

No. 717

J A M A I C A

IN THE COURT OF APPEAL

R.M.C.A. NO. 92/63

BEFORE: The Hon. Mr. Justice Henriques (Presiding)
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Moody (Acting)

JANE BENNETT .. Plaintiff/Appellant
 v.
AMOS DERWENT .. Defendant/Respondent

Mr. Tenn and
Mr. R.N.A. Henriques for the Plaintiff/Appellant

Mr. J. W. Kirlew for the Defendant/Respondent

25th November, 1965.

HENRIQUES, J. A.,

In this matter a preliminary objection has been taken that the grounds of appeal were filed out of time. It appears from the records that the Magistrate's reasons for judgment were delivered on the 30th day of May, 1963, and that the grounds of appeal were not filed until August 15, 1963. In other words, a considerable time had elapsed between the delivery of reasons for judgment and the filing of grounds of appeal.

An affidavit of the Solicitor for the appellant has been filed which sets out the reasons for the delay in filing of the grounds, and the learned Counsel on behalf of the appellant has asked the Court to exercise its discretion under Section 266 of Chapter 179 and permit these grounds to be filed out of time. It appears that notice of the filing of the reasons for judgment was received on the 4th of June, 1963, and thereupon no action whatsoever was taken by the appellant in relation to the filing of these grounds of appeal, until, as I have said, the 15th of August.

We have considered carefully the contents of that affidavit, and the contents reveal practically no reason or no good reason why the Court should exercise its discretion in favour of the appellant. In fact, it hardly supplies material at all for the Court to exercise its discretion in the matter. This Court
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has on a previous occasion laid down in the decision of Wright and Salmon reported (1964), 7 W.I.R. at page 50, the principles which this Court is minded to apply in relation to applications of this nature. In the course of the judgment of the learned President in that case, there is this passage -

" We have no doubt that the power is vested in this Court now, to grant relief to appellants who are late with the filing of their grounds of appeal, but it is a discretion which the Court has to exercise judicially and with care, to see that no injustice is done to any of the parties in the case. In the instant case, it is my view that the applicant has not shown any good cause or reason why this Court should exercise its discretion in his favour. The delay in this case has been extensive, and we have been complaining from this Bench for sometime past of the obvious carelessness with which appellants and some practitioners, counsel as well as solicitors, appear to conduct their business, and unless really good cause is shown and the Court is satisfied that every effort has been made to cure any defects that might have existed in the appeal proceedings that we should be slow to exercise that discretion."

We feel that this case falls within the principle enunciated in Wright and Salmon and therefore uphold the preliminary objection. The appeal is dismissed with costs £12.