

[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, LOIZOU, &  
HADJIANASTASSIOU, JJ.]

NIKI CHR. GEORGHIOU,

*Applicant,*

*v.*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND ANOTHER,

*Respondents.*

*(Civil Application No. 7/68).*

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*Practice—Appeal—Extension of time to file appeal—Three days out of time—Civil Procedure Rules, Order 35, rr. 2 and 19, Order 57, r. 2—Discretion of the Court, even in revisional jurisdiction cases—Principles applicable—Inadvertence or negligence or mistake of client's legal adviser—Discretion of the Court—Depends upon the facts of each individual case—Whether discretion should be exercised differently in revisional jurisdiction cases—In the present case and in view of its special circumstances the Court's discretion has been exercised by extending the time—Notwithstanding that this was a revisional jurisdiction matter.*

*Appeal—Extension of time to lodge appeal—Revisional jurisdiction case—See above.*

*Extension of time to file appeal—See above.*

*Time—Extension—Appeal—Revisional jurisdiction cases—See above.*

*Revisional jurisdiction cases—Appeal—Time—Extension—See above.*

This is an application for extension of time to lodge an appeal against the judgment of a Judge of this Court exercising revisional jurisdiction. The application is based on the Civil Procedure Rules, Order 35, rules 2 and 19, Order 57, rule 2.

On the 15th July, 1968, the Immigration Officer notified by letter the applicant, who is a Greek National, that her stay in Cyprus, without a permit, was illegal, and that she was required to leave Cyprus within seven days from

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the date of the letter; otherwise steps would be taken to deport her from Cyprus. A recourse under Article 146 of the Constitution was filed with this Court, in its revisional jurisdiction, which was heard in the ordinary way by a single Judge who delivered judgment on the 2nd August, 1968, dismissing the applicant's recourse against the decision of the Immigration Officer. The applicant was deported immediately after delivery of the said judgment. It would seem that the applicant wrote from Greece, on the 28th August, 1968, to her counsel complaining against the decision to deport her and that she did not have time to get in touch with her legal advisers, and instructing her counsel to lodge an appeal against the judgment of the trial Judge.

No appeal was, in fact, filed within the prescribed period of six weeks; but three days after the expiry of that period counsel acting on behalf of the applicant filed an application for extension of time to appeal. Several reasons have been given for the delay, but the net result is that it was counsel's inadvertence or negligence in delaying the filing of the appeal.

The Court by majority (Vassiliades P. and Loizou J., *dissenting*) granted the application and extended the time to appeal for seven days from the day of the delivery of the judgment.

*Held*, Per Josephides J. (Stavrinides and Hadjianastasiou JJ., *concurring*):

(1) The principles applicable in such applications were fully stated in *Erini Costa HadjiMichael v. Maria Karameichael* (1967) 1 C.L.R. 61 at p. 65. See also *Andreas Loizou v. Konteatis* (reported in this Vol. at 291 *ante*); *Edwards v. Edwards* [1968] 1 W.L.R. 149. To sum up, the Court has in the matter a discretion which is a perfectly free one; the only question is whether upon the facts of a particular case that discretion should be exercised.

(2) The fact that the omission to appeal in time was due to inadvertence, negligence, or mistake on the part of a legal adviser, may be sufficient cause to justify the court in exercising its discretion, but it is not to be thought that it will necessarily be exercised in every set of facts. There may be facts in a case which would make it unjust to allow

the appellant to succeed upon that argument (cf. *Gatti v. Shoosmith* [1939] 3 All E.R. 916, at p. 919).

(3) Put briefly, this is a case where the applicant, who is a foreign national, was deported from Cyprus immediately after delivery of the judgment at first instance, that she has been out of Cyprus ever since, that she did not have the necessary facilities of getting in touch with her legal advisers before she was deported, and that due to counsel's inadvertence or negligence the application to extend the time for appeal was filed three days out of time. If this were a civil appeal I have no difficulty in saying that I would have exercised my discretion in favour of the applicant.

(4) The question which remains for consideration is whether this being a revisional matter our discretion should be exercised in a different way. Considering that this particular decision sought to be appealed against does not affect any other person except the applicant, and that it does not appear to have any other implications or any consequential repercussions on the Administration, I would still be prepared, in the special circumstances of this case, to exercise my discretion in the applicant's favour and grant her application, subject to the payment of the costs in this application.

*Held, Per Vassiliades P. (in his dissenting judgment, Loizou J. concurring):*

(1) The cases to which we have been referred show that the Court is mostly inclined against extending the time; especially in a case where the reason for extension is the failure of a legal practitioner to take in time the steps necessary for his client's case. It may be hard for the client, but his remedy may, perhaps, lie elsewhere. (See *Andrea Loizou's case supra: Areti Pavlou and Another v. George Cacoyannis* (1963) 2 C.L.R. 405; *The Attorney-General v. Petros Demetri Hadji Constanti* (1968) 8 J.S.C. 885.

(2) Acting on the view that the Court has a discretion in the matter which has to be exercised judicially. I am of the view that even in a case such as the present one there is no sufficient justification for extending the time so as to enable the appeal to be taken.

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*Application granted. Time extended for seven days from delivery of the judgment. Costs of the application in any event to be borne by applicant.*

Cases referred to:

*Erini Costa HadjiMichael v. Maria Karamichael* (1967)  
1 C.L.R. 61 at p. 65;

*Branco Salvage Ltd. v. The Republic* (1967) 3 C.L.R. 313;

*Andreas Loizou v. Konteatis* (1968) (reported in this Vol.  
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*Edwards v. Edwards* [1968] 1 W.L.R. 149;

*Gatti v. Shoosmith* [1939] 3 All E.R. 916, at p. 919;

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

*The Attorney-General v. Petros Demetri HudjiConstanti*  
(1968) 8 J.S.C. 885.

**Application.**

Application for extension of time within which to file an appeal against the judgment of a Judge of the Supreme Court Cyprus, exercising revisional jurisdiction, given on the 2nd August, 1968, in Case No. 254/68.

*Ch. Kyriakides*, for the applicant.

*A. Frangos*, Senior Counsel of the Republic, for the respondents.

VASSILIADES, P.: I shall ask Mr. Justice Josephides to deliver the first judgment in this case.

JOSEPHIDES, J.: This is an application for extension of time to lodge an appeal against the judgment of a judge of this Court exercising revisional jurisdiction. The application is based on the Civil Procedure Rules, Order 35, rule 2, Order 57, rule 2 and Order 35, rule 19. Briefly, the facts as appearing in the affidavit in support of the application are the following:

The applicant in this case, who is a Greek National, was

married on the 11th March, 1967 to a Greek Cypriot, a citizen of the Republic of Cyprus. This marriage was dissolved on the 31st May, 1968, by the ecclesiastical court of Limassol. On the 15th July, 1968, the Immigration Officer notified the applicant by letter that her stay in Cyprus, without a permit, was illegal, and that she was required to leave Cyprus within seven days from the date of the letter; otherwise steps would be taken to deport her from Cyprus. A recourse was filed with this Court, in its revisional jurisdiction, which was heard by a single judge who delivered judgment on the 2nd August, 1968, dismissing the applicant's recourse against the decision of the Immigration Officer. The applicant was deported immediately after delivery of the judgment, but we do not have the exact date of deportation. The affidavit in support of the application further states that she wrote from Greece, on the 28th August, 1968, to her counsel complaining against the decision to deport her and that she did not have time to get in touch with her legal advisers, and instructing her counsel to lodge an appeal against the judgment of the trial judge.

No appeal was, in fact, filed within the prescribed period of six weeks; but three days after the expiry of that period counsel acting on behalf of the applicant filed an application for extension of time to appeal. Several reasons have been given for the delay, but the net result is that, however you look at it, it was counsel's inadvertence or negligence in delaying the filing of the appeal, whether it was his typist who mislaid the papers or he was late in drafting and signing the papers, or he was expecting applicant to sign a retainer which he had sent to her. The fact remains that he ought to have filed the appeal within six weeks and he failed to do so.

What are the principles applicable in such applications? We have several decisions on the point and I might, perhaps, refer to *Erini Costa Hji Michael v. Maria Karamichael and Others* (1967) 1 C.L.R. 61 at p. 65, in which the principles were fully stated. This is what we said:

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“The discretion of the Court under the 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

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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: *Kevor-kian 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.”

In the *Hji Michael* case (1967), from which I quoted the above extract, this court granted an extension of time to file an appeal some 3 1/2 years after the delivery of the judgment but, of course, that was a very exceptional case.

Then we have the case of *Branco Salvage Ltd. v. The Republic* (1967) 3 C.L.R. 313, to which reference was made in the course of the argument, which does not lay down any new principle but shows how the discretion of this Court was exercised on the particular facts of the case. The question whether in revisional appeals leave should be granted on the ground of force majeure only was left open.

Finally, we have a very recent judgment delivered in August this year by the learned President of this Court in the case of *Andreas Loizou v. Konteatis* (reported in this Vol. at p. 291) where reference is made to the case of *Edwards v. Edwards* [1968] 1 W.L.R. p. 149. The following is the concluding paragraph of the judgment in the *Loizou* case, at page 294.

“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 today 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”.

I think it would be helpful to quote also the headnote in the *Edwards* case [1968] 1 W.L.R. 149:-

“On April 15, 1964, on the wife’s complaint, justices found the husband guilty of persistent cruelty and made a separation and maintenance order in favour of the wife. Twenty-one months out of time, the husband sought leave to appeal:-

“*Held*, that it was in the public interest that there should be some end to litigation and the stipulations as to time in procedural matters laid down by Parliament were to be observed unless justice clearly indicated that they should be relaxed; and that, since there was no good reason to suppose that there had been a miscarriage of justice in the present case, the application would be dismissed”.

To sum up, the discretion of the court being a perfectly free one, the only question is whether upon the facts of a particular case that discretion should be exercised. The fact that the omission to appeal in due time was due to inadvertence, negligence, or mistake on the part of a legal adviser, *may be* sufficient cause to justify the court in exercising its discretion, but it is not to be thought that it will necessarily be exercised in every set of facts. As I conceive the rule, there is nothing in the nature of such inadvertence, negligence or mistake as to exclude it from being a proper ground for allowing the appeal to be effective though out of time; and whether the matter shall be so treated must depend upon the facts of each individual case. There may be facts in a case which would make it unjust to allow the appellant to succeed upon that argument (cf. *Gatti v. Shoosmith* [1939] 3 All E.R. 916, at page 919).

Reverting now to the present case, we have to consider how on the facts of this particular case our discretion should be exercised. Put briefly, this is a case where the applicant, who is a foreign national, was deported from Cyprus immediately after delivery of the judgment at first instance, that she has been out of Cyprus ever since, that she did not have the necessary facilities of getting in touch with her legal advisers before she was deported, and that due to counsel’s inadvertence or negligence the application to extend the time for appeal was filed three days out of time. If this were a civil appeal I have no difficulty in saying that, speaking for

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myself, I would have exercised my discretion in favour of the applicant.

The question which remains for consideration is whether this being a revisional matter our discretion should be exercised in a different way. Considering that this particular decision does not affect any other person except the applicant, and that it does not appear to have any other implications or any consequential repercussions on the Administration, I would still be prepared, in the special circumstances of this case, to exercise my discretion in the applicant's favour and grant her application, subject to the payment of the costs of this application.

STAVRINIDES, J.: I agree. It is understood that the position as regards other revisional cases is still left open.

HADJIANASTASSIOU, J.: I am in agreement with the reasoning and the conclusions reached by my learned brother Mr. Justice Josephides in the judgment just delivered.

I would like, however, to state that in view of the fact that this is a revisional jurisdiction case and, because I have decided to exercise my discretion in favour of the applicant, to add a few words myself.

Having had the advantage of reading some of the authorities, I take the view, that the power of the Court to enlarge the time for appeal is a matter within the discretionary powers of the Court. Although I am aware that 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, nevertheless, in view of the particular facts in this case, viz., that the applicant was deported from Cyprus and that the delay for the filing of the appeal was a matter of 3 days, due to the negligent handling of counsel, I have reached the conclusion to allow the application for extension of time, as I am of the opinion, that stipulations as to time in procedural matters should be observed, unless justice clearly indicated, when there is a good reason, that they should be relaxed.

VASSILIADES, P.: I have asked Mr. Justice Josephides to deliver the first judgment in this interim appeal expressing the majority view which determines the result of the proceeding and grants the application, extending the time for the



filing of an appeal, in the exercise of the court's discretion in the matter. I shall now proceed to state the minority view which is that the application for extension of time should be refused.

There is no doubt that there is merit in the human aspect of the application, by reflection from the human aspect of this exceptional case. On the other hand, the right approach to the matter, is, in my opinion, that this is a case where through the negligence, or, to use the milder word, through the inadvertence of the advocate of the applicant, the appeal was not filed within the period prescribed by the rules; and the question on which we have to decide this case, is whether the failure of the advocate to file a proceeding within the time prescribed by the rules is, even in a case such as this, sufficient justification for extending the time so as to enable the proceeding to be taken.

The minority take the view that the answer to this question should be in the negative; and such view is based on what was stated in *Andreas Loizou v. Panayiotis Konteatis* (reported in this Vol. at p. 291, *ante*), referred to in the course of the argument. The respondent-plaintiff in that action obtained judgment against the defendant in the District Court of Nicosia on June 20th, 1968. The defendant, wishing to appeal from that judgment and knowing that the time set by the rules had expired, sought an order enlarging the time so as to enable him to take the appeal. His application was based on precisely the same rule as this proceeding is, that is to say, Order 35, rule 2. The court, refusing the application said that the power of the Court to enlarge the time for appeal is a matter of discretion which must, of course, be judicially exercised. In an earlier case *Areti Pavlou and Another v. George Cacyannis* (Civil Application 5/63, decided on 22nd October, 1963, now reported in (1963) 2 C.L.R. page 405), the court took the view that the power of the court to extend the time under Order 35, rule 2 is discretionary; which was, indeed, conceded on the part of the appellant litigant. Acting on the view that such discretion should be judicially exercised, on the facts of the particular case, the Court refused the application for extension. The following is an extract from the judgment in that case: "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 discre-

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tion of the Court should be exercised in such an application". This was referred to in the *Loizou v. Konteatis* case (*supra*) where it formed the basis of the decision.

In the present case, when the application for extension of time came before the single judge—and his judgment is part of the record before us—he refused the application, stating the position in these words, towards the end of his decision: "In all the circumstances of this case I find myself unable to find that the applicant has satisfied me of the existence of adequate grounds justifying an extension of the time for appeal; especially as this is a revisional jurisdiction case and it is of the utmost importance in cases of such a nature, that litigation should be instituted and pursued within the prescribed time limits, so that once they expire there should be finality in such matters, with consequent certainty in relation thereto, in the interests of proper and good public administration".

In another case also referred to in the course of the argument, *The Attorney-General v. Petros Demetri Hji Constanti* decided in August last, (1968) 8, J.S.C. p. 885, the Court in exercising a discretion of a similar nature but under a statutory provision in the Criminal Procedure Law, (Cap. 155) followed the same course. Section 134 of Cap. 155, reads:-

"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".

In declining extension of time where the delay after expiry of the statutory period for filing the appeal, was only a very short one, the court still thought that following the trend of decisions in such cases, it was important that where the legislature lays down specific periods for the taking of a proceeding such periods must be strictly adhered to. The reason why this must be so is obvious and I need not restate it.

The cases to which I have referred, show that the Court is mostly inclined against extending the time; especially in a case where the reason for extension, is the failure of a legal practitioner to take in time the steps necessary for his client's case. It may be hard on the client, but his remedy may, perhaps, lie elsewhere.

For the reasons I have attempted to state, I would refuse this application.

LOIZOU, J.: I agree with the judgment of the learned President of the Court that this application to enlarge the time for the filing of the appeal should be refused. I would like to add that, even at this late stage, I am left wondering precisely on what ground this Court is prayed to exercise its discretion in favour of the applicant. Today we have been told by learned counsel appearing for the applicant that the delay in filing the appeal was due to the fact that a typist in his office misplaced the grounds of appeal typed by her. In the affidavit in support of the application before this Court, sworn by the Managing Clerk of counsel for the applicant, on counsel's instructions no doubt, it is stated that though they received instructions from the applicant, by her letter dated the 28th August, 1968, to file an appeal and though the grounds of appeal were prepared soon after, due to a mistake of one of the typists they were not typed in time; that they discovered this mistake on the 16th September i.e. three days after the expiration of the time limited by the rules for filing an appeal and on the same day they filed their application for extension of time, attaching thereto the grounds of appeal. To the learned Judge to whom a similar application was made in the first instance and who refused it for the reasons already stated, which I need not repeat here, it was explained by learned counsel for the applicant that the appeal was not filed in time although applicant's instructions had reached his office not later than the 1st September, 1968, through a "clerical oversight" in his office as apparently his staff had expected to receive, also, a formal authorization from the applicant for the filing of the appeal which had been sent to her earlier for signature, and which, though dated the 28th August, 1968, was not received until the 13th September, the very day on which the time limited by the rules for the filing of an appeal was expiring.

So, we have three versions, and I must say I find it difficult to guess which of the three is the correct one and, therefore, on what ground I am invited to exercise my discretion in favour of the applicant by extending the time as applied. But, wherever the truth may lie, I have not been satisfied that, in the circumstances of this case, an extension of time within which to file the appeal would be justified on any of the

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grounds advanced. I would, therefore, refuse the application.

VASSILIADES, P.: In the result the application is allowed and the period for filing of the appeal is extended for seven days from today.

Costs by applicant in any event.

*Application allowed; seven  
days extension granted;  
order for costs as aforesaid.*