

R. PULLEN AND ANOTHER,

Applicants,

v.

THE REPUBLIC,

Respondent.

R. PULLEN
AND
ANOTHER
v.
THE REPUBLIC

(Criminal Application Nos. 6/69 and 7/69).

Criminal Procedure—Appeal—Time—Extension of time to file an appeal—Criminal Procedure Law, Cap. 155 section 134—“Good cause”—As a rule counsel’s mistake shall not be considered a “good cause” for extending time—But in the special circumstances of this case extension of time was granted under that section 134.

Appeal—Time—Extension of—See above.

Time—Appeal—Extension of time within which to file an appeal—See hereabove.

Extension of time within which to file an appeal—Section 134 of Cap. 155 (supra)—“Good cause”—See hereabove.

The applicants were convicted in the Assize Court of Limassol on October 7, 1969. On the following day and well within the ten days limit prescribed by section 132 of the Criminal Procedure Law, Cap. 155 the convicts gave instructions 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 on October 10, 1969 to the Registrar of the District Court of Limassol instead of the chief Registrar Supreme Court Nicosia as required by section 132. The Registrar of the District Court of Limassol (who received the notice of appeal on October 10 *supra*) forwarded the notice to the Chief Registrar on October 17, 1969. Here the Chief Registrar noticed that the appeal should have been filed in the Registry of the Supreme Court ; and that the appeal was already out of time. Granting the applications for extension of time within which to file the appeal under section 134 of the Criminal Procedure Law, Cap. 155 the Court :—

Held, (1). An advocate’s mistake is not by itself a sufficient reason for extending the time for the filing of an appeal (see

1969
Nov 28
—
R PULLEN
AND
ANOTHER
v
THE REPUBLIC

Finch Frederick Peter v. The Police (1963) 1 C.L.R. 42 ;
Hagop Djeredjian and Another v The Republic (1967) 2 C.L.R.
136 ; *The Attorney-General v HjiConstanti* (1968) 2 C.L.R.
113.

(2) In the special circumstances of the case however taking into consideration the nature of the mistake , the fact that the notices of appeal were delivered three days after conviction in the Registry of the District Court of Limassol where the case was tried , and the serious nature of the conviction and the severity of the sentence imposed ; together with the very fair stand of counsel for the Republic we came to the conclusion that we should exercise our discretionary powers in favour of the applicants under section 134 of Cap. 155 *supra*.

Let the period for the filing of these appeals be extended under section 134 *supra* so as to expire seven days from today.

Application granted.

Cases referred to :

Finch Frederick Peter v The Police (1963) 1 C L R. 42 ,
Hagop Djeredjian and Another v. The Republic (1967) 2 C.L.R.
136 ;
The Attorney-General v. Hji Constanti (1968) 2 C.L.R. 113.

Application.

Application for extension of time within which to file an appeal against the sentence imposed on the applicants by the Assize Court of Limassol on the 7th October 1969, in Criminal Case No. 12152/69.

St. G. McBride, for the applicants.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: These two applications for extension of time for the filing of an appeal arise in the same 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 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.

1969
Nov. 28
—
R. PULLEN
AND
ANOTHER
v.
THE REPUBLIC

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 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 the appeal.

Counsel for the appellants frankly admitted that it was a slip 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 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.

There is no doubt that this is the correct position. See *Finch Frederick Peter v. The Police*, (1963) C.L.R. (Part 1, Criminal Cases) p. 42 ; *Hagop Djeredjian and Another v. The Republic* (1967) 2 C.L.R. 136 at p. 139 ; and *The Attorney-General v. Petros Hji Constanti* (1968) 2 C.L.R. 113. In the special circumstances of this case, however, taking into consideration the nature of the mistake ; the fact that the notice of appeal was delivered three days after conviction in the Registry of the Court where the case was tried ; and the serious nature of the conviction and the severity of the

1969
Nov. 28
—
R. PULLEN
AND
ANOTHER
v
THE REPUBLIC

sentence imposed on the applicants ; together with the very fair stand of counsel for the Republic who readily conceded that on the merits this case deserves the Court's favourable consideration, we came to the conclusion that we should exercise our discretionary powers in favour of the applicants and grant the extension required to enable them to pursue their appeal. Let the period for the filing of the appeals be extended under section 134 of the Criminal Procedure Law, Cap. 155, so as to expire seven days from to-day.

Applications granted. Order for extension as above.

Applications granted.