

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Egom v. Mallet*, 2022 NSCA 63

**Date:** 20221019

**Docket:** CA 514324

**Registry:** Halifax

**Between:**

Emmanuel Egom

Appellant

v.

Julie Mallet

Respondent

**Judge:** Farrar J.A.

**Motion Heard:** October 19, 2022, in Halifax, Nova Scotia in Chambers

**Held:** Motion dismissed. Leave to appeal and appeal dismissed with costs to the respondent in the amount of \$1,500, inclusive of disbursements, payable forthwith.

**Counsel:** Emmanuel Egom, the appellant, self-represented  
Bryen Mooney, for the respondent

## **Decision:**

[1] Dr. Egom seeks leave of this Court to extend the time for perfecting his Notice of Application for Leave to Appeal and Appeal Notice (Appeal) from a Costs Order of Justice Pamela J. MacKeigan dated April 7, 2022. In the Costs Order, she awarded costs against the appellant in the amount of \$2,000 for his “conduct in failing to disclose and consent to orders in a timely fashion ...” The Order requiring production was issued on September 14, 2021 and is not the subject of an appeal (the Production Order). This is the second time Dr. Egom has sought an extension of time to perfect his Appeal.

[2] The Appeal was originally scheduled to be heard on October 11, 2022 at 10:00 a.m. On July 15, 2022, Dr. Egom moved to extend the time for filing his Appeal Book and Factum citing issues with obtaining a transcript of the proceeding below in time to meet the filing deadlines.

[3] On August 18, 2022, Justice Carole A. Beaton heard the motion and granted the requested relief. Beaton J.A. ordered costs in the amount of \$500 to be paid by Dr. Egom to the respondent forthwith.

[4] Justice Beaton’s Order also provided:

[...]

2. The appellant shall not be entitled to any further extensions of time in this matter [...]

[5] In telephone chambers on August 24, 2022, Dr. Egom was given the following filing deadlines:

- Appeal Book – October 14, 2022
- Appellant’s Factum – November 10, 2022.

[6] On September 26, 2022, Dr. Egom filed a further motion to extend the filing deadlines, again citing difficulties with obtaining a transcript of the proceedings before Justice MacKeigan.

[7] The motion is opposed by the respondent.

[8] I heard the motion in tele-chambers on October 19, 2022 and reserved my decision after hearing from the parties. For the reasons that follow, I would

dismiss the motion to extend the filing dates and dismiss the appeal with costs to the respondent in the amount of \$1,500, inclusive of disbursements, payable forthwith.

### **Analysis**

[9] Section 50 of the *Judicature Act*, R.S.N.S. 1989, c. 20, expressly authorizes this Court to extend time periods preliminary to an appeal. *Rule* 90.37(11)(h) allows a motions judge to extend or abridge any time prescribed by the *Rule*. *Rule* 90.43(4) authorizes perfection of an unperfected appeal or dismissal of the appeal. *Rule* 90.40(2) authorizes dismissal of an appeal which is not conducted in accordance with the *Rules*.

[10] The issue for me to determine is whether it is in the interests of justice to grant the extension requested (*Jollymore Estate v. Jollymore*, 2001 NSCA 116, at ¶24-25).

[11] What is in the interests of justice was discussed in detail by Beveridge J.A. in *Farrell v. Casavant*, 2010 NSCA 71:

[17] Given the myriad of circumstances that can surround the failure by a prospective appellant to meet the prescribed time limits to perfect an appeal, it is appropriate that the so called three-part test has since clearly morphed into being more properly considered as guidelines or factors which a Chambers judge should consider in determining the ultimate question as to whether or not justice requires that an extension of time be granted. (See *Mitchell v. Massey Estate* (1997), 163 N.S.R. (2d) 278; *Robert Hatch Retail Inc. v. Canadian Auto Workers Union Local 4624*, 1999 NSCA 107.) From these, and other cases, common factors considered to be relevant are the length of delay, the reason for the delay, the presence or absence of prejudice, the apparent strength or merit in the proposed appeal and the good faith intention of the applicant to exercise his right of appeal within the prescribed time period. The relative weight to be given to these or other factors may vary. As Hallett J.A. stressed, the test is a flexible one, uninhibited by rigid guidelines.

[12] In my view, it is not in the interests of justice to further extend the time for Dr. Egom to perfect his appeal for the following reasons:

1. In the August 18, 2022 Order, Justice Beaton, despite granting the extension, noted the appellant “has not taken sufficient steps to mitigate that delay nor the delay of the hearing of the appeal ...”.

Likewise, I am of the view that Dr. Egom has failed to take proper steps to mitigate the delay in perfecting the Appeal;

2. Perhaps most importantly, the grounds of appeal cited by Dr. Egom in his Application for Leave to Appeal and Appeal are devoid of merit. The two grounds of appeal are as follows:
  - (1) A serious misunderstanding of the evidence
  - (2) Erred in principle (the judge ordered me to produce documents that are CLEARLY irrelevant)

It appears from these grounds of appeal that the appellant is looking to challenge the Production Order which gave rise to the costs award and not the actual costs award itself. The grounds of appeal do not articulate any error in Justice MacKeigan's discretionary decision to order costs against him;

3. I am not satisfied that Dr. Egom is acting in good faith in proceeding with this appeal. This is evidenced by both his grounds of appeal which have nothing to do with the costs award and his lack of diligence in his efforts in obtaining the transcript despite Justice Beaton making it clear there would be no further extensions; and
4. In her Order of August 18, 2022, Justice Beaton ordered costs to be payable to the respondent in the amount of \$500 forthwith. The appellant has failed to comply with that Order. In the circumstances of this case, it is not in the interests of justice to grant indulgences to Dr. Egom when he has failed to comply with a previous order of this Court.

### **Conclusion**

[13] For these reasons, the motion to extend the time of perfecting the Appeal is dismissed and the Appeal is dismissed for failure to perfect it within the time limit directed by this Court.

[14] Dr. Egom is further ordered to pay costs to the respondent in the amount of \$1,500, inclusive of disbursements, payable forthwith. To eliminate confusion, this amount is in addition to the \$500 awarded by Justice Beaton. The total amount awarded to the respondent is \$2,000.

Farrar J.A.