

1st September, 1986

Court of Appeal (Single Judge)  
P.L. Crill, Esq., C.B.E., Bailiff

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BETWEEN

T Appellant,

AND

H Respondent.

Advocate G.R. Boxall for the Appellant.

Advocate J.A. Clyde-Smith for the Respondent.

On the 4th June, 1985, the Greffier Substitute varied the maintenance and other matters which had been agreed between the parties arising from an earlier divorce, it is not necessary for me to set out what he did, but is sufficient for me to say that there was an appeal lodged against that order which was heard in two stages by the Royal Court before Mr. Commissioner Dorey and of course two Jurats, I am not concerned with the reason as to why it was held in two stages, it doesn't affect my decision today. They gave judgement on the 21st January, which had the effect of considerably increasing the award which the Greffier Substitute had made, and the Order he made on the 4th of June, a notice of Appeal was issued on the 13th of February. On the 18th of February, time began to run against the Appellant who had four months within which to furnish his reasons and his grounds of appeal. He did not do so, mainly because we were told by his counsel, that in 1985 he had planned to go on an extensive sailing voyage to the West Indies and left on the 1st of November, which means that he was not present for the hearing of his appeal at the Royal Court, which I may say, is unusual, and it would have been better if he had put his holiday off and attended to his duties to his family, but he didn't do so. He therefore was not present then, and of course he wasn't present on the 21st of January to hear the Judgement given by the Court on that occasion. The fact of the matter is that he hoped to return by April in order to give instructions to his counsel but he didn't do so, he was held up by bad weather. We think that he treated the Court and his counsel cavalierly, and he should have taken far greater care to keep in touch with this Island, as Mr. Clyde-Smith rightly said, we are not living (he didn't say this, but I am now saying it) in the middle ages, and it should be possible, even from the West Indies with communications as they are, to give clear instructions, but having said that there are certain principles which I think I am bound by, and which I must consider in coming to my decision, and before I do so, I think I would like to

suggest to counsel that it would be better in future if applications for extensions of time are indeed supported by affidavits of the parties themselves, it makes the Court's task easier, and indeed counsel's task easier.

Now the cases which are cited by counsel, were in fact reviewed only recently, by the Deputy Bailiff in the Judgement he gave, (Mr. Boxall will remember it), in the Judgement he gave between A.C. Gallie -v- Davis and Walker, on the 14th of April, of this year, and he set out, if I may say so, very succinctly, on page 7 of that Judgement the matters to which a single Judge has to apply his mind, and he reconciled the various cases which had been put before him, and as I say, on page 7 the learned Deputy Bailiff says :-

(1) The object of the rule is to give the Court a discretion to extend time with a view to the avoidance of injustice to the parties. It is a very general power in the Court to extend time whenever the Court thinks it just to do so.

(2) Excessive delay may induce the Court in its discretion to refuse to extend the time. This principle, enunciated by Jessel M.R. in Eaton -v- Storer is effectively the same as was applied by Sir Frank Ereaut in Jersey Demolition Contractors -v- The Resources Recovery Board.

(3) There must be a sufficient explanation of the delay to justify an extension of time. In Revici -v- Prentice Hall Incorporated not a single ground or excuse was put forward to explain the delay. This was described by Lord Denning M.R., as "important". Edmund Davies L.J. added that if there is a non-compliance that is something which has to be explained away. That is consistent with an exercise of discretion to extend time with a view to the avoidance of injustice. An appellant who gives no explanation can hardly expect discretion to be exercised in his favour, to the extent that Bramwell L.J. may have said something different in Atwood -v- Chichester, that case is to be distinguished.

The crux of the matter, therefore, is that I have to decide whether, in all the circumstances of the particular case, and in the exercise of my discretion, it is just to enlarge the time as requested. As Lord Guest said in Ratnam -v- Cumarasamy there must be some material on which the Court can exercise its discretion; and it is entirely a matter of discretion whether or not the material advanced is sufficient to justify an extension of time.

Now although I have criticized the appellant for his rather cavalier attitude to the Court and leaving his advocate without instructions, he did intend to come back in April, and had he come back in April, having regard to the expedition with which he was able when he eventually arrived, to instruct his counsel and the way in which counsel, as a result of those instructions, was able on the 6th of August, to put in his summons, with indeed the case which is/would be seeking to advance before the Court of Appeal, there has not been a very long delay involved, one takes it, if one wants to from April to August, that is another four months, but two months of those, as explained

by the absence of the appellant from the Island, I repeat, it was of course for his own purposes and he could have been more courteous to inform his counsel of what was going on, but having looked at the circumstances I consider that the delays are not such as to be a long delay, they are relatively short which have taken place, and there is some material which I can exercise my discretion, and and having regard to the reasons advanced by you, Mr. Boxall, notwithstanding my strictures on your client, which I hope he has listened to, I am prepared to exercise my discretion and to grant you leave accordingly, which I do. It follows therefore, that the respondent will have one month from today within which to file her reply. The costs are in the cause.

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