

1982 September 13

[TRIANTAFYLIDIS, P., MALACHTOS AND SAVVIDES, JJ.]

TETIS PAPADOPOULOS,

*Applicant.*

v.

THE POLICE,

*Respondents.*

*(Criminal Application No. 1/82).*

*Criminal Procedure—Appeal—Time—Extension of time within which to file appeal—Section 134 of the Criminal Procedure Law, Cap. 155—Discretion of the Court—Leave may be given on “good cause” shown to the satisfaction of the Court—Fact that applicant was under impression that time limit for filing an appeal 14 days, instead of 10 days, not a “good cause” justifying exercise of Court’s discretion in his favour.*

This was an application, under section 134\* of the Criminal Procedure Law, Cap. 155 for extension of time within which to file a notice of appeal. The application was filed one day after the ten days’ time limit, provided by section 133 of Cap. 155, had expired. In support of the application applicant stated, in an affidavit sworn by him, that he failed to file the notice of appeal in time because he was under the impression that the time limit provided by law was 14 days.

*Held*, that the power of this Court to grant the order sought is discretionary and that leave may only be given on good cause shown to the satisfaction of the Court; that what is a “good cause” depends on the facts and circumstances of the particular case; generally speaking, where the legislator sets a period of time for the taking of a step in proceedings of judicial character,

\* Section 134 provides as follows:

“Except in the case of a conviction involving sentence of death, the time within which notice of appeal or application for leave to appeal may be given may, on good cause shown, be extended at any time by the Supreme Court”.

such provision must be strictly enforced as it is connected with the public interest in the finality of litigation; that in the present case the fact that the applicant being under the impression that the time limit prescribed by Law within which an appeal should be filed, is 14 days instead of 10 days, is not a good cause shown in order that the discretion under section 134 of the Criminal Procedure Law, Cap. 155, may be exercised in his favour. 5

*Application dismissed.*

Cases referred to:

*Pullen and Another v. Republic* (1969) 2 C.L.R. 199; 10

*Peter v. Police* (1963) 1 C.L.R. 42;

*Djeredjian and Another v. Republic* (1967) 2 C.L.R. 136;

*Attorney-General v. Hji Constanti* (1968) 2 C.L.R. 113.

**Application.**

Application by the accused for extension of the time within which to file an appeal against the sentence which was imposed on him by the District Court of Larnaca on the 5th July, 1982, in Criminal Case No. 1466/82. 15

*A. Koukounis*, for the applicant.

*D. Papadopoulou (Mrs)*, for the respondents. 20

TRIANTAFYLIDIS P.: The judgment of the Court will be delivered by Mr. Justice Malachtos.

MALACHTOS J.: This is an application under section 134 of the Criminal Procedure Law, Cap. 155 by the accused in Criminal Case No. 1466/82, of the District Court of Larnaca, whereby he applies for extension of time within which to file a Notice of Appeal. 25

The applicant on the 5th July, 1982, was convicted, after he pleaded guilty, to three counts for offences under the Motor Vehicles and Road Traffic Law of 1972 (Law 86/72) and the Motor Vehicles and Road Traffic Regulations of 1973, made thereunder, and was sentenced to £200.- fine on count 1 and £10.- fine on each one of the two other counts. 30

The application was filed on the 16th July, 1982, i.e. one day after the ten days' time limit provided by section 133 of the Criminal Procedure Law, Cap. 155, had expired. 35

In the affidavit in support of the application, sworn by the applicant, it is stated that he failed to file the Notice of Appeal in time because he was under the impression that the time limit provided by law, within which a Notice of Appeal should  
5 be filed, was 14 days.

Counsel for applicant in arguing today this application before us reiterated the contents of the said affidavit and cited the case of *R. Pullen and Another v. The Republic* (1969) 2 C.L.R. 199, where the time within which an appeal should be filed was  
10 extended. In that case the applicants were jointly charged in the Assize Court of Limassol and were tried and convicted in that Court on October 7, 1969. On the following day and well within the ten days' limit prescribed in section 132 of the Criminal Procedure Law (Cap. 155) the convicts gave instructions  
15 to their advocate to file on their behalf an appeal against sentence. The advocate proceeded to prepare the notice of appeal straight away; but he delivered it to the Registrar of the District Court of Limassol instead of the Chief Registrar as required by section 132.

The notice was delivered and received at the Registry on October 10; and was forwarded, together with the notes of the proceedings to the Chief Registrar on October 17, 1969. Here the Registrar noticed that the appeal should have been  
20 filed in the Registry of the Supreme Court; and that the appeal was already out of time. The papers were, therefore, returned to the District Court with the suggestion that the appellants now had to obtain extension of time for the filing of  
25 the appeal.

Counsel for the appellants frankly admitted that it was a slip  
30 on his part to deliver the notice of appeal to the Registrar of the Court where the case was tried instead of the Chief Registrar as provided in section 132 of the Criminal Procedure Law.

Counsel for the Republic on the other hand, after pointing out that a lawyer's mistake cannot always be considered as a  
35 sufficient reason or "good cause" for extending the time under section 134 of the Criminal Procedure Law, stated that the nature of the advocate's mistake in this particular case and the nature of the case itself were such that he did not wish to object to an extension which in any case is a matter for the Court's

discretion. Considering the severity of the sentence, counsel added, he was inclined to facilitate matters so long as due care was taken to preserve the position that an advocate's mistake is not, by itself, a sufficient reason for extending the time for the filing of an appeal. 5

Section 134 of the Criminal Procedure Law, Cap. 155, on which the application is based, is as follows:

“Except in the case of a conviction involving sentence of death, the time within which notice of appeal or application for leave to appeal may be given may, on good cause shown, be extended at any time by the Supreme Court.” 10

It follows from the above that the power of this Court to grant the Order sought, is discretionary and that leave may only be given on good cause shown, to the satisfaction of the Court. 15

In the case of *Finch Frederick Peter v. The Police* (1963) 1 C.L.R. 42, it was decided that the convenience of counsel as a general rule, is not a good cause for failure to take necessary steps in a legal proceeding. Nor, the fact that the notes of proceedings were not ready to enable counsel to draft the grounds of appeal or that there were irregularities at the trial is a good cause for extending the time (*Hagop Michael Djeredjian and Another v. The Republic* (1967) 2 C.L.R. 136). 20

Generally speaking, where the legislator sets a period of time for the taking of a step in proceedings of judicial character, such provision must be strictly enforced as it is connected with the public interest in the finality of litigation. (*The Attorney-General of the Republic v. Petros Demetriou Hji Constanti* (1968) 2 C.L.R. 113. What is a “good cause” depends on the facts and circumstances of the particular case. 25 30

In the present case we do not consider the fact that the applicant being under the impression that the time limit prescribed by Law within which an appeal should be filed, is 14 days instead of 10, is a good cause shown in order to exercise our discretion under section 134 of the Criminal Procedure Law, Cap. 155, in his favour. 35

The application is, therefore, refused.

*Application refused.*