

1984 January 18

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

SOCRATES CHARALAMBOUS,

Applicant

v.

CHARALAMBIDES DAIRIES LTD.,

Respondent

(Civil Application No. 27/83)

Civil Procedure—Appeal—Extension of time within which to appeal—Inconvenience of Counsel—Ordinarily not a factor excusing non-compliance with time provisions for appeal—Need for finality of proceedings which is a cardinal rule of public policy aimed to ensure certainty of legal rights and uphold social order.

5

This was an application for extension of the time within which to file an appeal against a decision of the Industrial Arbitration Tribunal. The application was based on the ground that the Counsel for the applicant was confined to bed, due to illness during most but not the entire period of 21 days laid down by the Rules for raising an appeal.

10

Held, that after the effluxion of the time limited for appeal rights accruing from litigation vest finally in a party; that that finality must not be disturbed except in the face of cogent reasons that finality of proceedings is a cardinal rule of public policy aimed to ensure certainty of legal rights and uphold social order that procedural rules establishing time limits for the pursuit of litigation, are designed to protect rights vesting in litigation that these rules must, in the absence of strong reasons justifying departure, be adhered to, strictly; that inconvenience of Counsel is not ordinarily a factor excusing non-compliance with time provisions for appeal; accordingly the application must fail.

15

20

Application dismissed

Cases referred to:

Pavlou and Another v. Cacoyiannis and Others (1963) 2 C.L.R. 405 at p.406:

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

Lambert v. Mainland Market [1977] 2 All E.R. 826 at p. 833: 5

Turkish Co-operative Carob Marketing Society Ltd. v. Kiamil and Another (1973) 1 C.L.R. 1.

Application.

Application for the extension of time within which to file an appeal against a decision of the Industrial Arbitration Tribunal. 10

V. Hadjivassiliou, for the applicant.

M. Spanos with M. Spanos (Miss), for the respondents.

Cur. adv. vult.

PIKIS J.: This is an application for extension of the time envisaged by the Rules, in order to enable the applicant to file an appeal against a decision of the Industrial Arbitration Tribunal given on 30.3.83. The relevant Rules, the Industrial Arbitration Tribunal Rules, 1968, lay down that application for the statement of a case must be made to the Industrial Tribunal within 21 days from the date judgment was given (rule 17(1)). 15 20

An appeal lies to the Supreme Court by way of case stated but on legal grounds only. The Rules confer discretion on the tribunal - r.12(1) - to enlarge at its discretion the time limited by the Rules for the initiation of proceedings. An application to the tribunal, by the applicant, for enlargement of time to make possible the filing of an appeal in the manner envisaged by the Rules, was refused. The present proceedings were taken in the aftermath of such refusal. 25

The legal basis of the application is far from clear on the face of the proceedings. Obviously, it is not an application to review the discretion of the tribunal. It is not an appeal from its decision refusing extension of time. In the course of the address of counsel for the applicant, it emerged that the application primarily rests on the provisions of Ord. 35, r.19, not cited in the application. It confers, in appropriate circumstances, 30 33

discretion upon the Supreme Court to extend the time for filing an appeal. And an extension may be granted notwithstanding the prior refusal of the trial Court to extend the time for taking an appeal.

5 Counsel for the respondents disputed the applicability of Ord. 35, r. 19 in respect of proceedings before the tribunal. In his submission, a matter connected with proceedings before the tribunal, can only be raised before the Supreme Court by way of case stated and, then, only on points of law.

10 The Rules governing proceedings before the tribunal seem to be exhaustive and prima facie appear to regulate every facet of litigation, including the circumstances under which an appeal may be taken. If this is a correct appreciation of their effect, no matter can be raised before the Supreme Court except by way
15 of case stated, which is not the position before us and, then, only on questions of law. Whereupon these proceedings would appear to be ill founded and misconceived. Moreover, it is doubtful whether the exercise of discretion by the tribunal, with regard to the enlargement of time can, under any circumstances,
20 qualify as a question of law. In the words of Vassiliades, J., as he then was, in *Pavlou And Another v. Cacoyiannis And Others*, (1963) 2 C.L.R. 405, 406,

“There is a fundamental distinction between a matter of law and a matter of discretion.....”.

25 We debated the issue of the applicability of Ord. 35, r. 19, to proceedings connected with decisions of the tribunal but in the end we decided it is unnecessary to express a concluded opinion for, on any view of the facts supporting the application set down in an affidavit of counsel accompanying the application, the
30 application is doomed to failure on the merits.

The reasons propounded for extension of time arise from an illness, bronchopneumonia, of the advocate of the applicant that necessitated his confinement to bed during most but not the entire period of 21 days laid down by the Rules for raising an
35 appeal. Certainly, arrangements could have been made for the preparation of the appeal by himself or some other counsel. The filing of an appeal can be accomplished without personal attendance at the Registry (rule 13(3)). Inconvenience of counsel is not ordinarily a factor excusing non compliance with

time provisions for appeal. As much was decided in *Pavlou v Tachoyiannis*, supra. The same principle was affirmed in *Loizou Konteatis* (1968) 1 C.L.R. 291. It must be added however that, in neither of the above cases did the Court aim to restrict the discretion of a Court seized with an application to extend time in a manner prohibiting examination of the intrinsic merits of the facts of the case. In *Pavlou*, supra, emphasis was laid on the need to sustain finality of proceedings (see also, observations of Megaw, L.J., in *Lambert v Mainland Market* [1977] 2 All E.R. 826, 833 (C - D)). After the effluxion of the time limited for appeal, rights accruing from litigation vest finally in a party. This finality must not be disturbed except in the face of cogent reasons. Finality of proceedings is a cardinal rule of public policy aimed to ensure certainty of legal rights and uphold social order. Procedural rules establishing time limits for the pursuit of litigation, are designed to fledge rights vesting in litigation. These rules must, in the absence of strong reasons justifying departure, be adhered to, strictly (see, *The Turkish Co-operative Carob Marketing Society Ltd v Lutfi Kiamil And Another* (1973) 1 C.L.R. 1).

In our judgment, the application must be dismissed with costs. Order accordingly.

Application dismissed with costs.