

**FREETOWN COLD STORAGE CO v REFELL**

CA

**COURT OF APPEAL FOR SIERRA LEONE**, Miscellaneous Appeal 8 of 1979, Hon Mr Justice S B Davies PJ, Hon Mr Justice S C Warne JA, Hon Mr Justice M S Turay JA, 19 June 1979

[1] **Civil Procedure – Extension of time to appeal – Whether application for extension of time ‘made’ within time limit – ‘Made’ not to be interpreted too literally – Application was ‘made’ when notice of application filed – Court of Appeal Rules r 11(4)**

[2] **Words and Phrases – ‘Made’ – Court of Appeal Rules r 11(4)**

The High Court delivered judgment in favour of the respondent in an unfair dismissal case on 1 February 1979. The applicant filed a notice of motion on 1 June 1979, seeking an extension of time in which to appeal from the High Court’s decision. The issue was whether the application for extension had been “made” within the time limit required by rule 11(4) of the Court of Appeal Rules, which stated that no application could be “made after the expiration of one month from the expiration of the time prescribed within which an appeal may be brought” (3 months). The respondent argued that the application itself had to be made within the one month period and that the filing of the notice seeking an application for extension on 1 June meant that the application was made out of time.

**Held, per Beccles Davies JA, granting the extension of time:**

1. To pay too much attention to the literal meaning of the word ‘made’ would not achieve the purpose of the rule. A liberal construction was to be given to the word ‘made’ in order to accord it its true meaning. The making of the application includes the filing. In other words the application is ‘made’ when the notice of motion is filed. *Rousou (A Bankrupt) (Trustee) v Rousou* [1955] 3 All ER 486 applied.

**Cases referred to**

*Rousou (A Bankrupt) (Trustee) v Rousou* [1955] 3 All ER 486

**Legislation referred to**

*Court of Appeal Rules r 11(4)*

**Application**

This was an application to the Court of Appeal for an extension of time within which to appeal from a judgment delivered by the High Court on 1 February 1979 in favour of the respondent, Ignatius Guilford Refell who was awarded damages for unlawful dismissal. The facts appear sufficiently in the following judgment.

*Mr J H Smythe for the applicant.*

*Mr M R O Garber for the respondent.*

**BECCLES DAVIES JA:** This is an application for an extension of time within which to appeal to this court from a final judgment delivered in the High Court on 1<sup>st</sup> February 1979.

The rule governing the application is rule 11(4) of the rules of this court. It provides:

“no application for enlargement of time in which to appeal shall be made after the expiration of one month from the expiration of the time prescribed within which an



appeal may be brought. Every such application shall be supported by an affidavit setting forth good and sufficient reasons for the application and by Grounds of Appeal which prima facie show good cause for leave to be granted. ..."

The judgment from which an extension of time to appeal against was sought was delivered on February 1<sup>st</sup> 1979. The notice of motion by which the extension is being sought was filed on June 1<sup>st</sup> 1979. Mr Smythe submitted that the application was made within the one month allowed by rule 11. Mr Garber for the respondent contended that it was out of time as it had been 'made' within the one month period. It was out of date of the filing of the notice of motion that mattered. The application was to be 'made' and it could not have been made before June 4<sup>th</sup> that is, two clear days from June 1<sup>st</sup>. In the interpretation of statutory rules, unless a contrary intention appears, 'one month' means 'one calendar month' and it is reckoned from the day immediately following the happening of a particular event. The last day for making the application in this case would be the 1<sup>st</sup> of June 1979. I now turn to answer the question: was the application made within one month after the expiration of three months the judgment sought to be appealed against being final? I would answer the question on the affirmative. For as the court said in *Rousou (A Bankrupt) (Trustee) v Rousou* [1955] 3 All ER 486 at page 499:

"One must not pay too much attention to the literal meaning of the word 'made'."

To pay too much attention to the literal meaning of the word 'made' would not achieve the purpose of the rule. If one took Mr. Garber's view, then the last day for filing the application (so that it could be 'made' within the one month period), would be four days to the end of the month. Transposed to the instant case, it would mean that Mr. Smythe had to file the notice of motion not later than the 29<sup>th</sup> May for it to be 'made' on June 1<sup>st</sup>, the last day. That with respect could not be the intention of the framers of the rule. If they had intended that they would have said so. My view is that a liberal construction is to be given to the word 'made' in that rule in order to accord it its true meaning. As I see it, the making of the application includes the filing. In other words the application is 'made' when the notice of motion is filed.

Mr Garber's next submission was that if the application was in time the affidavits in support does not show any merit at all.

The rule requires that an applicant's affidavit must set forth good and sufficient reasons for the application and grounds of appeal which prima facie show good cause for leave to be granted. The expression 'good and sufficient reasons' is relative and would vary from case to case, but must be such as to move the court to exercise its discretion in favour of an applicant in a particular set of circumstances. The affidavit states that the notice of appeal had been drawn up since March 6<sup>th</sup> and counsel for the applicant forgot about it until his clients enquired as to its progress. It was then that he realized that it had not been filed. The file containing the appeal had been erroneously put away with other files that had been disposed of and the proposed appeal involved an important point of law for the determination of this court.

The main ground of appeal seems to be ground 4 which complains that the trial judge applied wrong principles of law in considering the meaning of "unlawful dismissal."

I think that this is a proper case for this court to exercise its discretion in the applicant's favour and grant them the extension of time they now seek.

This court therefore makes the following orders:

1. Notice of appeal to be filed within seven days of today's date.
2. Stay of execution of the judgment.
3. Costs of the action in the High Court be taxed and paid to the respondent's solicitor upon his personal undertaking to refund the same if the appeal is successful.



4. The applicant to deposit the whole of the amount awarded the respondent into court, to be refunded to the applicant in the event of the appeal succeeding.

5. Costs of this application assessed at Le100 to be paid to the respondent's solicitor.

Reported by Anthony P Kinnear and Victoria Jamina