

**METATRON GLOBAL FUND & ANOR v CANADA LIFE INTERNATIONAL LIMITED**

**2023 SCJ 474**

**Record No. 123644**

**THE SUPREME COURT OF MAURITIUS**

**In the matter of:**

- 1. Metatron Global Fund**
- 2. Metatron Global Asset Managers Ltd**

**Applicants**

**v.**

**Canada Life International Limited**

**Respondent**

**In the presence of:**

**SBM Bank (Mauritius) Ltd**

**Co-respondent**

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**JUDGMENT**

In a judgment delivered on the 8<sup>th</sup> of September 2022 by the Commercial Division of the Supreme Court in plaint with summons SC/COM/PWS/000212/2020 (which will be referred to as ‘the plaint with summons’), the judge found that the calculation date of the net asset value (NAV) of shares, was as at 31<sup>st</sup> of January 2014 at a value of USD 1026.32. The applicant was ordered as a consequence to pay to the respondent (then plaintiff) the remaining amount following payment of USD 752,854.17 already effected. The learned judge also ordered costs in favour of the respondent in the amount of USD 100,000.

The present application is one for leave to appeal outside delay as the applicant is dissatisfied with the judgment of the learned judge and wishes to appeal.

As required by section 5(1) of the Court of Civil Appeal Act, the applicant lodged a notice of appeal in the Registry of the Supreme Court on the last day of the period of appeal (28<sup>th</sup> of September 2022) and furnished the required security. Service of the notice of appeal was also made on Mr. Ramdhur, the attorney of respondent during the plaint with summons on the 28<sup>th</sup> of September 2022, however he did not accept service on behalf of the respondent. These facts are not disputed. The next day, the 29<sup>th</sup> of September 2022, the applicants applied for leave to appeal outside delay and outside jurisdiction.

In the present application which is a motion paper supported by affidavits the applicants are praying for an order:

- A. Granting to the applicants, leave to appeal against the judgment, dated 8<sup>th</sup> September 2022, before the Court of Civil Appeal, outside the prescribed delay,
- B. Granting to the applicants
  - i. Leave to serve the Notice and Grounds of Appeal and all other relevant proceedings that may be required for the process of the appeal case at the respondents' address outside the jurisdiction of Mauritius, namely at Canada Life House, Isle of Man Business Park, Douglas, Isle of Man IM2 2Q.
  - ii. Specifying the mode as to which the service is to be effected upon the respondent, outside the jurisdiction of Mauritius, namely in the Isle of Man.
- C. Granting to the applicants, an extension of time of three months from the date on which an order is made under this present application to lodge the Notice of Appeal and Grounds of Appeal in the registry of the Court of Civil Appeal and/or
- D. Any such order and/or orders as the Honourable Court may deem fit and proper in the circumstances.

During the proceedings of the plaint with summons, the respondent had as its attorney Mr. Ramdhur. The applicant avers that as the proxy and agent of the respondent, Mr. Ramdhur could be served with the notice and grounds of appeal and these could be accepted by him on behalf of the respondent in Mauritius. In the affidavit of the applicant, it is averred that they

were not favoured with a copy of the power of attorney of Mr. Ramdhur which is what led the applicants not being able to lodge (this is an obvious mistake) and serve the required notice of appeal.

The respondent avers that it was Appleby (JV) Ltd which was appointed by the power of attorney as represented by Mr. Ramdhur. This was for the sole purpose of representing the respondent to give evidence on its behalf in the plaint with summons and that Appleby was not mandated to accept any process in Mauritius or elsewhere. It is also averred by the respondent that the mandate of the attorney came to an end with judgment in the plaint with summons having been delivered.

Following a query by the court, learned counsel for both parties and co-respondent agreed that the law provided for an attorney's mandate to end on the day that judgment is delivered and did not include the 21 days within which an appeal can be made. It is accepted by all learned counsel that service needs to be made on the respondent personally if he/she/it does not have a duly appointed agent within the jurisdiction and that the *cursus* is to ask for leave to serve outside jurisdiction and obviously a motion to extend the time within which the appeal can be made and to serve notice of appeal outside delay.

In the present matter there was an attempted service upon Mr. Ramdhur on the 28<sup>th</sup> of September 2022.

It is the case for the applicants that first of all Mr. Ramdhur was entitled to receive service on behalf of the respondent as the agent (it is conceded not as attorney). Secondly from the affidavit and written submissions which were provided prior to the hearing date, it was the case for the applicants that they did not have access to the power of attorney. Learned counsel for the applicant stated that a copy of this crucial power of attorney was not communicated to them. He submitted that the crux of the issue was their access to the power of attorney and the reason why they could not appeal within delay. The applicants could not appeal within delay because they had a legitimate belief that Mr. Ramdhur was the agent and proxy.

It was during the hearing when learned counsel for the applicants were queried as to whether the impugned power of attorney was in fact available from the court record of the Commercial Division in the plaint with summons, that the applicants, well-advisedly, dropped this particular contention. Learned counsel for the applicants then agreed that the issue for the

court to decide within the present application is the interpretation to be given to words used in the power of attorney.

The submissions of the applicants are that Mr. Ramdhur was mandated to represent the respondent and therefore able to accept service on its behalf in another role as the agent and not the attorney and therefore as *mandat ad litem*.

The flaw in the argument of the applicants is that if it is accepted that the mandate of Mr. Ramdhur did not end on the day of the judgment, then he should have been empowered to accept service on the 28<sup>th</sup> of September 2022 and therefore the “attempt” was a valid one and within delay.

We therefore consider the argument that, it could be inferred that Mr Ramdhur was entitled to accept service as it was related to the plaint with summons, here we reproduce the relevant extract for the power of attorney in question:

2. The principal hereby appoints the Appleby (JV) Ltd & Cie, trading under the name of Appleby, Mauritius as represented by Mr Dushyant Ramdhur, Attorney at Law and Partner at Appleby (JV) Ltd & Cie and holder of National Identity Card bearing Number ....., as its agent and proxy (Attorney) for the sole purpose of representing the Principal and to give evidence on its behalf in the Plaint With Summons bearing cause number SC/COM/PWS/000212/2020 which is listed to be heard on its Merits on the 23<sup>rd</sup> May 2022 (as such date may be amended or postponed from time to time) and in any other court hearing relating to the same matter.

Mr Sookhoo of counsel for the applicants submitted that the words “*and in any other court hearing relating to the same matter*” gave Mr. Ramdhur a mandate to include appeal proceedings. He also highlighted that the court record of the hearing of the plaint with summons before Hon. Lau Yuk Poon, reveals that it is recorded that the “plaintiff is represented by Mr. Dushyant Ramdhur, agent and proxy”. It is noteworthy that no authorities were cited by learned counsel for the applicants in support of his contention.

Learned counsel for the co-respondent, who abides by the decision of the court, submitted briefly that the power of attorney could not be interpreted as extending to include the appeal process.

We disagree with the contention of learned counsel for the applicants that Mr. D. Ramdhur was empowered to accept service of the notice of appeal. Firstly, it is Appleby which

is appointed as the agent and proxy of the respondent and it is specified as “attorney”. This indicates the intention of the respondent, that it is in the role of an attorney that the appointment is made. Mr. Ramdhur is representing Appleby and cannot be ascribed a wider role as an agent as submitted by learned counsel for applicants.

The underlined words from the power of attorney need to be read together with what immediately precedes them and not in isolation and in context the extract states:

- It is a law firm which is appointed,
- The law firm is represented by Mr. Ramdhur,
- Mr Ramdhur is described as Attorney at law,
- as the applicants’ agent and proxy (Attorney)
- to give evidence on the applicants’ behalf in the plaint with summons
- for any court hearing relating to the same matter.

Secondly, we need to closely examine the words “... as its agent and proxy (Attorney) for the sole purpose of representing the Principal and to give evidence on its behalf in the Plaint With summons...”. These are revealing inasmuch as it is clear that the intention is for an attorney at law to give evidence on behalf of the principal in a court case and hearing. This is the context.

We refer to articles 1987, 1988 and 1989 of the Code Civil which state the following:

1987. *Il (le mandat) est ou spécial et pour une affaire ou certaines affaires seulement, ou général et pour toutes les affaires du mandant.*

1988. *Le mandat conçu en termes généraux n’embrasse que les actes d’administration.*

*S’il s’agit d’aliéner ou hypothéquer, ou de quelque autre acte de propriété, le mandat doit être exprès.*

1989. *Le mandataire ne peut rien faire au-delà de ce qui est porté dans son mandat; le pouvoir de transiger ne renferme pas celui de compromettre.*

In Jurisclasseur, Notarial Répertoire Note 72<sup>1</sup> on Mandat explains the distinction between a « mandat général » and a « mandat spécial »:

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<sup>1</sup> In Jurisclasseur, Notarial Répertoire Note 72 on Mandat, Mustapha Mekki Professeur Université Paris – Nord (Paris XIII – Villetaneuse)

*L'article 1987 du Code Civil distingue le mandat spécial et le mandat général. Cette distinction renvoie à l'objet du mandat qui doit être déterminé ou déterminable. Le mandat « spécial » est celui qui porte sur un seul acte précis et généralement précisé dans la procuration (vente d'un bien déterminé à un prix...)*

Precision is required as to the extent of the mandate given to an agent and should leave no room for inference. The boundaries need to be clear as to what an agent can or cannot do. There should be no room for ambiguity.

The applicants are seeking to blur the lines as to whether Mr. Ramdhur is acting as an attorney as well as the interpretation to be given to the words "and in any other court hearing relating to the same matter".

**In Dalloz, Répertoire Pratique, 1920 Tome Huitième, Mandat, note 315**

*A. – Arrivée du terme ou de la condition.*

*315. Lorsqu'un mandat doit cesser, en vertu de la convention, après un certain délai, ou à l'arrivée d'une condition, les pouvoirs du mandataire prennent fin dès que le terme est venu ou la condition réalisée, à moins que le terme ou la condition n'aient été stipulés dans l'intérêt du mandataire (Bastia, 19 déc. 1865, D.P. 67. 1. 345). – Mais, si la procuration ne comporte ni terme, ni condition, elle vaut tant que l'opération n'est pas terminée, ou que le mandat n'est pas révoqué (V. toutefois les ordonnances des 1<sup>er</sup> mai 1816 et 9 janv. 1818, relatives aux mandataires des titulaires de rentes, R. Trésor public, p. 1148 et 1135 ; et l'instruction ministérielle du 1<sup>er</sup> mai 1819, R. eod. v<sup>o</sup>, p. 1201). – Les juges du fond ont, d'ailleurs, un pouvoir souverain pour décider, par interprétation du mandat, s'il comporte un délai et une condition, et quelle est la portée exacte de ce délai ou de cette condition (Civ. 12 flor. An 9, R. 420, 136-1<sup>o</sup> ; Req. 25 juin 934, R. 421).*

The above basis needs to be taken in the context of an application for leave to appeal outside delay. As it can be seen, the legal advisors embarked on a misguided approach.

We now turn to oft cited case of **S. Ramtohul v The State [1996 SCJ 356]** which deals with different formulation of the principles applicable when a court is considering a motion to allow an appeal to proceed outside delay. We do not propose to repeat the exercise but we agree that it is a matter of discretion which should be exercised in exceptional cases.

In the present matter it is the legal advisors who decided to adopt an approach, which we find to be wrong as concluded above, as to whom the notice should be served upon, as to

how to obtain a document (the power of attorney) and what procedure to adopt. This court cannot condone every instance whereby an incorrect choice is made by lawyers as to procedure. This especially when our court system deals with high volume of cases including cases which should never find their way to litigation before the courts and impinges on the time of the court to the detriment of other cases. Here, we find it appropriate to refer to the case of **Seecharran v R 1934 MR 4** where it was held (i) that the court could, in certain exceptional cases, allow the appeal to proceed although certain delays had not been observed but (ii) that such discretion should only be exercised when the failure so to do had been independent of any negligence on appellant's part; (iii) that appellant is bound by the laches or negligence of his attorney. The judges in **Seecharran** found the attorney to be directly responsible in the case and did not exercise their discretion. We respectfully agree and endorse this decision.

We find that in the present matter, the applicants have no sufficient justification for us to exercise our discretion. The respondent is entitled to the finality of the decision in question. We observe that the proceedings have been protracted in the matter and we find no reason to exercise our discretion. This application is without any merit and is dismissed with costs.

**R. Teelock  
Judge**

**V. Kwok Yin Siong Yen  
Judge**

**20 November 2023**

**Judgment delivered by Hon R. Teelock, Judge**

**For Applicants:** Mrs D. Ghose-Radhakkeesoon, Attorney at Law  
Mr R. Pursem SC together with Mr A. Sookoo

**For Respondent:** Mrs K. Beegoo, Attorney at Law  
Mr Y. Nazroo, together with Mr D. Mannikum, of Counsel

**For Co-Respondent:** Mr S. Mardemootoo, Attorney at Law  
Ms A. Ganoo, of Counsel