is real. Making an Order which would require a further delay in the resolution of this dispute must prolong a hardship unnecessarily and for no good reason.

Conclusion

- [7] In my view the application should be dismissed because Mr. Rose was in breach of the requirement to file his appeal within 42 days. His delay of more than three months after the time limited for filing was inordinate. The reason he advanced for the delay was not acceptable. He did not show that there was any substantial miscarriage of justice which was likely to be corrected on appeal. To authorize further delay in the resolution of this dispute would amount to a denial of justice to Mrs. Rose.
- [8] I would therefore dismiss this application.

Sir Dennis Byron
Chief Justice