THE YOUNG MEN'S BUDDHIST ASSOCIATION
v.
AZEEZ AND ANOTHER

SUPREME COURT
G. P. S. DE SILVA, C. J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 100/94
C.A. NO. 643/81F
D.C. KURUNEGALA NO. 4508/L

Computation of time – Judgment delivered on a day other than the day originally fixed – Civil strife – Knowledge of date from newspaper report – Lex non cogit ad impossibilia – Actus curiae neminem gravabit.

Where the judgment to appeal from which leave is sought was delivered on a day other than that originally fixed owing to civil strife, knowledge of the date of delivery of judgment cannot be attributed to the exact date of a newspaper report of the judgment. Reasonable time for verification of the report should be allowed. In view of all the facts, including conditions of civil unrest which prevailed in the country and the fact that the judgment was delivered on a date other than the date which the court had fixed for delivery of judgment no lapse, fault or delay

can be attributed to the plaintiff – appellant in filing the application for leave to appeal late. The principle *'lex non cogit ad impossibilia'* would apply in addition to the principle *'actus curiae neminem gravabit'*.

Cases referred to

1. *State Graphite Corporation v. Fernando* (1982) 2 Sri L. R. 590.
2. *United Plantation Workers' Union v. Superintendent Craig Estate* 74 N. L. R. 499.

PRELIMINARY objection to entertainment of Appeal.
A. K. Premadasa, P.C. with *S. C. B. Walgampaya* for appellant.
Faisz Musthapha, P.C. with *G. L. Geethananda* for respondent.

Cur. adv. vult.

August 21, 1995.

KULATUNGA, J.

This is an appeal to this Court with leave granted by the Court of Appeal. At the hearing of the appeal Mr. Musthapha, President's Counsel for the defendants-respondents raised a preliminary objection that the order of the Court of Appeal granting leave to appeal is invalid and without jurisdiction in that the application for leave to appeal was out of time. He submitted that the application had been made after the expiry of the time for appeal.

In terms of Rule 21(1) of the Supreme Court Rules 1978 then in force, an application for leave to appeal to the Supreme Court had to be made within 14 days of the judgment from which leave to appeal was sought.

The plaintiff-appellant sued the defendants-respondents for a declaration of title to the premises in suit and for ejectment and damages. The defendants-respondents claimed that they were carrying on business in partnership under the name and style of "Abdulla & Brothers"; and that they were tenants of the premises. It was their position that the tenancy existed from 1940; rent receipts had always been issued by the plaintiff-appellant in the name of the partnership; hence there was a tenancy with the partners for the time being.

The District Judge held that in the absence of clear evidence, there was no tenancy, particularly for the reason that there cannot be a contract of tenancy with a partnership, which is not a legal person. Accordingly, the Court gave judgment for the plaintiff-appellant. This was reversed in appeal. The Court of Appeal held that the contract of tenancy was with the individual partners, for the time being. The Court allowed the appeal, set aside the judgment of the trial Court and dismissed the plaintiff's action.

The appeal had been argued on 02.06.89 and judgment was reserved for 04.08.89 on which day, it was not delivered due to conditions of civil unrest. An Emergency had been proclaimed on 20.06.89. It is not seriously argued that the period that followed was not subject to disruption of normal civil life. In this background the judgment was delivered only on 25.08.89, in the absence of parties or their Counsel. The Court of Appeal record does not show that the date of the delivery of judgment was notified to the parties or their registered Attorneys, though it is possible that it might have appeared in the list for that day.

The plaintiff-appellant (the Y.M.B.A., Kurunegala) states that it became aware of the judgment from a report in the "Ceylon Daily News" of 06/10/89 whereupon they took steps to seek leave to appeal to the Supreme Court. The application for leave was filed on 25.10.89.

Mr. Musthapha submits that even if time for leave to appeal has to be computed from 06.10.89 when the plaintiff-respondent became aware of the judgment, admittedly, the application for leave had been filed after 14 days from this date as well in that it has been filed on 25.10.89 when it should have been filed on 20.10.89. Hence the said application was invalid and the Court of Appeal had no jurisdiction to entertain it.

The Court of Appeal considered the objection and allowed leave to appeal on the basis that the delay was "not unreasonable". Mr. Musthapha submits that the Court adopted a wrong principle in entertaining the application, which was in breach of the mandatory time limit for appeal. He relied on *State Graphite Corporation v.*

Fernando [1] as authority for the right of a party to object to an appeal on the ground that the order of the Court of Appeal granting leave to appeal is invalid. In that case this Court rejected the objection for the reason that leave had been validly granted.

Mr. A. K. Premadasa, President's Counsel for the defendants-respondents submitted that once the Court of Appeal grants leave to appeal, this Court cannot hold that such leave was wrongly granted. In any event, he submitted that in view of the unsettled conditions in the country, the Court of Appeal was justified in excusing the delay. In view of the decision in the State Graphite Corporation case (*Supra*) I cannot agree with the first submission made by Counsel. But the second submission made by him deserves consideration.

There is no doubt that the period of 14 days prescribed by Rule 21(1) is mandatory and time would normally run from the date of the judgment i.e. 25.08.89. Any delay has to be justified by the application of the principle *"lex non cogit ad impossibilia"*. The principle *"actus curiae neminem gravabit"* also appears to be applicable. I am of the view that in the instant case time began to run after the plaintiff-appellant became aware of the judgment, on seeing a news report.

In *United Plantation Workers' Union v. Superintendent Craig Estates* [2] it was held that the day on which the order of a Labour Tribunal is made (after giving the parties notice of the particular day on which its order or decision will be made) will determine the commencement of the appealable period of 14 days specified in s. 31D(3) of the Industrial Disputes Act. In the absence of such notice, no time will run against a party adversely affected by the order till notice of such order is given to him by the Secretary of the Tribunal, as required by Regulation 33 of the Industrial Disputes Regulations 1958; and an appeal (filed within 14 days of such notice given by the Secretary) will nevertheless be heard in accordance with the principle *"actus curiae neminem gravabit"*.

Mr. Musthapha submits that even assuming that in this case time runs from 06.10.89 when the plaintiff-appellant became aware of the judgment from a newspaper report, the application for leave is out of

time as it was filed after 14 days from that date. I do not think that in such a case we can be so strict in considering the excuse for the delay, as in the case of an appeal from a Labour Tribunal order where the aggrieved party officially receives a copy of the order from the Secretary of the tribunal.

Mr. Musthapha relies on the fact that the plaintiff-appellant had knowledge of the judgment on 06.10.89 from a newspaper report. But a newspaper report is not authentic. The plaintiff-appellant had to come down to Colombo and verify it. He also had to obtain a certified copy of the judgment. This has to be done on a working day. It is observed that the 7th and the 8th of October, 1989 immediately following the day on which the plaintiff-appellant read about the judgment in a newspaper, are a Saturday and a Sunday. Those days must be excluded, in considering the excuse for the delay.

I am of the view that taking into consideration all the facts, including conditions of civil unrest which prevailed in the country and the fact that the judgment was delivered on a date other than the date which the Court had fixed for delivery of judgment, no lapse, fault or delay can be attributed to the plaintiff-appellant in filling the application for leave to appeal on 25.10.95; hence the principle *"lex non cogit ad impossibilia"* would apply, in addition to the principle *"actus curiae neminem gravabit".*

For the foregoing reasons, the preliminary objection is rejected and the appeal is set down for hearing on the merits. Costs will abide the final decision of this case.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Preliminary objections rejected.
Appeal set down for hearing.