

1981 August 25

[A. LOIZOU, J.]

CYPRIAN SEAWAY AGENCIES LTD.
AND OTHERS,

Applicants,

v.

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

Respondents.

(Case Nos. 131/78, 351/78 and 405/78).

5 *Civil procedure—Appeal—Time—Extension of time within which to file appeal—Revisional jurisdiction appeal—Rule 3 of the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964—Discretion of the Court—Principles applicable—Failure of litigant to take appropriate steps for filing an appeal—Whether a ground for extending time—Reasons for not filing appeal within prescribed time not sufficient to justify extension.*

10 *Civil Procedure—Appeal—Time—Application for extension of time—Desirability of attaching thereto statement of the proposed grounds of appeal.*

15 By means of applications filed 19 days after the time of 42 days prescribed by the Rules* for filing an appeal, the applicants in these cases applied for extension of time within which to appeal. The extension was sought on the ground that the applicants, who were members of the Cyprus Shipping Association, had to obtain the approval of the association before filing an appeal ; and that though the judgment appealed from was communicated to the association for their consideration the latter failed to ask the applicants to instruct counsel to file
20 an appeal. Another ground on which extension was sought

* See rule 3 of the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964 which makes applicable, mutatis mutandis, to Revisional Jurisdiction appeals the provisions of Order 35 of the Civil Procedure Rules.

related to the novelty of the legal points involved in the appeal and the possibility of its success.

Held, (after stating the principles governing extension of time—*vide pp. 275–78 post*) that in this case there was failure on the part of the litigant to take appropriate steps for the filing of an appeal; 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 discretion of the Court should be exercised in favour of granting extension (see *Pavlou and Another v. Cacoyiannis* (1963) 2.C.L.R. 405); that bearing in mind the facts of this case this Court has come to the conclusion that it should not exercise its discretion in favour of granting an extension of time as the reasons given in the affidavit relied upon by the applicants for not filing their appeals within the prescribed time are not sufficient to justify such an enlargement; accordingly the applications must fail.

Held, further, regarding the ground of novelty of the legal point and the possibility of success of the appeal the applicants should have adopted the course of attaching a copy of the grounds of appeal to their application to enable the Court to assess the possibility of such success, though this point is not in this case decided against the applicants in any way (see *Turkish Co-operative Carob Marketing Society Ltd. v. Kiamil and Others* (1973) 1 C.L.R. 1).

Applications dismissed.

Cases referred to :

- Loizou v. Konteatis* (1968) 1 C.L.R. 291 at p. 293 ;
Hadjimichael v. Karamichael and Others (1967) 1 C.L.R. 61 ;
Pavlou and Another v. Cacoyiannis (1963) 2 C.L.R. 405 ;
Kourtis and Another v. Iasonides (1972) 1 C.L.R. 56 ;
Branco Salvage Ltd. v. Republic (1967) 3 C.L.R. 213 ;
Georghiou (No. 3) v. Republic (1968) 3 C.L.R. 563 ;
Attorney-General v. Hji Constanti (1968) 2 C.L.R. 113 ;
Edwards v. Edwards [1968] 1 W.L.R. 149 at p. 150 ;
Turkish Co-operative Carob Marketing Society Ltd. v. Kiamil and Others (1973) 1 C.L.R. 1 ;
Weldon v. De Bath, 3 T.L.R. 445 at p. 446 ;
Georghiou v. Republic (1968) 1 C.L.R. 411 ;
Graig v. Phillips [1877] 7 Ch. D. 249 at p. 252.

Applications.

Applications for an order enlarging the time within which to file an appeal against the judgment delivered in each of the above recourses.

5 *E. Psillaki (Mrs.)*, for the applicant.

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

Cur. adv. vult.

10 *A. LOIZOU J.* read the following judgment. These three applications for an order of the Court enlarging the time for filing an appeal against the judgment delivered in each of the aforesaid recourses were heard together upon a direction made with the consent of both sides as they present common questions of law and fact. In fact, the three recourses in question were
15 heard together for the same reason.

 On November 17, 1980, this Court gave judgment* dismissing the above recourses. On January 17, 1981, that is, 19 days after the time of 42 days prescribed by the relevant Rules for filing an appeal, the applicants filed these applications for
20 extension of time within which to file an appeal.

 The grounds in support of these applications are stated in paras. 2-6 of the affidavit sworn by counsel for the applicants which run as follows:

25 "2. The Applicants in the above recourse are members of the Cyprus Shipping Association, for whom our firm acts as legal advisers, and the policy followed by Applicants and all other members of the said Association as well as any steps that they may decide to take vis-a-vis
30 any Cyprus Authority including the Department of Customs and Excise have to be decided and/or approved and/or sanctioned by the said Association.

 3. The filing of the above recourse was made following the decision of the said Association, by which the Applicants abided and instructed our firm accordingly.

35 4. The Judgment of the Honourable Court in the above recourse was communicated to the said Association for their consideration and the matter of whether or

* See (1980) 3 C.L.R. 592.

not an Appeal should be made therefrom was considered a matter for an Extraordinary General Meeting of the Association in view of its great importance to its members. Such meeting was fixed in accordance with the Articles of the said Association for the 2nd January, 1981, the Committee of the Association not being aware of the time limit existing for making an Appeal. 5

5. The said Association failed to ask the Applicants to instruct us to file an Appeal pending their decision whether one should be made or not, because they considered this step as one affecting their relationship with the Respondents adversely and because they thought that this may not be a proper use of the process of the Court. 10

6. The legal points raised by the above recourse are completely novel and interesting ones and seriously affect the interests of a large number of Cyprus Citizens and of the Government of Cyprus. The consideration of such points further on appeal is in my honest and reasonable belief of the utmost importance and should the said Association decide, after fully considering the matter from all aspects, to allow its members to instruct us to appeal, we should be able to file an Appeal latest by the 5th January, 1981". 15 20

It is significant to note that though the affidavit was sworn on the 30th December, 1980, that is, one day after the expiration of the prescribed time limit, these applications were filed much later, i.e. on January 17, 1981. Another point worthy of note is that in para. 4 of the aforesaid affidavit it is stated that the judgment was communicated to the Association "for their consideration" but it is not mentioned when this was done. 25 30

The legal position with regard to the power of the Court to enlarge the time for appeal is to be found in a number of judgments of this Court to which reference will be made. The relevant rule from which this power emanates is rule 3 of the Supreme Court (Revisional Jurisdiction) Appeal Rules, 1964 which provides that— 35

"The provisions of Order 35 of the Civil Procedure Rules relating to appeals shall apply, mutatis mutandis, to an

appeal from a decision of a Judge or Judges exercising revisional jurisdiction under sub-s. (2) of s.11 of the Law”.

By r. 2 of that Order,

5 “subject and without prejudice to the power of the Court of Appeal under Order 57, r. 2”,

the time for bringing an appeal may be enlarged; and by the latter rule,

10 “a Court or Judge shall have power to enlarge..... the time appointed by these Rules..... for..... taking any proceeding..... although the application for the same is not made until after the expiration of the time appointed or allowed”.

The overriding principle is that this power is a matter of discretion (see *Loizou v. Konteatis* (1968) 1 C.L.R. 291 at p. 15 293); and 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. 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 20 be so accepted depends again on the facts of the particular case (see *Hadjimichael v. Karamichael & Others* (1967) 1 C.L.R. 61). 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 25 the discretion of the Court should be exercised in such an application (see *Pavlou & Another v. Cacoyannis* (1963) 2 C.L.R. 405), which was followed in the *Konteatis* case (*supra*).

In *Kourtis & Another v. Iasonides* (1972) 1 C.L.R. 56, it was stated “The more appropriate course in the circumstances was 30 for the appellants to apply before the expiration of the time within which to appeal for an order enlarging such time”.

In *Branco Salvage Ltd. v. The Republic* (1967) 3 C.L.R. 213, a Revisional Jurisdiction case decided by the Full Bench of this Court, Triantafyllides, J., as he then was, expressed the 35 view that “The discretion which does exist under the rules in question, should be exercised and can be exercised only in cases in which, according to relevant Administrative Law principles developed in Greece, time does not run against applicant

or appellant, i.e. in cases where he is prevented from filing proceedings due to force majeure". Stavrinides, J., refused the application on the ground that the delay in appealing "was not due to either force majeure or any other fact or circumstance on which under the rules the Court could exercise its discretion in applicant's favour". Vassiliades, P., dismissed the application on the ground that an application for extension of time should normally have been made before expiry of the time set by the rules. L. Loizou, J., agreed with the dismissal of the application; and finally Josephides and Hadjianastassiou, JJ., having dismissed the application left open the question whether an extension of time in revisional jurisdiction cases is granted only in cases of force majeure. 5 10

In *Georgiou (No. 3) v. The Republic* (1968) 3 C.L.R. 563 Triantafyllides, J., following the *Branco Salvage* case (*supra*), *Konteatis* case (*supra*), and *Attorney-General v. Hji Constanti* (1968) 2 C.L.R. 113, stated the following at p. 565: 15

"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". 20 25

In the *Hji Constanti* case (*supra*) the following were stated by Vassiliades, P.: "Generally speaking where the legislator sets a period of time for the taking of a step in proceedings of a judicial character, such provision must be strictly enforced. It is connected with the public interest in the finality of litigation; and it affects directly the parties' rights therein". 30

In *Edwards v. Edwards* [1968] 1 W.L.R. 149, the following were stated at page 150: 35

"Thirdly and most relevant of all to this application 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 or for an indefinite period”.

5 In *Turkish Cooperative Carob Marketing Society Ltd. v. Kiamil & Others* (1973) 1 C.L.R. 1, Triantafyllides P., delivering the judgment of the Court stated at page 7: “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”.

10 In *Weldon v. De Bathe*, 3 T.L.R. 445, at page 446, which was referred to in the *Turkish Cooperative* case (*supra*), the following were stated by Bowen, L.J.:

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

In *Georgiou v. The Republic* (1968) 1 C.L.R. 411, the majority of the Court of Appeal granted extension having held (vide pages 417–418):

20 “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
25 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
30 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
35 (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 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".

Reverting to the facts of this case in para. 5 of the affidavit in support, it is stated that "the Association failed to ask the applicants" to instruct counsel to file an appeal. There is thus failure on the part of the litigant to take appropriate steps for the filing of an appeal which as was held in the *Cacoyannis* case (*supra*) is not a sufficient ground upon which the discretion of the Court should be exercised in favour of granting extension. The applicants do not invoke "inadvertence, negligence, mistake or misunderstanding" so that the case might be brought under the principles formulated in the case of *Georghiou v. The Republic* (*supra*) and the *Hadjimichael* case (*supra*). Contrary to what happened in the *Turkish Cooperative* case (*supra*), where the judgment was made available to counsel only until about five days before the last day of the period prescribed for appealing, whereas the judgment in this case was made available on the date of its delivery. Moreover, the application for extension in the *Turkish Cooperative Society* case was made before the expiry of the time limit, while in this case 19 days after the expiry, and as was said by Sir George Jessel M.R. in *Graig v. Phillips* [1877] 7 Ch. D., 249, at p. 252: "a person who comes to ask the Court to relax provisions of the rules concerning

time must show great diligence and not unnecessary delay in doing so". Regarding the novelty of the legal point and the possibility of success of the appeal as stated in the *Turkish Cooperative* case (*supra*), the applicants should have adopted
5 the course of attaching a copy of the grounds of appeal to their application to enable the Court to assess the possibility of such success, though this point is not in this case held against the applicants in any way.

Bearing in mind the facts of this case, I have come to the
10 conclusion that I should not exercise my discretion in favour of granting the extension of time applied for as the reasons given in the affidavit relied upon by the applicants for not filing their appeals within the prescribed time are not sufficient to justify such an enlargement. The views of the Cyprus Shipping
15 Association of which the applicants are members, could be and ought to have been given within the prescribed time and if not so given, the applicants themselves could, in compliance with the relevant rules, have filed their appeal in time. If
20 for any reason the Association disagreed and they wanted to abide by the collective wish of their colleagues, there was nothing to prevent them from discontinuing such appeals. Furthermore the applicants could have applied for an enlargement of time before the expiration of the period prescribed by the Rules.

For all the above reasons these applications are dismissed
25 but in the circumstances I make no order as to costs.

*Applications dismissed.
No order as to costs.*