

1973
Feb. 20,
Mar. 6

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU,
A. LOIZOU, MALACHTOS, JJ.]

IN THE
MATTER
OF Y. Z
AN ADVOCÁTE
(No 1)

IN THE MATTER OF AN APPLICATION UNDER SECTION
17(5) OF THE ADVOCATES LAW, CAP. 2,

and

IN THE MATTER OF Y. Z., AN ADVOCATE (No. 1).

(Case No. 2/72).

Advocates—Conduct and etiquette—Disciplinary Board—Decision—Application to the Supreme Court for review by the advocate found guilty of unprofessional conduct—Section 17(5) of the Advocates Law, Cap. 2—Proper time-limit within which to file application for review—The ten days time-limit prescribed under the Criminal Procedure Law, Cap. 155, section 133 in respect of criminal appeals, not applicable to a case of application for review under the Advocates Law (supra)—On the other hand there exists no provision either in the said Law Cap. 2 or in any rule prescribing any time-limit to a proceeding like the present one under said section 17(5) of the Advocates Law, Cap. 2—Of course when it is clear that through an unjustifiable delay an application has been filed so belatedly that it amounts to abuse of the relevant process—Then the Supreme Court may refuse to exercise its powers of review.

Application to the Supreme Court for review by the advocate who was found guilty by the Disciplinary Board of unprofessional conduct—Time within which such application may be filed—See supra.

This is an application under section 17(5) of the Advocates Law, Cap. 2, to the Supreme Court for review of a decision of the Advocates Disciplinary Board whereby the applicant advocate was found guilty of unprofessional conduct. The application was filed within a month after the decision of the Board. The Supreme Court allowing the application to proceed :—

Held, (1). There exists no rule prescribing any time-limit in relation to a proceeding like the present one under section 17(5) of the Advocates Law, Cap. 2. Nor can we construe sub-sections (7) and (8) of section 17 of the said Law so far as to incorporate by reference the ten days' time-limit prescribed for criminal appeals under section 133 of the Criminal Procedure Law, Cap. 155.

(2) And we think that when it is clear that through unjustifiable delay such an application for review has been filed so belatedly that it amounts to abuse of the relevant process, then this Court may refuse to exercise its power of review.

(3) But in the present case, taking into account that the application was filed within a month after the decision of the Board and that the applicant advocate was and has been abroad at all material times, we are of the view that there does not exist any undue delay and, so, we shall proceed to deal with the merits of the matter

Order in terms.

Review proceedings.

Review proceedings before the Supreme Court on the application of the applicant-advocate, under section 17 (5) of the Advocates Law, Cap. 2 (as amended), for the review of the decision of the Disciplinary Board established under section 12 of the Law, whereby he was suspended from practising as an advocate for a period of two months for unprofessional conduct contrary to rules 4, 7 and 11 of the Advocates (Practice and Etiquette) Rules, 1966.

G. Cacoyiannis, for the applicant advocate.

L. Clerides, for the Advocates' Disciplinary Board.

The ruling of the Court was delivered by:—

TRIANTAFYLLIDES, P. : This is an application under section 17 (5) of the Advocates Law, Cap. 2, which reads as follows:—

“(5) The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit.”

The application has been made by an advocate who has been found guilty of unprofessional conduct, by the Advocates' Disciplinary Board, and was suspended from practising for a period of two months.

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Counsel for the respondent Board has submitted that, in view of subsections (7) and (8) of section 17, which provide that—

“(7) The Disciplinary Board in carrying out an enquiry under this section shall have the same powers and shall conduct the enquiry as nearly as may be as a Court of summary jurisdiction,”

and

“(8) Any decision of the Disciplinary Board shall be deemed to be an order of a Court of summary jurisdiction and shall be enforced in the same manner as an order of such Court is enforced,”

we should hold that the time-limit prescribed for bringing an appeal against a judgment of a Court of summary jurisdiction, under section 133 of the Criminal Procedure Law, Cap. 155, namely ten days, applies to an application by an advocate under subsection (5), above, and, therefore, as the complained of decision of the Board was given on the 3rd February, 1972, and this application was filed on the 6th March, 1972, the application is out of time ; he has, however, added, very fairly, that he would not object to an extension of time.

Counsel for the applicant advocate has argued in reply that the said time-limit of ten days is not applicable to a case of this nature.

Under section 32 of Cap. 2 Rules may be made for the better carrying into effect of the purposes of, *inter alia*, Part IV of Cap. 2, in which section 17 is contained, but no such Rules have been made ; thus, there exists no rule prescribing any time-limit in relation to a proceeding under subsection (5) of section 17.

Nor can we construe subsections (7) and (8) of section 17 as going so far as to incorporate by reference the afore-said ten days' time-limit prescribed under section 133 of Cap. 155.

Of course, we do appreciate that it would be unfair in certain circumstances to allow cases to come before us for review on an application under subsection (5) after a considerable time has elapsed from the date when the decision of the Board was taken ; and we think that when it is clear that through unjustifiable delay such an application has been filed so belatedly that it amounts to abuse of the relevant process then this Court may refuse to exercise its power of review.

In the present case, taking into account that the application was filed within a month after the decision of the Board and that the applicant advocate was and has been abroad at all material times, we are of the view that there does not exist any undue delay and, so, we shall proceed to deal with the merits of the matter.

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