

ATTORNEY GENERAL -v- WILSON WONG

High Court of Solomon Islands

(Muria CJ.)

Civil Case No. 134 of 1991

Hearing: 19 May 1994

Ruling: 19 May 1994

Mr P. Afeau for Applicant

F. Waleilia for the Respondent

MURIA CJ: This is an application for leave to file Notice of Appeal outside the time limit as required by the Court of Appeal Rules.

Judgement was given on 14 January 1994 and Mr. Afeau was present at that occasion to receive judgement. However, it is said that copy of the judgement was not made available until mid February 1994.

Mr. afeau conceded however that when Mr. Charles Ashley (the officer dealing with the matter in the Attorney General's office) resumed duty on 7 February 1994 he discussed the question of whether or not to appeal against the High Court's decision with Mr. Ashley and the Hon. Attorney General. It was decided during that discussion that an appeal should be filed against the decision of the High Court.

According to Mr. Afeau the main reason for appealing was to have the Court of Appeal reconsider the issue of malicious prosecution which the High Court had already dealt with. This, Counsel said, was because the High Court decision would have a far wide effect on the work of the police in the investigation of crimes.

Mr. Waleilia objected to the application on the basis that what the applicant is doing is simply to have the Court of Appeal reconsider the question of malicious prosecution. This Mr. Waleilia said was not good public policy.

However, Mr. Waleilia argued that should the appellant be given extension of the time file his Notice of Appeal, then he seeks leave also to file Notice of Cross-Appeal against the High Court's finding on liability and the assessment of damages.

Rule 10(1) of the Court of Appeal Rules 1983 spells out the time for appealing against a decision of the High Court. It says:

"(1) Except where otherwise provided in any Act every notice of appeal shall, subject to paragraph (3), be filed within thirty days of the decision complained of, calculated from the date upon which the judgment or order of the court below was signed, entered or otherwise perfected."

In this case there can be no doubt that the decision complained of was given on 14/1/94. The question really is when was it signed entered or otherwise perfected?

Ord. 43 of High Court (Civil Procedure) Rules 1964 provides for the entry of judgement.

Rule 3 of Order 43 says -

"3. Where any judgement is pronounced by the Court, the entry of the judgement is pronounced, unless the Court shall otherwise order, and the judgment shall take effect from that date: Provided that by special leave of the Court a judgment may be ante-dated or post-dated."

It would appear that the date on which a judgement of the Court is effective is that date when it is pronounced. But as Daly CJ said in **Liliau -v- Trading Company (Solomons) Ltd** (1983) SILR 40, that Rule 3 must be read in the context of the other Rules in Order 43.

In the course of his judgement, Daly CJ cited and relied on the decision of the English Court of Appeal in **Harrisons's Settlement** [1985] 1 ALL ER 185 and in particular the judgement of Jenkins LJ at page 188 A where the learned law Lord said:

"Few judgments are reversed and it would be unfortunate if once the words of a judgment were pronounced there were no locus poenitentiae. The appellants make a nominal concession to meet this difficulty by saying that the judge retains seisin of the matter so long as the parties are before him, but that, once the parties have left the court and the court and the next case has been called, it is too late because the parties may have already acted on his oral judgment. Our answer to this is that, although the judgment dates from the day of its pronouncement, it is not perfected until drawn up, passed and entered, and anyone who acts on it before-hand must take such risk as there is that it will not be drawn in the form in which it was heard to be pronounced."

Daly CJ accepted the position as stated by Jenkins LJ and said that the same situation obtains in Solomon Islands. With respect, I agree as in very many cases judgements are drawn up, approved and signed before they are entered. When that is done, the judgement is said to be perfected. In terms of Rule 10(1) of the Court of Appeal Rules 1983, the thirty days period begins to run as from the date upon which the judgement is perfected.

Although, in this case, the judgement was pronounced on 14 January 1994, Mr. Afeau said that it was not perfected until sometime later than 14 January 1994. We have not been told when exactly that was done. But if the judgement was perfected on the same date that it was delivered, then when the appellant lodged his Notice of Appeal on 25 February 1994, he was clearly out of time. On the other hand if the judgement was signed or perfected in the middle of February 1994 which was about the time the appellant received the copy judgement then the Notice of Appeal filed on 25 February 1994 must be accepted as filed within time.

The material available to the Court on this application is insufficient to make a firm conclusion that the judgement was not perfected on 14 January 1994, the date on which it was delivered but that it was perfected at a later date. It is incumbent on the applicant to satisfy the Court on evidence, whether by affidavit or otherwise, that the judgement complained of in this case was not perfected on the 14 January 1994.

On balance I am satisfied that the Notice of Appeal lodged on 25 February 1994 was out of time.

Now the question is whether the Court should grant extension of time to file Notice of Appeal.

The Respondent in this case obtained judgement against the Appellant in a claim for malicious prosecution. As I have said earlier, unless the Court is satisfied otherwise, the judgement in this case must be taken to have been entered against the appellant on 14 January 1994 with damages to be assessed against the appellant.

Mr. Afeau urged that the judgement has a wide implications on the police in their work on criminal investigation and prosecution of persons accused of committing criminal offences. Hence counsel said, the matter ought to be further determined by the Court of Appeal.

It is settled principle that in an application for extension of time to appeal, the applicant must show substantial grounds for the delay in bringing the appeal within the time allowed by law or that it is in the interest of justice that he should be permitted to institute and pursue his appeal. Unless that is done, the application cannot succeed. This is

particularly moreso since at the expiration of the time fixed by law, a party really has lost his right to appeal.

In this case Mr. Afeau has urged the Court to allow the appellant to file his appeal out of time as the question of law now sought to be determined by the Court is one of considerable importance to the work of the police in particular on criminal investigation and prosecution of persons accused of committing offences. Mr. Afeau argued that this is the first time that such a case came before the High Court here and a question of law of general importance, not only to the police but to all those who are dealing with law and order is likely to arise.

I feel that there is some merit in Mr. Afeau's argument. It is for that reason and taking all the circumstances into account, I feel the appellant should be permitted to file and pursue his appeal in the interest of justice.

I exercise the Courts discretion and grant the appellant's application. I further exercise the Court's discretion and grant an extension of the time to the Respondent to file his Notice of Cross-Appeal in this matter.

Each party to bear his own costs of this application.

(G.J.B. Muria)
CHIEF JUSTICE