

# CASES

DECIDED BY

## THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL  
FROM THE DISTRICT COURTS.

[TRIANTAFYLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

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THE TURKISH CO-OPERATIVE CAROB MARKETING  
SOCIETY LTD.,

*Applicant,*

v.

1. LUTFI KIAMIL,  
2. MEHMET KIAMIL,  
BOTH AS ADMINISTRATORS OF THE ESTATE  
OF KIAMIL AHMET MALYOTI,  
DECEASED,

*Respondents.*

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(Civil Application No. 12/72)

*Civil Procedure—Appeal—Time—Application for extension of time within which to lodge the appeal—Civil Procedure Rules, Order 35, rule 2, and Order 57, rule 2—Discretion of the Court—Need to conform strictly with prescribed time limits—Factors to be taken into account when considering an application for extension of time—Prima facie likelihood of success of the intended appeal is only one of such factors—And where there existed very strong reasons for granting an extension of time for appealing, the Court need not deal at all with the probability of success—A very long judgment not made available to counsel until five days before the expiry of the prescribed period for appealing—And an application to the trial Court was filed within such time, but dismissed several weeks thereafter—New application filed now in the Supreme Court—Need for time within which to consider whether or not to appeal and on what grounds—It is a consideration*

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*properly related to the matter of extension of time for appealing—Application for such extension granted by the Court of Appeal (the Supreme Court)—See further immediately herebelow.*

*Appeal—Extension of time for appealing—Application for—Desirability of attaching thereto statement of the proposed grounds of appeal.*

*Time for appealing—Extension—Application for extension made to the trial Court within the time prescribed for appealing—Application dismissed by the trial Court—New application then filed in the Supreme Court—New application granted by the Supreme Court.*

The Supreme Court granted this application for enlargement of the time for appealing. The facts of the case are very briefly as follows :—

The judgment intended to be appealed against was delivered by the trial Court on April 21, 1972, but its text—a very long one—was not made available to counsel for the applicant until about five days before the last day, the 2nd June 1972—of the period of six weeks prescribed under Order 35, rule 2, for appealing. On June 2, 1972, an application for enlargement of the said period, before its expiry, was made to the trial Court, but it was dismissed on September 30, 1972 ; and on November 7, 1972, the present application for extension was filed with the Supreme Court.

It was argued by counsel for the applicant—the intended appellant—that the time intervening between the obtaining of the text of the judgment and the expiry of the prescribed period within which the appeal could be made was insufficient, in the circumstances, to enable counsel to study the judgment with a view to appealing against it.

Counsel for the respondents has opposed this application mainly on the grounds that the applicant's counsel has not acted with due diligence and that he has failed to show, *prima facie*, that the appeal was likely to succeed.

Adopting the submission made by counsel for the applicant and rejecting that made by counsel for the respondents, the Supreme Court, granting the extension applied for :—

*Held*, (1). The need for, as a rule, strict adherence to prescribed time limits in relation to bringing appeals has been stressed in a number of cases. But, notwithstanding the

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need to conform strictly with such time-limits, the power to grant extension of time for appealing exists and its exercise is a matter within the discretion of the Court, on the basis of the particular facts of each individual case.

(2) As pointed out by Bowen C.J. in *Weldon v. De Bathe* 3 T.L.R. 445, at p. 446 ;

“ The Court ought not to fetter its discretion as to extending the time for appealing by laying any strict definition on the point, but would always exercise its discretion for the purpose of doing justice.” (See also *HjiMichael v. Karamichael and Others* (1967) 1 C.L.R. 61, at p. 65 per Josephides J.). But a person who comes to ask the Court to relax provisions of the Rules of Court concerning time “ must show great diligence, and not unnecessary delay in doing so ”. (See *Craig v. Phillips* [1877] 7 Ch. D. 249, at p. 252, per Sir George Jessel M.R. cited with approval by Sachs L.J. in *McC (RD) v. McC (JA) and Another* [1971] 2 All E.R. 1097, at p. 1102).

(3) In the present case we are satisfied that counsel for the applicant has not been guilty of undue delay and that he has acted with the requisite diligence ; he had only a few days in which to study the text of a long judgment running to 29 typewritten pages and dealing with important issues ; and the course which he adopted—of applying for extension of time to the trial Court before the expiry of the period prescribed for appealing—is one that has been found by this Court to be a proper one in similar situations (see *Kyriakides v. Kyriakides* (1969) 1 C.L.R. 373 and *Courtis and Another (No. 1) v. Iasonides* (1972) 1 C.L.R. 56). In the case of *Hji-Michael (supra)* it was held that the non-availability of the text of the judgment was sufficient cause for enlarging the time for appealing. And that the need for time to consider whether to appeal is a consideration properly related to the matter of such extension of time is to be derived from the case *Revici v. Prentice Hall Incorporated and Others* [1969] 1 All E.R. 772.

(4) (a) Regarding the contention of counsel for the respondents that it has not been shown by the application that there was, *prima facie*, a likelihood of the appeal succeeding :—

The question of the *prima facie* likelihood of success of the intended appeal is a factor to be taken into account together with all other relevant factors ; but it is a factor which appears to vary in effect according to the particular circumstances of each case in which an extension of the time for

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appealing is applied for. In *Gatti v. Shoosmith* [1939] 3 All E.R. 916, at p. 920 it was stressed that there existed such strong reasons for granting an extension of time for appealing that the Court was not concerned "with any question at all as to the merits of this case or the probability of success or otherwise".

(b) In the present case it would have been better if the applicant had adopted the course of attaching to the application a statement of the proposed grounds of appeal, as it was done in *Lanitis Brothers Ltd. (No. 1) v. The Municipal Corporation of Limassol* (1972) 2 C.L.R. 100 (and this is a practice which counsel are urged to follow in cases of this nature); but, notwithstanding the fact that no such statement has been filed, we are satisfied, having perused the judgment of the Court below, that there exist issues which do merit consideration on appeal.

*Application for extension of  
time for appealing granted.  
No order as to costs.*

Cases referred to :

- Loizou v. Konteatis* (1968) 1 C.L.R. 291 ;  
*Andreou v. The Republic* (1972) 2 C.L.R. 4 ;  
*Kyriakides v. Kyriakides* (1969) 1 C.L.R. 373 ;  
*Courtis and Another (No. 1) v. Iasonides* (1972) 1 C.L.R. 56 ;  
*Lanitis Brothers Ltd. (No. 1) v. The Municipal Corporation of  
Limassol* (1972) 2 C.L.R. 100 ;  
*Ratnam v. Kumarasamy and Another* [1964] 3 All E.R. 933,  
at p. 935 ; (P.C.) ;  
*Revici v. Prentice Hall Incorporated and Others* [1969] 1 All  
E.R. 772, at p. 774 per Lord Denning M.R. ; and at p.  
774 per Edmund Davies L.J. ;  
*McC (RD) v. McC (JA) and Another* [1971] 2 All E.R. 1097,  
at p. 1102, per Sachs, L.J. ;  
*HjiMichael v. Karamichael* (1967) 1 C.L.R. 61, at p. 65 ;  
*Georghiou v. The Republic* (1968) 1 C.L.R. 411 ;  
*Edwards v. Edwards* [1968] 1 W.L.R. 149, at p. 151, per Sir  
Jocelyn Simon P. ;  
*Weldon v. De Pathe*, 3 T.L.R. 445, at p. 446, per Bowen L.J. ;  
*Craig v. Phillips* [1877] 7 Ch. D. 249, at p. 252, per Sir George  
Jessel M.R. ;  
*Re J. Wigfull and Sons' Trade Marks* [1919] 1 Ch. 52 ;  
*Gatti v. Shoosmith* [1939] 3 All E.R. 916, at p. 920.

## Application.

Application for extension of time within which to appeal against the judgment of the District Court of Limassol dated the 21st April, 1972 (Action No. 2882/69).

*A. Berberoglu*, for the applicant.

*G. Cacoyiannis* with *M. Yusuf*, for the respondents.

*Cur. adv. vult.*

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The judgment of the Court was delivered by :

TRIANTAFYLLIDES, P.: The applicant has applied for an extension of the time within which to appeal against the judgment given by the District Court of Limassol in Action No. 2882/69 ; the application has been made under Order 35, rule 2, and Order 57, rule 2, of the Civil Procedure Rules.

The judgment in the said action was delivered on the 21st April, 1972, but its text was not made available to counsel for the applicant until about five days before the last day—the 2nd June, 1972—of the period prescribed under Order 35, rule 2, for bringing an appeal against such judgment ; the text of the judgment had not been applied for in writing, but had been requested orally from the Registry of the District Court of Limassol. On the 2nd June, 1972, an application for enlargement of the said period, before its expiry, was made to the District Court of Limassol, but it was dismissed on the 30th September, 1972 ; and on the 7th November, 1972, the present application was filed.

It has been contended by counsel for the applicant that the time intervening between the obtaining of the text of the judgment and the expiry of the period within which the appeal could be made was insufficient, in the circumstances, to enable counsel to study the judgment in regard to appealing against it.

Counsel for the respondents has opposed this application on the grounds, mainly, that the applicant's counsel has not acted with due diligence and that he has failed to show, *prima facie*, that the appeal is likely to succeed.

The need for, as a rule, strict adherence to prescribed time limits in relation to bringing appeals has been stressed in a number of cases (see, *inter alia*, *Loizou v. Konteatis* (1968) 1 C.L.R. 291, and *Andreou v. The Republic* (1972) 2 C.L.R. 4.

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The same view is to be found in relevant English case-law :

In *Ratnam v. Cumarasamy and Another* [1964] 3 All E.R. 933, Lord Guest, in delivering the judgment of the Privy Council in relation to an appeal against the refusal of extension of time for filing the record of appeal, stated (at p. 935) :—

“ The rules of Court must, *prima facie*, be obeyed, and, in order to justify a Court in extending the time during which some step in procedure requires to be taken, there must be some material on which the Court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.”

In *Revici v. Prentice Hall Incorporated and Other* [1969] 1 All E.R. 772, Lord Denning, M.R., said in his judgment (at p. 774) :—

“ Counsel for the plaintiff referred us to the old cases in the last century of *Eaton v. Storer*\* and *Atwood v. Chichester*\*\* and urged that time does not matter as long as the costs are paid. Nowadays we regard time very differently from what they did in the nineteenth century. We insist on the rules as to time being observed. We have had occasion recently to dismiss many cases for want of prosecution when people have not kept to the rules as to time.”

And in the same case Edmund Davies, L.J. stated (at p. 774) in dealing with the question of whether it could be said that a party, who had exceeded the time-limit set by the Rules, “ is *entitled* to have his time extended simply on undertaking to pay any costs occasioned by his delay ” :—

“ On the contrary, the rules are there to be observed ; and if there is non-compliance (other than a minimal kind), that is something which has to be explained away. *Prima facie*, if no excuse is offered, no indulgence should be granted : See *Ratnam v. Cumarasamy*\*\*\*, per Lord Guest.”

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\* [1882] 22 Ch.D. 91 ;

\*\* [1878] 3 Q.B.D. 722 ;

\*\*\* [1964] 3 All E.R. 933, at p. 935.

Lastly, in *McC (RD) v. McC (JA) and Another* [1971] 2 All E.R. 1097, Sachs, L.J. said in his judgment (at p. 1102 *et seq.*) :—

“ In the end it would be a sad thing if a solicitor, after a case was over and the time for appealing had expired, had in general to say to the successful litigant, ‘ You cannot really put your anxieties at rest. If there is a change in the law, or if the Court can be persuaded that the judgment was unsatisfactory, you must be prepared for your anxieties to be revived and to go through all the pains of litigation over again ’. Save in really special circumstances, when the time for appealing has expired that litigant is entitled to an easy mind.”

Notwithstanding the need to conform strictly with prescribed time-limits the power to grant extension of time for appealing exists and its exercise is a matter within the discretion of the Court, on the basis of the particular facts of each individual case.

As pointed out by Bowen, L.J., in *Weldon v. De Bathe*, 3 T.L.R. 445 (at p. 446) :—

“ The Court ought not to fetter its discretion as to extending the time for appealing by laying any strict definition on the point, but would always exercise its discretion for the purpose of doing justice.”

In *HjiMichael v. Karamichael and Others* (1967) 1 C.L.R. 61, (at p. 65) Josephides, J., said :—

“ 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.”

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The *HjiMichael* case was cited in *Georghiou v. The Republic* (1968) 1 C.L.R. 411, in which there was also cited the case of *Konteatits (supra)*. In the *Konteatits* case it was held that the circumstances did not justify an extension of time for appealing, but in the *Georghiou* case it was found that such an extension was justified in the circumstances; in both cases there was cited the case of *Edwards v. Edwards* [1968] 1 W.L.R. 149, in which Sir Jocelyn Simon, P., stated (at p. 151):—

“ So far as procedural delays are concerned, Parliament has left a discretion in the Courts to dispense with the time requirements in certain respects. That does not mean, however, that the rules are to be regarded as, so to speak, antique timepieces of an ornamental value but no chronometric significance, so that lip service only need be paid to them. On the contrary, in my view the stipulations which Parliament has laid down or sanctioned as to time are to be observed unless justice clearly indicates that they should be relaxed.”

A person who comes to ask the Court to relax provisions of the Rules of Court concerning time “ must show great diligence, and not unnecessary delay, in doing so ”; this was stated by Sir George Jessel, M.R., in *Craig v. Phillips* [1877] 7 Ch.D. 249, at p. 252, and his statement was cited with approval by Sachs, L.J., in *McC (RD) (supra)*, at p. 1102).

In the present case we are satisfied that counsel for the applicant has not been guilty of undue delay and that he has acted with the requisite diligence: He had only a few days in which to study the text of a long judgment running to 29 typewritten pages and dealing with important issues and the course which he adopted—of applying for extension of time before the expiry of the period prescribed for appealing—is one that has been found by this Court to be a proper one in similar situations (see *Kyriakides v. Kyriakides* (1969) 1 C.L.R. 373 and *Courtis and Another (No. 1) v. Iasonides* (1972) 1 C.L.R. 56).

In the case of *HjiMichael (supra)* it was held that the non-availability of the text of the judgment was sufficient cause for enlarging the period within which to bring an appeal against such judgment. And that the need for time within which to consider whether to appeal is a consideration properly related to the matter of the extension of time for appealing is to be derived from the *Revici* case (*supra*), where extensions were given for such a purpose, on more than one occasion, by consent, and where, eventually, when an application was made for a further extension for



the same purpose, it was held that the party applying for the extension had had already ample time for considering whether he would appeal.

We shall examine, next, the contention of counsel for the respondents that it has not been shown by the applicant that there is, *prima facie*, a likelihood of the appeal succeeding :

The question of the *prima facie* likelihood of success of the intended appeal is a factor to be taken into account together with all other relevant factors when considering whether to grant an extension of time for appealing, but it is a factor which appears to vary in effect according to the particular circumstances of each case in which such an extension is applied for.

In the *McC (RD)* case (*supra*, at p. 1102) it was pointed out that a judicial decision cannot be challenged out of time merely because it appears on the face of it to be wrong (see, also, *Re J. Wigfull & Sons' Trade Marks* [1919] 1 Ch. 52).

On the other hand, in *Gatti v. Shoosmith* [1939] 3 All E.R. 916, it was stressed (at p. 920) that there existed such strong reasons for granting an extension of time for appealing that the Court was not concerned "with any question at all as to the merits of this case or the probability of success or otherwise".

In the present case it would have been better if the applicant had adopted the course of attaching to the application a statement of the proposed grounds of appeal, as it was done in *Lanitis Brothers Ltd. (No. 1) v. The Municipal Corporation Limassol* (1972) 2 C.L.R. 100 (and this is a practice which counsel are urged to follow in cases of this nature) ; but, notwithstanding the fact that no such statement has been filed, we are satisfied, having perused the judgment of the Court below, that there exist issues which do merit consideration on appeal.

In the light of all relevant considerations we are of the view that in the present case we should, in the proper exercise of our discretion, enlarge the time within which an appeal may be brought and we order that such time be extended until the 15th March, 1973.

In the result this application for extension is granted as stated ; but we have decided to make no order as to the costs of the application.

*Application granted. No order as to costs.*

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