

BRANCO SALVAGE LTD.,

BRANCO
SALVAGE LTD.

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE ATTORNEY-GENERAL AS SUCCESSOR
TO THE GREEK COMMUNAL CHAMBER,
2. THE COMMISSIONER OF INCOME TAX,

v.
REPUBLIC
(ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER AND
ANOTHER)

Respondents.

(Case No. 137/65).

Practice — Appeal — Time — Enlargement of time for filing appeal from a decision of a single Judge of the Supreme Court exercising revisional jurisdiction under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law 33/64)—The Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964, rule 3—The Civil Procedure Rules. Order 35, rule 2, Order 57, rule 2—Discretion of the Court—Principles applicable—Principles applying in Greece to appeals to the Council of State—Force majeure only can warrant enlargement of the time prescribed by legislation—Whether these stricter Greek principles are applicable in Cyprus—Question left open, dissenting Triantafyllides, J., who took the view that the said principles of Administrative Law developed in Greece are applicable here regard being had to the nature of the particular proceedings.

Appeal—Time—Enlargement—Appeal against judgment of a single judge exercising revisional jurisdiction under section 11 (2) of Law No. 33 of 1964 (supra)—Principles applicable—See above.

Time—Appeal—Enlargement of time for appeal—See above.

This is an application for enlargement of time for filing an appeal from the decision of a single judge of the Supreme Court in a recourse under Article 146 of the Constitution, which has been made after the time has run out. The Court dismissed the application refusing to exercise its discretion under the relevant rules (*supra*). The question whether the stricter

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principles applicable in Greece to appeals to the Council of State are also applicable in Cyprus, was left open. Triantafyllides, J. *dissenting* (i.e. taking the view that they are applicable).

Application.

Application for enlargement of time within which to file an appeal against a decision of a judge of the Supreme Court of Cyprus given on the 17th March, 1966, in Case No. 137/65.

A. Triantafyllides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondents.

VASSILIADES, P.: Mr. Justice Stavrinides will deliver the first Judgment.

STAVRINIDES, J.: This is an application for enlargement of time for filing an appeal from the decision of a single judge of this Court in a recourse under Article 146 of the Constitution, which has been made after the time has run out.

In Greece an appeal to the Council of State may be brought after the lapse of the time limited by legislative provision only in case of force majeure. In this country the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964, provide by r. 3 that—

“The provisions of Order 35 of the Civil Procedure Rules relating to appeals shall apply, *mutatis mutandis*, to an appeal from a decision of a judge or judges exercising revisional jurisdiction under sub-s. (2) of s. 11 of the Law”.

By r. 2 of that Order,

“subject and without prejudice to the power of the Court of Appeal under Order 57, r. 2”,

the time for bringing an appeal may be enlarged; and by the latter rule,

“a court or judge shall have power to enlarge... the time appointed by these Rules..... for..... taking any proceeding..... although the application for the same is not made until after the expiration of the time appointed or allowed”.

As the delay in appealing was not due to either force majeure or

any other fact or circumstance on which under the Rules to which I have referred we could properly exercise a discretion in the Applicant's favour, the application must be dismissed, whether the force majeure test is applicable or the position is governed by those Rules, which in the circumstances it is not necessary to decide.

VASSILIADES, P.: I agree with the result. I would exercise my discretion against the Applicants on the ground that an application for extension of time should, normally, have been made before expiry of the time set by the Rules. No sufficient reason for failure to do so has been shown here.

TRIANAFYLLIDES, J.: I agree with the result reached by the majority of this Court. As for myself, as at present advised, I think that the discretion, which does exist under the Rules in question, should be exercised and can be exercised, only in cases in which, according to relevant Administrative Law principles developed in Greece, time does not run against Applicant or Appellant, *i.e.* in cases where he is prevented from filing proceedings due to force majeure. I reached this conclusion because I think that in exercising our discretion, we must not lose sight of the nature of the particular proceedings.

JOSEPHIDES, J.: In this case the representative of the Commissioner of Income Tax, put the Applicant on his election, that is, he informed him that if an appeal were to be filed, the matter would become *sub judice* and he could not continue with the negotiations for settlement, and the offer of reduction in his income tax would then be considered as not having been made. The Applicant elected not to appeal, and to go on with the negotiations. Having made his election, the Applicant cannot now go back on it and, on the general principles applicable to the exercise of judicial discretion for enlargement of time to file an appeal in civil actions, under the provisions of Order 35, rule 2, and Order 57, rule 2, of the Civil Procedure Rules (which apply *mutatis mutandis* to these proceedings), I would exercise my discretion against the Applicant and dismiss his application to extend the time for the filing of an appeal.

As regards the stricter principle which is stated to be applicable in Administrative Law cases in other jurisdictions, that is, that an extension of time is only granted in cases of force majeure, I leave that matter open as I do not consider that it is necessary to decide it for the purposes of the present application.

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LOIZOU, J.: I, also, agree with the majority decision and I do not think that there is anything that I can usefully add.

HADJIANASTASSIOU, J.: I am in agreement with the Judgment read by Mr. Justice Stavrinides, but I would like to add that as regards the principle applicable in Greece in cases of Administrative Law, that an extension of time is only granted when force majeure is proved, I leave this question open, when the facts of a case are such as to require a decision on the point.

I would, therefore, dismiss the Application to extend the time for the filing of an appeal.

VASSILLIADES, P.: The application for extension of time is therefore refused. And in the circumstances of this proceeding we make no order as to costs.

*Application dismissed.
No order as to costs.*