

ROBERT GOH -v- AUSTIN YAM

High Court of Solomon Islands

(Muria J.)

Civil Case No. 154 of 1989

Hearing: 30 January 1992

Judgment: 31 January 1992

J. Corrin for the Plaintiff

A. Nori for the Defendant

MURIA J. This is an application by the defendant for leave to appeal out of time against the order of 9 August 1991.

Under section 11(2)(f) of the Court of Appeal Act 1978 leave of the Judge of the Court of Appeal is required before appeal can be brought against any interlocutory order or interlocutory judgment made by a judge of the High Court. The application for leave to appeal must be made within 14 days from the date of the order or judgment as required by Rule 10(2) of the Court of Appeal Rules 1983.

In this case the interlocutory judgment sought to be appealed against was made on 9 August 1991 and as such the application for leave to appeal should have been filed on or before 23 August 1991. The defendant did not file the application for leave until 2 October 1991 which is almost three months from the date of the interlocutory judgment.

This application seeks an extension of time to file the application for leave to appeal. The power to grant such extension is provided for under section 19(b) of the Act. However, before a judge can exercise that power, the applicant would have to show two factors. First, he must show substantial reasons for the delay and, secondly he must also show that there is some legal merit on the grounds of appeal. Whether extension of time is to be granted or not is a matter entirely in the discretion of the Court and it is not granted as a matter of course. The Court may grant the extension if the applicant can satisfy the Court of the two factors mentioned above.

In this case the delay was said to have been caused mainly by the inaction of the then applicant's solicitor and subsequently absence from the country of his present

solicitor. It is an unfortunate situation for the defendant to have his defence to the plaintiff's action struck out because of his solicitor's failure to take the necessary steps as required by the order of the Court and again to find himself out of time to seek leave to appeal against the interlocutory judgement of the Court. Normally such failures can hardly be substantial reasons justifying the delay, especially where the applicant is professionally represented.

This application in relation to an interlocutory proceedings and it is on this basis that I will exercise the Court's discretion and grant the application. The defendant is granted an extension of time within which to lodge his application for leave to appeal. He has 7 days to do that if he has not done so yet.

Costs of this application must be paid by the defendant.

**(G.J.B. Muria)**

**JUDGE**