

IN THE COURT OF APPEAL OF BELIZE AD 2018  
CIVIL APPEAL NO 3 OF 2015

**MICHAEL SLUSSER**

Appellant

v

**SANDRA BERGQUIST  
PROPRIETORS OF STRATA PLAN NO 22 LTD**

Respondents

BEFORE

The Hon Mr Justice Sir Manuel Sosa  
The Hon Mr Justice Samuel Awich  
The Hon Madam Justice Minnet Hafiz Bertram

President  
Justice of Appeal  
Justice of Appeal

H E Elrington SC, for the applicant/appellant.  
S Musa SC, for the respondents.

17 October 2018 (On Submissions in Writing).

**SIR MANUEL SOSA P**

*Introduction*

[1] This is a purported application by Michael Slusser ('the applicant') for an extension of the time within which to serve on Sandra Bergquist and Proprietors of Strata Plan No 22 Ltd ('the respondents'), a copy of the notice of appeal ('the notice') filed on his behalf at the Registry of this Court ('the Registry') on 4 February 2015.

*The material fact*

[2] The sole fact of importance before the Court is that which is presupposed by the very making of the ‘application’, viz that the ‘applicant’, by his attorney-at-law, failed to serve the respondents or any of them with a copy of the notice within the period of time prescribed by law.

*The applicable rules*

[3] The relevant legal prescription is to be found at Order II, rules (1) and (2) of the Court of Appeal Rules, which, as material for present purposes, provide as follows:

‘4.-(1) A true copy of the notice of appeal shall be served upon all parties directly affected by the appeal ...

(2) A true copy of the notice shall be served upon the respondent within seven days after the original notice has been filed.’

*Discussion*

[4] The ‘applicant’ faces an insurmountable obstacle in making the present ‘application’: his counsel has been unable to identify its legal basis for this Court.

[5] In fairness to the latter, it must be pointed out that, at the time of the filing of the notice of motion for an extension of time, the legal position was not entirely clear. He did not have the benefit of the majority decision of this Court (Sosa P and Hafiz Bertram JA, Awich JA dissenting) in *Dawson (Sharryn) v Central Bank of Belize*, Civil Appeal No 18 of 2015 (judgment delivered on 20 July 2017) nor of its later unanimous decision in *Valence (Gaeton) v Augustine (Isolene) and anor*, Civil Appeal No 5 of 2016 (judgment delivered on 6 September 2017).

[6] There is no need to quote *in extenso* from the reasoning in these two decisions of the Court which have served fully to clarify the legal position in respect of the service of copies of notices of appeal. Suffice to say that, in *Dawson*, the majority view, as set out in para [13] of my judgment, was as follows:

‘One thus comes to the inescapable conclusion that, given that there is at this time no known legal basis for Ms Dawson’s application, it must inevitably be refused ...’

and that, in *Valence*, the majority decision in *Dawson* was followed by the Court (Sosa P and Hafiz Bertram and Ducille JJA), whose members were in agreement that, in the words employed by me at para [2] -

‘[t]he applicable law has ... been correctly set out ... in ... [*Dawson*] in which case my reasons for judgment enjoyed the full concurrence of my learned Sister, Hafiz Bertram JA, and thus constituted the reasons for judgment of the majority. I see no reason to recapitulate in the present judgment. Suffice to say that the conclusion stated by me as to the existing law in my judgment in *Dawson* is that there is no known legal basis for an application for extension of the time within which to serve a notice of appeal in this jurisdiction. Accordingly, the governing legal provisions as regards service of a notice of appeal are those to be found in Order II, rule 4 of the Court of Appeal Rules ...’

#### *Disposal*

**[7]** There is, as I see it, no option open to the Court in the instant case. Given the absence of a legal basis for it, this ‘application’ must, in my opinion, be refused with costs. I would only add that such costs are to be taxed, unless agreed.

#### *Apology*

**[8]** This judgment would be incomplete without the expression by me of my most sincere apologies to the parties for the long delay in delivering it, a delay which, needless to say, I very deeply regret.

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SIR MANUEL SOSA P

## AWICH JA

Dissenting judgment.

[9] I do dissent from the judgment of the learned President Sir Manuel Sosa P, in this application. I understand that, the learned Madam Justice Hafiz-Bertram JA has concurred in the judgment. I am in the minority.

[10] The application before the Court is by the appellant, Michael Slusser, for an order of this Court extending time limited within which to serve a copy of the notice of appeal that he filed on 4 February 2015. He did not serve a copy of the notice on the respondent. Order 4 r.(2) requires the appellant to serve a copy of a notice of appeal that he has filed, on the respondent within 7(seven) days from the day the notice was filed. The appellant has applied for the order of this Court extending the time so that he may serve a copy of the notice outside the time limit.

[11] The majority has refused and dismissed the application. It held in the words of Sir Manuel Sosa P, quoting himself in ***Sharryn Dawson v Central Bank of Belize, Civ. Appeal No. 18 of 2015*** that: "...there is no known legal basis for an application for extension of the time within which to serve a notice of appeal in this jurisdiction". That is the proposition to which I respectfully dissent.

[12] My view is that, a precedent to the contrary had been long been established by this Court ( Henry P, Sir Robotham, and Georges JJA) in 1992 in ***Derek Aikman v The Belize Bank Limited, Civ. Appeal No.12 of 1992***. In the appeal case, one of the questions that the Court had to answer was, whether the Court of Appeal had power to extend the time for serving a copy of a notice of appeal on the respondent. The Court answered unequivocally that, it had the power. At the ninth paragraph of its judgment, the Court stated this:

"The first question which we had to decide was whether there was power to extend the time for serving the notice of appeal, since neither the Court of Appeal Act nor the Court of Appeal Rules, 1967, contain specific provisions for extending the time within which a notice of appeal is required to be served. There is much to be said for the approach that the significant act is the filing of a valid appeal, that service

of the notice of appeal on the respondent named in that appeal is merely a procedural step towards the hearing of the appeal, and that the time prescribed for taking that step is part of the timetable for the conduct of the litigation. On this approach the power conferred by Order II rule 3 of the Court of Appeal Rules to extend the time for performing the significant act of filing the appeal must necessarily include a concomitant power to extend the time for taking the merely procedural step of serving the notice of appeal. But in any event section 13 of the Court of Appeal Act provides as follows:

'Where in any case no special provision is contained in this or any other Act, or rules of court, with reference thereto, any jurisdiction in relation to appeals in criminal and civil cases shall be exercised by the Court as nearly as may be in conformity with the law and practice for the time being in force in England in the Court of Appeal.'

[13] To depart from the precedent in *Aikman*, this Court had an obligation to consider it squarely in the present appeal case. It had the obligation also when it decided ***Dawson v Central Bank***. In the present appeal case we did not consider the precedent in *Aikman*. When we decided *Dawson* recently on 20 July 2027, we did not mention *Aikman*. Also the judgment of the Court (Sir Manuel Sosa P, Hafiz-Bertram and Ducille JJA) in ***Valence v Augustine*** delivered on 6 September 2017, never mentioned *Aikman*.

[14] It was and is still my respectful conclusion that, this Court erred on the first occasion in *Dawson*, when by majority, it decided the question whether it had the power to extend the time for serving a copy of a notice of appeal, without having considered its earlier unanimous decision in *Aikman*. The court compounded the error when on the second occasion in *Valence*, it relied on *Dawson*. On the merit, the Court also erred when it decided *Dawson* and decided *Valence*.

[15] For the reasons I have given I hold that, this Court has jurisdiction to extend the time for serving a copy of a notice of appeal. I would order that, the application be considered on the merit.

[16] Costs of the application so far, would be considered at the hearing of the application on the merit.

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AWICH JA

**HAFIZ BERTRAM JA**

[17] I am entirely in agreement with the judgment of the learned President and have nothing else to add.

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HAFIZ BERTRAM JA