

1963
May 3

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

RFN. FINCH
FREDERICK
PETER
v.
THE POLICE

RFN. FINCH FREDERICK PETER,

Applicant.

v.

THE POLICE,

Respondents.

(Criminal Application No. 1/63)

Criminal Procedure—Appeal out of time—Application for extension of time within which to give notice of appeal—Criminal Procedure Law, Cap. 155, section 134—Extension may be given only on good cause shown—Convenience of counsel as a general rule is not such a cause.

Application for extension of time.

Application for an order extending the time within which the applicant may give notice of appeal against his conviction by the District Court of Larnaca, dated 28th March, 1963, in Cr. Case No. 4919/63 of the offence of stealing.

Application dismissed.

M. Aziz for the applicant.

V. Aziz for respondents.

The facts sufficiently appear in the judgment of the Court, read by :

WILSON, P. : This is an application for an order extending the time within which the accused may give notice of appeal from his conviction, and, presumably, the sentence by the District Court of Larnaca on March 28, 1963. He was convicted of the offence of stealing and sentenced to a fine, costs, payment of compensation and forfeiture of a sum of money.

The material filed in support of the application consists only of the affidavit of the applicant's advocate at trial and the ground upon which the extension of time is sought is, I quote, "I was away in Turkey between the dates of 30th March, 1963 and 7th April, 1963 and, therefore, I could not file the notice of appeal in time". He had received on March 29 instructions to appeal.

The advocate's affidavit says only that he had to leave for Turkey on the first date mentioned, 30th March, 1963, for unforeseen reasons and had to stay there until 7th April, 1963.

These grounds are not sufficient to justify granting the relief asked.

The leave sought may be given only on good cause shown as required by section 134 of the Criminal Procedure Law, Cap. 155. It is our view that the convenience of counsel as a general rule is not a good cause for failure to take necessary steps in a legal proceeding and this has been held on more than one occasion in this Court.

However, I desire to add a few additional words with respect to this particular appeal and that is that the applicant himself has not made an affidavit as to the facts and setting out the facts in any detail. This ought to have been done.

With respect to the advocate's own affidavit, it does not set out all the facts which were alleged to us by the counsel for the applicant who appeared before us. In our view the advocate ought to have set out fully the facts upon which he relied if the failure to prosecute the appeal was due to his omission to take the necessary steps to protect his client's interest. If the advocate is at fault he must set out the facts fully so that this Court may be in a position to judge whether or not a litigant is entitled to assistance to prevent any injustice being done. This necessary material has not been before us and we are of the opinion that good cause has not been shown. The application, therefore, must be dismissed.

Application dismissed.

1963
May 3
—
RFN. FINCH
FREDERICK
PETER
v.
THE POLICE