

ATTORNEY-GENERAL and Anor v TIMOCI NACO (ABU0004 of 2006)

COURT OF APPEAL — CIVIL JURISDICTION

5 WARD P

27 February 2007

Practice and procedure — appeal — stay of execution pending appeal — failure to file submissions despite warnings from the court — want of prosecution — 1997 Constitution ss 20(1)(g), 23(1), 27(1)(a).

15 The Respondent obtained favourable judgment against Appellants. The Appellants obtained a stay of execution pending appeal and notice of appeal was filed. By Practice Direction 1/04, the Appellants had 28 days to file their submissions. No submission had been filed.

20 At the hearing in chambers, the Appellants had not filed the submissions and asked for an extension of time. The Appellants explained the reason for the failure was because the Finance Department had delayed the payment of the sum ordered by the judge. The Appellants wished to withdraw the appeal, but if the sum was not paid, they would seek to continue with the appeal. The Respondents sought to have the appeal dismissed for want of prosecution. The Respondents alleged that the brevity of the submissions showed the failure to file in time was a clear failure for no good reason to pursue the appeal.

25 **Held** — (1) The Appellants' submission on the delay was totally inadequate. No other explanation for delay was given. If the appellants admitted liability under the judgment and would withdraw if the judgment sum was paid, they could not challenge the decision.

(2) The Appellants' failure to file the submission despite the clear warning by the court showed a want of prosecution.

Appeal dismissed.

No cases referred to.

30 *N. Karan* for the Appellants

M. Dutta for the Respondent

35 **Ward P.** The Respondent in this appeal brought an action in the High Court for constitutional redress against both named Appellants. It is not clear at this stage why the second Appellant is included because the claim against him was dismissed by the learned judge.

40 In his judgment on 21 October 2005, Coventry J found that the Respondent's rights under ss 23(1) and 27(1)(a) of the Constitution had been breached. He awarded \$1000 damages and \$1250 costs. The Appellants obtained a stay of execution pending appeal and notice of appeal was filed on 11 January 2006.

45 There followed a misunderstanding about the finality of the High Court proceedings, which was resolved on 19 September 2006 in a minute by the learned trial judge. The registry advised the Appellants on 2 October 2006 that the judge's notes were ready for collection and the record was submitted to the court on 13 October 2006. It was returned for minor correction on 6 November 2006 with a direction that it was to be returned for checking no later than 24 November 2006 and it was returned and certified on that date.

50 By Practice Direction 1/04 the Appellants had 28 days to file their submissions. No submission had been filed by 22 January 2007 when the case was listed for call over and, on that date, counsel for the Appellants asked for, and were granted, a further 14 days to file submissions.

In order to ensure the appeal was ready by the next session of the court, the Respondents were given 28 days thereafter to file their submissions. If the Appellants wished to file any further written response, it was to be done within a further 7 days. The appeal was listed for hearing on 19 March 2007.

5 On 14 February 2007 the Respondent wrote to the court pointing out that the Appellants had not filed their submissions. On 19 February when the submissions had still not been filed, I directed the registry to advise the Appellants that the submissions were to be filed by 3 pm on 20 February 2007 and that failure to do so would result in the appeal being dismissed.

10 That was not done and the case was listed in chambers on 26 February 2007. On that date having heard counsel, I dismissed the appeal under s 20(1)(g) of the Court of Appeal Act. I said I would give brief written reasons and now do so.

At the hearing in chambers, counsel for the Appellants still had not filed the submissions and asked for the time to be extended to the next day, 27 February
15 2007. She explained the reason for the failure was that the Finance Department had delayed the payment of the sum ordered the judge. She told the court that she had been trying to ensure it was paid. She stated that she wished to withdraw the appeal, but if the sum was not paid, the Appellants would seek to continue with the appeal. She agreed that her written submissions would amount, at the most,
20 to four pages of typescript.

Counsel for the Respondent sought to have the appeal dismissed for want of prosecution. He pointed out that the brevity of the submissions showed the failure to file in time was a clear failure for no good reason to pursue the appeal. There is no longer sufficient time to comply with the remaining timetable before
25 19 March 2007 when the hearing has been fixed. The sum ordered was small and, if the Appellants were willing to pay the sum, it was hard to understand how they would continue to pursue the appeal.

I find that the Appellants' submission on the delay is totally inadequate. No other explanation for the delay was given. If the Appellants admit liability under
30 the judgment and would withdraw if the judgment sum is paid, I fail to understand how they can be challenging the decision. The failure to file the submission despite the clear warning by the court shows a want of prosecution and I dismiss the appeal under s 20(1)(g) with \$200 costs to the Respondent.

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Appeal dismissed.

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