

(1988)

1988 November 16

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS LOIZIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND/OR
THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 182/77).

Practice—Revisional Jurisdiction Appeal—Extension of the time within which to file it—Mistake of advocate in not filing the appeal in time—Not a ground sufficient to grant an extension—Review of authorities concerning the matter.

The facts of this case sufficiently appear in the judgment of the Court.

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Application dismissed.

No order as to costs.

Cases referred to:

Branco Salvage Ltd. v. The Republic (1967) 3 C.L.R. 213;

Loizou v. Konteati (1968) 1 C.L.R. 291;

Georghiou (No.3) v. The Republic (1968) 3 C.L.R. 563;

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Cyprian Seaways Agencies Ltd v. The Republic (1981) 3 C.L.R. 271;

Pavlou and Another v. Cacoyannis (1963) 2 C.L.R. 405;

Edwards v. Edwards [1968] 1 W.L.R. 149.

Application.

5 Application for extension of time within which to file an appeal.

Chr. Triantafyllides, for the applicant.

A.S. Angelides, for the respondents.

Cur. adv. vult.

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MALACHTOS J. read the following judgment. On the 7th May, 1987, judgment was issued in this recourse dismissing the claim of the applicant for a declaration of the Court that the decision of the respondent published in the Official Gazette of the Republic, No. 717, dated 22.4.1977, to appoint to the post of Inspector 1st Grade, Secondary Education, the interested parties, namely, 1. Aris Georghiou and 2. Andreas Phylactou, instead of the applicant, is null and void and of no legal effect whatsoever.

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After the expiration of the six weeks time prescribed by Order 35, rule 2 of the Civil Procedure Rules, which are applicable in administrative cases by virtue of the Supreme Constitutional Court Rules 1962, rule 18, within which the applicant was entitled to file an appeal against the judgment of the court, he filed an application for extension of time.

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In the affidavit in support of the application the only reason given as to why the appeal was not filed in time is that "although the appeal against the decision under the above number and title recourse was early prepared and in time, nevertheless, due to a misunderstanding it was not filed within the prescribed time".

The respondent opposed the application and in the affidavit in support thereof, alleged that the application is not based on any one of the rules in force or on the Case Law of the Supreme Court.

On 9.1.1988, when the application came up for hearing before the court, counsel appearing for the applicant applied and obtained leave to withdraw it and as a result it was dismissed. 5

The applicant on 2.2.1988, through his present advocate, filed a new application for extension of time to file an appeal. In the affidavit in support thereof the applicant alleges that although immediately after the issue of judgment on 7.5.1987, he instructed his advocate to file an appeal, no such appeal was filed. An application for extension of time was filed after the expiration of the six weeks time prescribed by the rules and this application was withdrawn without his knowledge on 9.1.1988. He further alleges that it is not fair for him to suffer for the mistake of his previous advocate. 10 15

Counsel for applicant in support of the application referred to *Branco Salvage Ltd. v. The Republic* (1967) 3 C.L.R. 213, *Loizou v. Konteati* (1968) 1 C.L.R. 291 and *Georghiou (No.3) v. The Republic* (1968) 3 C.L.R. 563 and submitted that inspite of the result of those cases the case in hand should be distinguished as the applicant is not to blame for the delay. 20

On the other hand, counsel for the respondent in opposing the application laid stress on the fact that a responsible advocate on 9.1.1988 appeared before the court and withdrew a similar application. He further cited the case of *Cyprian Seaways Agencies Ltd. v. The Republic* (1981) 3 C.L.R. 271 where a review of the position as regards applications for extension of time to file an appeal was made by A. Loizou, J., as he then was, where reference was made to a great number of decided cases both in private and public law. 25 30

It is well settled that the power of the court to enlarge the time

5 for appeal is within its discretion depending always on the facts
of the particular case. In *Areti Pavlou and Another v. George Ca-*
coyannis (1963) 2 C.L.R. 405, it was decided that the failure of
the advocate or the litigant to take the proper steps for the filing of
an appeal within the prescribed period, is not a sufficient ground
upon which the discretion of the court should be exercised in fa-
vour of the applicant. In *Edwards v. Edwards* [1968] 1 W.L.R.
149, it was decided that all adjudication like every piece of social
10 engineering, is a compromise between a number of desiderata,
not all of which are easily made consistent. The most relevant of
all is that it is desirable that disputes within society should be
brought to an end as soon as it is reasonably practical and should
not be allowed to drag festeringly on for an indefinite period.

15 In the present case the interested parties acquired a vested right
judicially declared. This was subject to an appeal filed within the
time prescribed by the rules and after the expiration of that time
their rights under the judgment became final. I hold the view that
the cause put forward by the applicant before me that the delay to
20 file an appeal was due to a mistake on behalf of his previous ad-
vocate, is not sufficient to exercise my discretion in his favour.
Furthermore, we must not lose sight of the fact that a similar ap-
plication was made and was withdrawn on 9.1.1988.

25 In the result, the application for extension of time to file an ap-
peal is refused and with the utmost reluctance I make no order as
to costs.

Application refused.
No order as to costs.