

SUPREME COURT OF SEYCHELLES

Reportable

MC34/2024

In the matter of –

ROSEBELLE (PTY) LTD
(rep. by Joel Camille)

APPLICANT

Versus

MARIA REMOTO
(rep. by Wilby Lucas)

RESPONDENT

Neutral Citation: *Rosebelle (Pty) Ltd v Remoto (MC34 of 2024)* [2025] (04th April 2025)
Before: A. Madeleine, J
Summary: Application for extension of time – Rule 5 Courts Act (Appeal Rules) - Supreme Court has discretion to extend time to file notice of appeal and memorandum of appeal as is reasonable in the circumstances on sufficient grounds
Heard: Affidavit and Written Submissions
Delivered: 4th April 2025

ORDER

Application is dismissed.

JUDGMENT

A. MADELEINE, J

Introduction

- [1] This Ruling arises from the application of Rosebelle (Pty) Ltd – the Applicant herein – for the following order –

“an order to grant leave to the Applicant to file its Notice of Appeal out of time and for its appeal to be heard accordingly”.

Applicant's Affidavit

- [2] The application is made by way of notice of motion supported by the Affidavit of Jean-Pierre Morin, a director of Rosebelle (Pty) Ltd sworn on 28th June 2024.
- [3] The Applicant's Affidavit show that on 21st May 2024, the Employment Tribunal delivered a judgment against the Applicant declaring that the termination of the Respondent's employment was unlawful and that the sum of Rs. 221,755.78 should be paid to the Respondent as employment benefits claimed. At the time of filing the present application on 28th June 2024, the Respondent had not yet received a copy of the Judgment of the Employment Tribunal. Its counsel received a copy of the computation made by the Tribunal relating to the employment benefits by email on the said date. On the same date, the Applicant filed its Notice of Appeal against the said judgment. A copy of email from the Employment Tribunal attaching the computation of benefits are produced in the affidavit.
- [4] Further, the Applicant could not finalize its appeal within the prescribed time limit (which would have been on or before the 10 June 2024) because neither the Applicant nor its counsel have been served with a copy of the Judgment. Their counsel was on sick leave immediately after the date of judgment for a period of two weeks and this has greatly affected their ability to meet with him to discuss and prepare the appeal before 10th June 2024. A copy of email attaching a copy of the sick leave certificate of Counsel are produced in the affidavit.
- [5] The Applicant is desirous of appealing the Judgment of the Employment Tribunal as per the notice of appeal filed. There are good causes to allow the filing of the appeal out of time. The fact that the Applicant could not meet with their counsel in view that he was indisposed through illness provides good cause for leave to be granted. The Applicant has been prevented from acting within the time limit for filing of the appeal. There is no inordinate delay in making the current application

and it will be in the interest of justice for the court to exercise its discretion to grant leave to file the notice of appeal out of time.

- [6] The application is strenuously opposed by the Respondent in her Affidavit in reply made on 26 July 2024. The grounds of opposition are as follows.

Respondent's Affidavit

- [7] The Judgment of the Employment Tribunal was delivered on 21st May 2024 in the presence of the Applicant's Counsel. Counsel had full knowledge of the Judgment and its contents. The Tribunal also advised that they had to appeal within 14 days. Further, the Applicant's statement that its Counsel was on sick leave and precluded from filing the notice of appeal within the prescribed time limit is feeble and devoid of merits. Applicant's counsel was only on sick leave for 3 days from 27th to 30th May 2024 while the deadline for filing the notice of appeal was on 10th June 2024. There was ample time for filing the notice of appeal and therefore there is no good cause for entertaining the appeal out of time. The application is an attempt to seriously deprive the Respondent of the fruit of the judgment and should be dismissed.

- [8] The Respondent also states that *"Since the appeal may take some time to dispose of, I invite the Court to make an order in my favour for a sum of 10,000/-Rs. allocated to me for maintenance."*

Submissions

Applicant's Submissions

- [9] The appeal was heard by way of written submissions duly filed by both sides. The Court notes that there was delay in filing the written submissions on both sides. Submissions on behalf of the Applicant were filed on 5th November 2024. Submissions on behalf of the Respondent were filed on 27th January 2025 in view of change of counsel on behalf of Respondent following the illness and passing of previous counsel.

- [10] The Applicant relied on the case of *Jean- louis v. Rosette SCA15/2010* to submit that an appeal out of time may only be granted where the Appellant has shown to the court that there is good cause to allow the appeal and that the delay is not caused by the acts or omissions of the Appellant or the Appellant's counsel. It is further submitted that the reasons given for not filing the notice of appeal timely are reasonable. The Applicant also relied on the case of *Bodco v. Herminie (2001) SLR 254* to submit that an extension of time can be granted where it does not relate to laches on the part of the petitioner or his representative. The fact that the Applicant could not meet up with his Attorney within the time limit allowed for the appeal because he was indisposed through illness, provides the Applicant with good cause as the Applicant has been prevented from acting within the time limit. The Applicant referred the Court to the case of *Farm AG v. Barclays Bank SSC 36/2000* to submit that the Court has unfettered discretion in matters of delay and extension of time for appeal, and will exercise discretion for the purpose of doing justice to the aggrieved having regards to the particular facts of the case. Since the delay involved is not inordinate, it is in the interest of justice that the court grants leave for the appeal out of time.

Respondent's Submissions

- [11] The Respondent submitted that an extension of time for appealing a Judgment should only be allowed on reasonable justification and for good cause. There is no reasonable justification for allowing the extension of time in the present application as the Applicant neglected without prudence to obtain a copy of the Judgment. The email communication between the Applicant and the Employment Tribunal is dated 28th June 2024, over 38 days after delivery of the Judgment. In exercising its discretion to serve the ends of justice, the court should consider that the Respondent has waited for 3 years for the judgment and that in the event that this application is granted the Applicant will have to wait further for the fruit of her judgment. The application should be dismissed.

Law and Analysis

- [12] Based on the respective affidavits and submissions of the parties, the issues to be determined are whether there is good cause for the court to exercise its discretion to extend the time for filing the appeal outside the prescribed time limit.
- [13] Appeals from decisions of the Employment Tribunal are governed by the Courts Act (Appeal Rules) as applicable to appeals from the Magistrates Court.¹ According to the Appeal Rules, a notice of appeal has to be delivered to the presiding officer of the Tribunal which made the decision within 14 days from the date of the decision appealed against.² Whereupon, the notice of the appeal is served on the Respondent³, and the record of appeal is prepared and served on the Appellant⁴. If the Appellant wishes to proceed with the appeal, he or she shall deliver a memorandum of appeal to the presiding officer of the Tribunal, within 14 days of receipt of a copy of the record.⁵
- [14] The time prescribed for, inter alia, delivering the notice of appeal or the memorandum of appeal may be extended by the Supreme Court under Rule 5 on application made by way of motion and “*such extension of time as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient.*”
- [15] Thus, it is within the Court’s discretion to extend the time by whatever period it considers reasonable in the circumstances and on any ground(s), it considers sufficient.
- [16] The Seychelles jurisprudence on extension of time in relation to appeals or as often referred to as ‘appeals out of time’ establish that the following factors are to be taken into consideration by court in exercising its discretion. These include the length of the delay, reasons for the delay, degree of prejudice to the defendant and whether the applicant has an arguable case on appeal: *Parcou v. Parcou SCA 32/1994*, *Germain v R (2007) SLR 25*, *Jean-Louis v Rosette SCA 15/2010*, *Gregoire’s Company Limited v*

¹ See Rules 3(1) and 27

² Rule 6(1) and (2)

³ Rule 6(5)

⁴ Rules 7 and 10

⁵ Rule 11

AG & Anor (SCA MA 12/2024) [2025] (31st January 2025). The intention of the Applicant and diligence of counsel are also relevant factors: *Parcou v Parcou SCA 32/1994*, *Germain v R (2007) SLR 25*, *Jean-Louis v Rosette SCA 15/2010*. The overall circumstances must, in other words, show good cause to justify the failure to comply with the prescribed time limit: *Aglae v Attorney General (2011) SLR 44*.

- [17] Counsel for the Applicant referred the Court to the case of *Morel & Anor v Dawn Dew Farm (Pty) Ltd*⁶ an appeal against the Supreme Court's decision not to grant the Appellants leave to file a notice of appeal. In that case, the Supreme Court had decided that not having a copy of the Judgment within the prescribed delay of 14 days was not a reason not to file a Notice of Appeal. The Court of Appeal held as follows –

“10. We also wish to point out that the Appellants concentrated their submissions entirely on the issue of not getting a copy of the Judgment in time which incidentally was only 22 days out of time. They could have availed of Rule 5 of the said Appeal Rules which provides:

“Any party desiring an extension of the time prescribed for taking any step may apply to the Supreme Court by motion and such extension as is reasonable in the circumstances may be granted on any ground which the Supreme Court considers sufficient.”

11. It is possible that the Court might not have thought it “sufficient reason” not to file a notice of appeal because one did not get a copy of the judgment. It might be sufficient reason for not filing the grounds of appeal but not the notice. In any case we may be restricted in terms of second guessing the Supreme Court when they have the discretion of making a decision on what may be termed reasonable. (See Verlaque v Government of Seychelles SCA 8/2000: The Court of Appeal will not interfere with the discretion of a court unless there was an error of law, the discretion was made without proper appreciation of the facts, the decision was so unreasonable that it was erroneous, or it was made unjudicially.)

12. The Appellants could have also argued under the general principles in consideration of the exercise of the court's discretion. These considerations would include the fact that the delay was not ordinate, that leave to appeal would not prejudice the Respondent, that the chances of the appeal succeeding were great, etc (See Jean-Louis v Rosette SCA 15/2010, Farm AG v Barclays Bank SC 36/2000 and Bodco v Herminie (2001) SLR 254 on what is good cause to grant leave to appeal out of time). This, they did not do and

⁶ SCA8/2012 delivered on 14th August 2014

the court is bound to rule only on the arguments they raised. (Emphasis added)

- [18] On a question of procedure, the Court of Appeal in *Gregoire's Company Limited* (supra) considered that the Applicant's "[...] *application for leave to file an appeal from the Supreme Court outside the prescribed time limit*" was not in accordance with rule 26 of the Seychelles Court of Appeal Rules, 2023 (which deals with applications for extensions of time), therefore irregular. The Court of Appeal per Robinson JA explained that –

"It is important to understand that an application for extension of time under rule 26 is not merely a formality. The Court is not simply exercising case management discretion in relation to an existing appeal. The exercise of discretion to extend the time to file the notice of appeal is a matter of material import as it grants the Court a jurisdiction it would not otherwise have."

(Emphasis added)

- [19] In the present application, the notice of motion seeks an order to grant leave to the Applicant to file its notice of appeal out of time and for its appeal to be heard accordingly. Rule 5 of the Appeal Rules provides that the time limit prescribed may be extended by the Supreme Court. Following the decision in *Gregoire's Company* (supra) the relief sought in the notice of motion is not in accordance with rule 5 of the Appeal Rules and is irregular.
- [20] Despite this irregularity, which goes to the root of this Court's jurisdiction to grant the relief sought, I proceed to consider whether the application discloses sufficient grounds for the Court to exercise its discretion to extend the time limit for the appeal.
- [21] It is noted that the application is made after the time limit prescribed for filing the notice of appeal has lapsed. If Court were to exercise the jurisdiction conferred under rule 5, it would have to extend time that has already lapsed. In my view, although the case of *Morel* (supra) determined that an Applicant who has not

obtained a copy of Judgment has the option of making an application for the extension of time for filing the notice of appeal, it makes good sense that such applications must be made before the time limit lapsed. Not having a copy of the Judgment does not prevent one from filing the notice of appeal. The grounds of appeal are only required to be filed within 14 days of receiving the records.

[22] At the time of filing, the application was outside the prescribed time limit by at least 14 days excluding Saturdays, Sundays and public holidays. At first glance, this time limit may not appear inordinate. As already stated above, not having a copy of the Judgment is not a bar from filing just a notice of appeal and thus not sufficient to excuse the delay. The other reason for the delay is Counsel having been indisposed. Medical certificate produced in the Applicant's affidavit show that from 27th to 30th May 2024 its Counsel was on medical leave. I note that the Applicant's averment that Counsel was on sick leave for two weeks to be unsubstantiated. I also consider that it is uncontroverted that Counsel was present at the delivery of the Judgment before the Employment Tribunal on 21st May 2024. Thus, the reasons for not filing a notice of appeal from delivery of judgment up to 27th May and from 3rd to 10th June 2024 are unexplained.

[23] Even if the Court were to overlook this delay on account that Counsel for the Applicant had indeed been indisposed on some days during the time when a notice of appeal should have been filed, the Court cannot consider the Applicant's prospects of success on the merits of the appeal as proposed grounds of appeal have not been produced in the Applicant's Affidavit. I do consider that the Applicant is basing itself on the fact that a copy of the judgment was not provided to enable it to prepare its notice of appeal, but I also consider that besides an exchange of emails dated 28th June 2024, the Applicant has failed to show the steps taken by it to obtain a copy of the Judgment prior to the said date. The emails show that there were two attachments including the computation of benefits. Only the computation of benefits has been disclosed to the Court.

[24] Furthermore, the application overlooks the degree of prejudice on the Respondent if the delay is overlooked.

[25] Based on all the above, the application is dismissed.

Signed, dated and delivered at Ile Du Port, Mahe on 4th April, 2025.


A. Madeleine, J

