

ANDREAS P. LOIZOU,

Applicant-Defendant,

v.

PANAYIOTIS CH. KONTEATIS,

Respondent-Plaintiff.

(Civil Application No. 4/68).

ANDREAS P.
LOIZOU
v.
PANAYIOTIS
CH. KONTEATIS

Practice—Appeal—Extension of time for appeal—The Civil Procedure Rules, Order 35, rule 2—Plaintiff's-respondent's final rights under the Judgment should not be interfered with, unless for good cause shown on the record and sufficient to move judicial discretion in the matter against him.

Appeal—Extension of time to appeal prescribed by the Rules—Discretion of the Court—See above.

Time for appeal—Enlargement—Principles applicable—See above.

This is an application under the Civil Procedure Rules, Order 35, r.2, by the defendant in the action, for extension of the time to appeal against the Judgment given for the plaintiff-respondent by the District Court of Nicosia on June 20, 1968. The application is based on the ground that the advocate who defended the action having been changed, the new advocate, whom the applicant-defendant instructed after the time for appeal had already expired, needed some time to study the record.

Refusing the application for enlargement of the time to appeal prescribed by the Rules, the Court:-

Held, (1) the power of the Court to enlarge the time for appeal is a matter of discretion. Such discretion must be judicially exercised on the facts of the particular case. In *Areti Pavlou and Another v. George Cacoyiannis* (1963) 2 C.L.R. 405 it was held that "the failure of the advocate or the litigant to take the appropriate steps for the filing of an appeal within the prescribed period, is not a sufficient ground upon which the discretion of the Court

1968
Aug. 19
—
ANDREAS P.
LOIZOU
v.
PANAYIOTIS
CH. KONTEATIS

should be exercised in such an application". On this view of the matter several cases have been decided.

(2) In the present case, the plaintiff-respondent acquired a vested interest in the amount of the judgment. After expiry of the prescribed time the plaintiff's rights under the judgment became final. We take the view that they should not now be interfered with, unless for good cause shown sufficient to move judicial discretion against him. But the cause put forward by the applicant before us is far too short of that.

Application refused.

Cases referred to:

Areti Pavlou and Another v. George Cacoyiannis (1963)
2 C.L.R. 405.

Edwards v. Edwards [1968] 1 W.L.R. 149, principles laid down at p. 150, *adopted*.

Application.

Application for an order enlarging the time within which to file an appeal against the judgment of the District Court of Nicosia given on the 20th June, 1968, in Action No. 2366/65.

M. Christofides for *X. Clerides* for the applicant.

N. Pelides for the respondent.

The judgment of the Court was delivered by :-

VASSILIADES, P. : The respondent-plaintiff in action No. 2366/65, in the District Court of Nicosia, obtained judgment against the applicant-defendant on June 20, 1968. The defendant now wishes to appeal from that judgment; and finding that the time set by the Rules for the filing of an appeal has expired, seeks an order enlarging the time, so as to enable him to take the appeal. His—the defendant's—application is based on Or.35, r.2 of the Civil Procedure Rules; and is supported by an affidavit sworn by his advocate's clerk.

According to the affidavit, applicant had a "previous advocate" who defended the action. But "some days ago", he instructed his present advocate "to file an appeal against

the judgment". Due to the fact, the affiant states, "that we had to study the notes of judgment and the notes of the proceedings in the action, we were unable to prepare and file the appeal within the time provided by the Rules of Court". And this advocate's clerk concludes his affidavit with the opinion that "under the circumstances and in the interest of justice, I think that an extension of time should be given".

The first observation which we feel that we must make, is that an affidavit filed in support of an application to the Court, should be confined to *the facts* on which the applicant relies; and should not contain unnecessary and superfluous matter such as what the affiant thinks that the Court should do in the circumstances.

Going to the Rules of Procedure which govern the matter (and which have been in force for many years now) they provide in Or. 35, r.2, that. "no appeal from any.

"order. shall be brought after the expiration of fourteen days, and no other appeal shall be brought after the expiration of six weeks, unless the Court or Judge, at the time of making the order or at any time subsequently, or the Court of Appeal shall enlarge the time. The said respective periods shall be calculated from the time that the judgment or order becomes binding on the intending appellant, or in the case of the refusal of an application, from the date of such refusal".

In the instant case the judgment of the District Court became binding on the intending appellant on June 20, 1968; and an appeal could be brought within six weeks thereafter, that is to say until August 1, 1968. No appeal against the judgment could be accepted at the Court Registry after that day without an order enlarging the time.

The power of the Court to enlarge the time for appeal is a matter of discretion. In *Areti Pavlou and Another v. George Cacoyiannis* (Civil Application 5/63, decided on 22.10.63),* this was conceded in a similar application; and the Court, acting on the view that when the matter rests in the discretion of the Court such discretion must be judicially exercised on the facts of the particular case, refused the application. The following is an extract from the judgment:-

*Note: Reported in (1963) 2 C.L.R. 405.

1968
Aug. 19
—
ANDREAS P.
LOIZOU
v.
PANAYIOTIS
CH. KONTEATIS

“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”.

On this view of the matter several cases have been decided since.

In England the position was recently considered by a Divisional Court in the Probate, Divorce and Admiralty Division of the High Court under the Matrimonial Causes Rules, 1957, in *Edwards v. Edwards* [1968] 1 W.L.R. p. 149. Sir Jocelyn Simon, President of the Division in delivering the judgment of the Court, is reported to have said at p.150:-

“All adjudication like every piece of social engineering, is a compromise between a number of desiderata, not all of which are easily made consistent.

.....

“Thirdly, and most relevant of all to this application, it is desirable that disputes within society should be brought to an end as soon as is reasonably practical and should not be allowed to drag festeringly on for an indefinite period.”

In the present case, the plaintiff-respondent acquired a vested interest in the amount of the judgment, judicially declared. This was subject to an appeal filed within the time set by the Rules. After expiry of that time, the plaintiff’s rights under the judgment became final. We take the view that they should not now be interfered with, unless for good cause shown in the record and sufficient to move judicial discretion against him. The cause put forward by the applicant before us, is far too short of that; especially as counsel appearing for him to-day has stated that the applicant went to consult his new advocate *after* the time for appeal had already expired, and the application for extension of time must be refused. As the respondent claimed no costs, we shall make no order.

Application refused. No order for costs.

Orders in terms.