

ERINI COSTA HJI MICHAEL,

Applicant-Defendant;

v.

MARIA KARAMICHAEL AND TWO OTHERS,

Respondents-Plaintiffs.

ERINI COSTA
HJI MICHAEL
v.
MARIA
KARAMICHAEL
AND TWO OTHERS

(Civil Application No. 2/67).

Practice—Appeal—Extension of time to appeal—More than three years after judgment—Explanation of delay—Discretion of Court to extend time—Principles applicable—Order 35, rule 2. and Order 57, rule 2, of the Civil Procedure Rules.

Civil Procedure—Appeal—Extension of time to appeal— See under “Practice” above.

Appeal—Extension of time to appeal—See under “Practice” above.

In this application, filed on the 2nd February, 1967, applicant prayed for an order enlarging the time for filing an appeal against the judgment of a President District Court delivered on the 27th September, 1963. The facts leading to the delay in applying are as follows :

Applicant applied on the 2nd October, 1963, for copy of the reasons for judgment delivered on the 27th September, 1963, and as they were not furnished to him within the time limit of six weeks provided for the lodging of an appeal of this nature she filed an application for extension which was granted until the 15th December, 1963; but as the judgment was not yet forthcoming she filed a fresh application which was fixed for the 13th January, 1964. Meanwhile as is well known the troubles broke out in Nicosia on the 21st December, 1963, and the District Court did not function for some time. On the 22nd August, 1966, applicant's counsel was informed by the Registrar that the copy of judgment was now ready for issue.

Applicant filed a fresh application for extension on the 29th October, 1966, which was dismissed on the ground that the previous application of December, 1963 had not been dealt with; thereafter the December application which could not be brought over to the new Court premises was reconstructed

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by the filing of copies of the originals and was eventually heard and dismissed on the 21st January, 1967.

Held, (1) the discretion of the Court under the Rules, as held in many English cases (interpreting the English Rules which correspond to our Rules) is perfectly free and the only question is whether upon the facts of any particular case it should be exercised : *Gatti v. Shoosmith* [1939] Ch. 841; [1939] 3 All E.R. 916. Mistake or misunderstanding by the appellant or his legal advisers may be accepted as a proper ground for extending the time, but whether it will be accepted depends again on the facts of the particular case : *Kevoorkian v. Burney* [1937] 4 All E.R. 97, C.A. Where the county court Judge omitted to furnish a copy of his notes within the time for appealing extension was granted: *Rogers v. Holborn* (1913) 7 B.W.C.C. 10. Finally, if there has been a long delay, leave should be given only if the delay can be satisfactorily explained : *W. T. Lamb & Sons v. Rider* [1948] 2 All E.R. 402; 2 K.B. 331 C.A.

(2) We have given careful and anxious consideration to this case and what weighs with us is the long delay of the District Court in furnishing the applicant with a copy of the reasons for judgment which was some three years after delivery. Admittedly, on receiving notice that the copy of the judgment was ready, applicant's counsel did not proceed with all due despatch; but considering the delay in the furnishing of the copy of the judgment, we are of the view that, in the exceptional circumstances of this case, we should exercise our discretion in applicant's favour and grant an extension of the time for the filing of the appeal on the following terms.

- (i) The time for lodging the appeal is extended up to the 8th June, 1967, inclusive.
- (ii) The applicant shall pay £20 costs of this application within three weeks, that is, up to the 8th June, 1967.
- (iii) All taxed costs in the District Court to be deposited in Court by the applicant within six weeks from taxation; and
- (iv) Applicant (defendant) to comply with the judgment given by the District Court on the 27th September, 1963, except the demolition order.

Order in terms.

Cases referred to :

Gatti v. Shoosmith [1939] Ch. 841; [1939] 3 All E.R. 916;
Kevorkian v. Burney [1937] 4 All E.R. 97 C.A.;
Rogers v. Holborn (1913) 7 B.W.C.C. 10;
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Application.

Application for an order enlarging the time for filing an appeal against the judgment of the District Court of Nicosia given on the 27th September, 1963, in Action No. 5387/60.

M. Houry with Chr. Mitsides, for the Applicant.

X. Clerides, for the Respondent.

VASSILIADES, P. : The Judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : This is an application for an order enlarging the time for filing an appeal against the Judgment of a President District Court delivered on the 27th September, 1963.

This is a rather unusual case because the application to extend the time is made some three-and-a-half years after the delivery of the Judgment. The application is based on Order 35, rule 2, and Order 57, rule 2, of the Civil Procedure Rules.

The history of the proceedings is as follows :

In 1960 there was a dispute over a right of way between the parties which was settled before a District Judge in Nicosia and the settlement recorded in court on the 20th June, 1960. Apparently there was no agreement between the parties as to the exact meaning of that settlement and a fresh action—the action with which we are concerned in this application—was filed in December 1960, raising the question of the interpretation of the settlement as recorded in court. The action came on for hearing in June 1962 but, in fact, no evidence was heard and counsel put in evidence the whole of the record of the previous action and addressed the Court in support of their case. Judgment was reserved and was delivered some fifteen months later, that is, on the 27th September, 1963. A few days later, i.e. on the 2nd October, 1963, the present

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applicant formally applied for a copy of the reasons for judgment. As she was not furnished with a copy in time to enable her to lodge an appeal within the time limit of six weeks, she filed an application to extend the time to appeal, and on the 19th November, 1963, when it came on for hearing before the court, an extension was granted until the 15th December, 1963. When that period was about to expire and a copy of the reasons for judgment was not yet forthcoming, two days prior to the 15th December, 1963, a fresh application for extension of time to appeal was filed in the District Court and was fixed for hearing on the 13th January, 1964. Meantime, the troubles broke out in Nicosia, as is well known, on the 21st December, 1963, and the District Court did not function for some time. Eventually, temporary premises were found and it is in evidence before us that the file of the present action was brought over to the new premises of the District Court not later than June 1964. The applicant did not move the Court to have her application for extension fixed, and no copy of the reasons for judgment was, indeed, made available to the applicant until the 22nd August, 1966, when a notice was sent by the District Court registry to the applicant's counsel informing him that the copy of the judgment which he had asked for some three years before was now ready for issue.

There is no evidence when a copy of the judgment was, in fact, issued out to the parties, but the first step which was taken after August 1966 by the present applicant was an application for an extension of time to appeal—and that was a fresh application—filed on the 29th of October, 1966, that is to say, about two months after the applicant was informed that the copy of the judgment was ready. That application was heard by a District Judge and dismissed, on the ground that the previous application of December 1963 had not been dealt with. Following that, the application of December 1963 for extension of time to appeal (which could not be brought over to the new Court premises) was reconstructed by the filing of copies of the originals, and was eventually heard and dismissed by a Judge of the District Court on the 21st January, 1967. Thereupon, the present application was filed in this Court on the 2nd February, 1967.

The question which arises for consideration is whether this Court, in the exercise of its discretion under the Rules, should grant the extension sought.

The discretion of the Court under the Rules, as held in many English cases (interpreting the English Rules which correspond to our Rules) is perfectly free and the only question is whether upon the facts of any particular case it should be exercised : *Gatti v. Shoosmith* [1939] Ch. 841; [1939] 3 All E.R. 916. Mistake or misunderstanding by the appellant or his legal advisers may be accepted as a proper ground for extending the time, but whether it will be accepted depends again on the facts of the particular case : *Kevorkian v. Burney* [1937] 4 All E.R. 97, C.A. Where the county court Judge omitted to furnish a copy of his notes within the time for appealing extension was granted : *Rogers v. Holborn* (1913) 7 B.W.C.C. 10. Finally, if there has been a long delay, leave should be given only if the delay can be satisfactorily explained : *W.T. Lamb & Sons v. Rider* [1948] 2 All E.R. 402; 2 K.B. 331 C.A.

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- (2) The applicant shall pay £20 costs of this application within three weeks, that is, up to the 8th June, 1967;
- (3) All taxed costs in the District Court to be deposited in Court by the applicant within six weeks from taxation; and
- (4) Applicant (defendant) to comply with the Judgment given by the District Court on the 27th September, 1963, except the demolition order.

Order in terms.