

COURT OF APPEAL

35,

27th February, 1991

Before: The Bailiff, Single Judge.

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| <u>Between:</u> | Yani Haryanto | <u>Appellant</u> |
| <u>And:</u> | E.D. & F. Man (Sugar) Ltd. | <u>Respondent</u> |

Application by the Appellant for an Extension of Time, under Rule 16 of the Court of Appeal (Civil) (Jersey) Rules, 1964, within which to file with the Judicial Greffier the items listed in Rule 8(1) of the said Rules.

Advocate M.H. Clapham for the Appellant.
Advocate J.G. White for the Respondent.

JUDGMENT

BAILIFF: It is quite right for Mr. White to draw attention to the fact that this is the third occasion when procedures clearly laid down by this Court have not been adhered to by the Appellant. It is also quite true that responsibility for the failure to file the Appellant's case has been quite openly accepted by his counsel, Mr. Clapham, who has been very frank and has given his reasons, which were that he believed, as a deliberate policy, that, within the time period allowed him (which was not due to expire until the 23th of December, 1990), the Court of Appeal in England would have sat and given its decision.

One has to look at the background to this case before I go any further.

The English judgment, which was registered here, and about which there was much discussion before Mr. Commissioner Hamon last August, is based on an award by an arbitrator that was upheld by the High Court. That award stems from a settlement which is impugned by the Plaintiff. He has impugned it in Indonesia and succeeded there twice. But the validity of that settlement has been upheld twice in the English jurisdiction. Therefore a good deal will hinge on whether the House of Lords will give leave or not and if it does, whether Mr. Haryanto will succeed there; but that is a long way in the future.

Nevertheless, I have to apply the Rules as they have evolved in this Court. The first point I want to make is this: the Rules are here to be followed, but I think there is much in what Mr. Clapham says that the Court should understand the pressures under which advocates, as barristers, work in this jurisdiction. I have therefore, whilst making allowances for that pressure, to be satisfied that the reasons for failing to lodge the Appellant's case within the time allowed are acceptable to me. Mr. White has conceded that the actual time was short, but he has pointed to the three failures I have already mentioned of the Appellant in respect of observing our procedural Rules.

On the other hand I have to ask myself what prejudice would be caused to the Respondent if I were to extend time. The Respondent says, through Mr. White, that he would be prevented from obtaining the money which is his following the registration of the judgment. That may well be so, but presumably it is earning interest and if he does eventually obtain it, that interest will accrue to him.

Is time of the essence in this appeal? I do not think it is, because I have no doubt that Mr. Clapham, if the appeal were to be heard, and I were to extend time, would argue, just as he argued before Mr. Commissioner Hamon, that one should wait upon events in the Court of Appeal, - he can no longer do that - so he might argue (perhaps with

less success because the time scale would be much longer) that one should wait upon events in the House of Lords.

I have come to the conclusion that I do not think that the prejudice to the Respondent outweighs the injustice which the Plaintiff would suffer if I did not grant this application. Therefore I am prepared to grant the application but for a period of fourteen days from today's date. I want to be addressed on the question of costs....

I think that it is right that the Respondent should have his taxed costs of and incidental to this hearing.

Authorities

Sloan (née Amy) -v- Sloan (4th September, 1990) Jersey Unreported.
Le Vannais -v- Island Development Committee (30th June, 1989) Jersey
Unreported.
Hickman (née Norton) -v- Hickman (8th July, 1988) Jersey Unreported;
(1987-88) JLR 602 C.A.
Taylor -v- Hayter (7th January, 1987) Jersey Unreported; (1987-88)
JLR 65 C.A.
Taylor -v- Hayter (1st September, 1986) Jersey Unreported.
Gallie Ltd -v- Davies & Anor. (14th April, 1986) Jersey Unreported.
Waring -v- Holderness (9th December, 1985) Jersey Unreported; (1985-
86) 2 JLR N.2 C.A.
Jersey Demolition Contractors Ltd -v- The Resources Recovery Board
(1985-86) 1 JLR 77 C.A.
Palata Investments Ltd -v- Burt and Sinfield Limited (1985) 2 All
ER 517.
C.M. Van Stillevoeldt BV -v- El Carriers Incorporated (1983) 1 All
ER 699.
Revici -v- Prentice Hall Incorporated (1969) 1 All ER 772.
Ratnam -v- Cumarasamy & Anor. (1964) 3 All ER 933.
Gatti -v- Shoosmith (1939) 3 AGER 916.
Attwood -v- Chichester (1878) 3 QB 722 C.A.