

ARETI PAVLOU AND ANOTHER

ARETI PAVLOU
AND ANOTHER
v.

Applicants-Plaintiffs,

v.

GEORGE P.
CACOYIANNIS
AND OTHERS

GEORGE P. CACOYIANNIS AND OTHERS,

Respondents-Defendants.

(Civil Application No. 5/63)

Practice—Appeal—Extension of time for appeal—Matter of discretion to be exercised judicially on the facts of the particular case in hand—But as a general statement, mere failure of counsel of the litigant to file the appeal within the time prescribed by the Rules, is not in itself a sufficient ground upon which the discretion of the Court should be exercised in extending the time—Even if there might be an important point of law to be argued in the appeal.

Held, (1) it is unnecessary for us to consider whether the conduct of the applicants' advocate which resulted in the necessity to make the present application was "negligent" or a "failure" or an "omission".

(2) It is sufficient for us to say that the failure of the advocate or the litigant to take the appropriate steps for the filing of an appeal within the time prescribed by the Rules, is not a sufficient ground upon which the discretion of the Court should be exercised in such an application.

(3) That as a general statement ; but the discretion of the Court must be exercised in each case on the facts before it; and in this particular case we see nothing, in the facts put forward in support of the application, justifying the exercise of our discretion in favour of the applicant.

Application dismissed with costs.

Application.

Application for extension of the time within which to file an appeal against the judgment of the District Court of Limassol in Action No. 2117/62.

Chr. P. Mitsides for the applicant.

P. L. Cacoyiannis for the respondent.

1963
Oct. 22

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WILSON, P. : Mr. Justice Vassiliades will deliver the judgment of the Court in this case.

VASSILIADES, J. : This is an application by one of the litigants in an action, for extension of the time provided by the Rules for the filing of an appeal against the judgment of the trial Court. Learned counsel on behalf of the applicant conceded that an order extending the time under the rule upon which the present application is made, is a matter of discretion. When the matter rests in the discretion of the Court, such discretion must be judicially exercised on the facts of the particular case in hand.

There is a fundamental distinction between a matter of law and a matter of discretion ; here, the Court is asked to exercise its discretionary powers in favour of the applicant, on grounds and facts which may be summarised thus :— The advocate handling the case (or his client) failed to take the appropriate steps for filing an appeal within the time prescribed by the Rules ; and as there is an important point of law to be argued in the appeal, the Court should grant the application. The words “ negligence ”, “ failure ” and “ omission ” were all used by counsel in the course of his argument to describe the conduct which resulted in the necessity to make the present application.

We find it unnecessary to enter into these matters. It is sufficient for us to say that the failure of the advocate or the litigant to take the appropriate steps for the filing of an appeal within the time prescribed by the Rules, is not a sufficient ground upon which the discretion of the Court should be exercised in such an application. That as a general statement ; but, as already said, the discretion of the Court must be exercised in each case on the facts before it ; and in this particular case we see nothing, in the facts put forward in support of the application, justifying the exercise of our discretion in favour of the applicant.

For these reasons we are unanimously of the opinion that the application must be dismissed with costs.

Application dismissed with costs.