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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

GANI BERISHA

Appellant

and

LULEJETA BERISHA

Respondent

and

ATTORNEY GENERAL FOR NORTHERN IRELAND

Amicus Curiae

Mr Anthony Brennan (instructed by McHugh Lynam Solicitors) for the Applicant
Ms Melanie Rice KC (instructed by McKeown & Co Solicitors) for the Respondent
Mr Timothy Ritchie (instructed by the Attorney General) as Amicus Curiae

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Before: Keegan LCJ, Treacy LJ and Horner LJ

TREACY LJ ***(delivering the judgment of the court)***

Introduction

[1] This is an appeal of an order made by Huddleston J on 22 of January 2020 granting a Decree Nisi for the parties and to refusing recognition of a divorce in Kosovo, pursuant to powers vested in him by sections 51 and 53 of the Family Law Act 1986 ("the 1986 Act"). The appellant husband seeks to set aside the impugned order.

[2] The decision under scrutiny was made in January 2020. The notice of appeal was lodged in July 2024. This appeal is therefore out of time by several years. Whether an extension of time should be allowed is plainly the core issue in this case. Before considering this point in detail, the relevant facts will be set out, as this provides background to the appellant's and informs this court's consideration of whether, notwithstanding the gross delay, it should allow an extension of time.

[3] Mr Brennan appears for the appellant, instructed by McHugh Lynam Solicitors. The respondent wife is represented by Ms Melanie Rice KC, instructed by McKeown and Company Solicitors. At the request of Lady Chief Justice Keegan, the Attorney General is acting as amicus curiae in this case, and submissions have been provided on her behalf by Timothie J Ritchie. We are grateful to all counsel for their skilful written and oral submissions.

Factual Background

[4] The appellant, Mr Berisha, and the respondent, Ms Berisha, were married on 23 September 2003 in Pejë in the Republic of Kosovo. The appellant came to Northern Ireland before 2000 and regards himself as habitually resident here. Following their marriage, the respondent moved to Northern Ireland and the two parties began to live together in October 2003. They had two children during their marriage, both born in Belfast in 2004 and 2010 respectively.

[5] The circumstances and facts leading to the breakdown of their marriage and subsequent divorce are not in dispute. It is also clear that both the appellant and respondent consented to the divorce. The appellant's position is that the breakdown occurred from 2016 onwards, after the respondent left their matrimonial home. The respondent's position is that the marriage broke down due to the appellant's unreasonable behaviour. The parties have also been involved in other domestic and family proceedings which resulted in a non-molestation order and occupation order being granted against the appellant husband.

[6] Following the breakdown of their marriage, both parties issued petitions for divorce. The appellant, Mr Berisha, issued for divorce at the Court of First Instance in Pejë, Kosovo, in January 2019, whereas the respondent wife issued proceedings in Northern Ireland in June 2019.

History of divorce and other proceedings

[7] On 21 January 2019 the appellant issued divorce proceedings in Kosovo against the respondent. According to the appellant's issued claim for divorce in Kosovo and its translation, the address provided for the wife is 'England, 2 Killagan Bend, Belfast, ODU.' This is the address of the parties' marital home. However, the wife had not been residing there after having moved in December 2018 to 46 Ulsterville Avenue, Belfast.

[8] On 14 March 2019, the appellant made an application for a declaration of parentage in Northern Ireland. On page 2 of the FL1, he indicated that "I also wish to ask the Court for an Order confirming that the plaintiff and the respondent are already divorced." However, no further information concerning the alleged divorce was provided. The decision concerning the divorce in Kosovo had also not yet been made.

[9] The respondent issued a petition for divorce proceedings in Northern Ireland on 21 May 2019. Following this, her solicitor sent a letter to the appellant on 17 June 2019. The appellant subsequently attended with his solicitor, NA and Co Solicitors, bringing the letter of 17 June. On 2 July 2019, NA and Co Solicitors responded to the letter dated 17 June, referring to divorce proceedings that have already commenced in Kosovo. The letter requested Ms Berisha to withdraw her petition on this basis. On 5 July 2019, Ms Berisha's solicitor responded stating that their client did not accept any proceedings in Kosovo. Importantly, the letter also stated:

> "(i) Our client has no record of having received any application from the Kosovo Court, nor has she sent any paperwork back and we now question the validity under which this application was received.
>
> (ii) We note your client's divorce in Kosovo, if credible, makes no provision for any financial affairs.
>
> (iii) We also note with great interest that your client appears not to have provided any information to the Kosovo Court in relation to the ongoing Domestic proceedings and family proceedings when it states that the contact remains open to the agreement of the parties as this was not what was ordered by the Court."

[10] The appellant received the form M6, acknowledgement of service of petition for divorce on 14 June 2019. According to Rule 2.11 of the Family Proceedings Rules (Northern Ireland) 1996, the appellant had 14 days after service of the document to return the form to the Matrimonial Office and indicate his intention to defend. Rule 2.14 of the same also states the appellant had 21 days to file an answer to the petition. No answer was filed and the acknowledgement of service was not completed until 17 September 2019, which is outside the 14-day time limit set out in Rule 2.11, and Rule 2.14's 21-day time limit.

[11] The respondent filed a summons and affidavit to deem service good on Mr Berisha on 18 July 2019, a week after notice of intention to defend was to be filed. On 14 August 2019, the wife's solicitor sent a letter to the appellant's solicitor stating that the application to deem service good is listed before the Master on 23 September 2019. However, the address on the letter was incorrect, and it is not clear whether the appellant's solicitor, NA and Co Solicitors, received it.

[12] NA and Co Solicitors forwarded the wife's solicitor a copy of the original Kosovo court document on 5 September 2019. This email was responded to the following day, with Ms Berisha's solicitor indicating their intention to proceed with the divorce petition. The email stated:

> "in relation to the foreign divorce proceedings – please confirm how the court papers were served on our client when both parties lived in Northern Ireland and what jurisdiction your client had to begin divorce proceedings in Kosovo when the parties have been habitually resident in Northern Ireland for several years."

The email concludes that "our client has never received any court papers relating to your client's divorce."

[13] The appellant completed the acknowledgement of service through his solicitors on 17 September 2019. On the petition notice questionnaire, the appellant responded to question 1.a. stating that there are divorce proceedings before the Kosovo Basic Court in Pejë, which had commenced on 21 January 2019. The appellant also noted that the names on the petition were spelt incorrectly, an issue he later raised at the Decree Nisi hearing. At para 4, he states that he is defending the case, and he also disagrees with question 1.d. in respect of the grounds for jurisdiction, as he and the respondent are domiciled in Kosovo.

[14] On 12 December 2019, the Court of First Instance in Pejë, Kosovo, rendered a decision to dissolve the marriage between the parties. The appellant has submitted an official translation of the court decision.

[15] It is accepted by the appellant, and it is evident from the Kosovan court decision, that a temporary representative was assigned to Ms Berisha, who was living in Northern Ireland at the time. At the proceedings, the representative opposed the statement of claim, stating that he had no authority from the respondent and that he is unaware of the circumstances of the case. The court held that in those circumstances, the assessment is left to the court.

[16] According to translation of the court order, the court formulated its decision to dissolve the marriage between the parties on hearing from a witness called Azlian Berisha and the appellant, Gania Berisha. This led to the conclusion that the conjugal relations between the parties had worsened since 2016, after the respondent left the marital home. Moreover, it was accepted as fact that following the parties' separation, the Northern Ireland authorities entrusted their two children into the mother's care, with whom they live. On this basis, the Court of First Instance concluded that the marriage "has no sense and no effect to further exist." The divorce was therefore granted by the Court at First Instance in Pejë on 12 December 2019.

[17] On 24 December 2019, the respondent appealed the decision of the Court at First Instance in Pejë on the following grounds: wrong and incomplete certification of the factual state, and wrong implementation of the material right. The Court of Appeal in Kosovo dismissed the respondent's appeal as groundless on 9 November 2020. In making its finding, the court stated that since the respondent acknowledged in their appeal that "the factual matrimonial life between now litigants has been

interrupted without any reason for 18 months", the appeal was dismissed by their own admission. This is because a reason for divorce in Kosovo can include unreasonable interruption of factual cohabitation for more than one year.

The Decree Nisi hearing

[18] The decree nisi hearing took place before Huddleston J on the 22 January 2020. The appellant appeared as a personal litigant after his solicitor came off record several days prior. At the hearing, it was indicated that Mr Berisha's acknowledgement of service was defective, and the court office had thereby given him a period of time to file a correct version, which was never done. This resulted in the case being listed as undefended before Huddleston J.

[19] The appellant raised the issue that there was already a divorce order granted on 12 December 2019 by the Court in Kosovo. In reply the respondent counsel submitted that the respondent was not aware of the proceedings in Kosovo until she received papers from Mr Berisha's solicitor. The only direct correspondence that Ms Berisha had had with Kosovo was documentation received before Christmas. Moreover, the respondent raised issue with the authenticity of the documentation, which allegedly contained a number of conflicting dates and incorrect information.

[20] The judge was therefore invited to refuse to recognise the Kosovan divorce pursuant to powers invested in him by section 51 of the Family Law Act 1986. This was on the basis that Ms Berisha was ignorant of the fact that a divorce was being undertaken in Kosovo and had no participation in the proceedings. The respondent Ms Berisha attended court and gave evidence attesting to the fact that she only became aware of the Kosovan proceedings after the petition in Northern Ireland was lodged in June. Counsel also noted that Kosovo's judicial system is unique, in that it is 'relatively simple to get a divorce' and 'it is a situation where there would be no thorough judicial scrutiny.'

[21] At the hearing, the appellant, who represented himself, requested that the case be adjourned so that he might find a new solicitor. The appellant took the view that the divorce petition could not proceed in Northern Ireland, as the parties were already divorced in Kosovo. It was submitted that the respondent was informed about the Kosovan proceedings in March. It is likely Mr Berisha was referencing the declaration of parentage FL1 form. The appellant further submitted that the British Embassy could confirm the fact that Ms Berisha was informed about the proceedings in Kosovo.

[22] In response, the respondent contended that the appellant had not provided any evidence of effective service on Ms Berisha, and as such, section 51(3) of the 1986 Act was applicable, and the divorce should not be recognised pursuant to that subsection.

[23] On this basis, Huddleston J proceeded with the divorce and refused to recognise the divorce proceedings in Kosovo pursuant to section 51 of the 1986 Act.

An Order of Decree Nisi was issued. The relevant sections of the Order which are in dispute in the present case are as follows:

> "AND the Court not being satisfied as to (a) the authenticity of such documents, or (b) If the Petitioner had been aware of them the (Court) decided to refuse recognition of the documentation pursuant to the powers vested in it by Sections 51 & 53 of the Family Law Act 1956".

[24] The wording in the Order misses out the word "Court" in (b) above, and the correct year of the Family Law Act should be 1986.

[25] It should be noted that papers provided in this appeal, including the Kosovan divorce papers and the Kosovan Basic Court ruling, were not before Mr Justice Huddleston in the court proceedings. The court was also not informed that Ms Berisha had appealed the Kosovan court decision on 24 December 2019. The parties are in dispute as to whether Ms Berisha was properly informed of the Kosovan divorce proceedings prior to them taking place.

The present appeal

[26] The Notice of Appeal was initially lodged by the appellant in May 2024. A revised Notice of Appeal was then lodged by the appellant on 16 July 2024, although, under direction of the appellate court, the revised Notice should have been lodged by the 10 July 2024.

[27] The appellant has brought this appeal out of time. It is noted that a Decree Absolute has not yet been issued, and the matter of ancillary relief has not yet been determined although it is ready to proceed before the Master.

Relevant Law concerning appeals out of time

[28] The core issue to be addressed in this case is whether the Court of Appeal should exercise its discretion and allow an extension of time to hear the appeal. The appeal notice for this matter was lodged on 16 July 2024, and is, therefore, considerably out of time, given that the relevant decision being appealed was delivered on 22 January 2020.

[29] The relevant rules concerning appeals out of time are set out in the Rules of the Court of Judicature. Order 59, rule 4(1)(c) states:

> "Subject to the provisions of this rule, every notice of appeal *must* be served under rule 3(4) within the following period (calculated from the date on which the judgement

> or order of the court below is filed), that is to say … six weeks."

The court has a discretionary power to extend the time limit, by virtue of Order 59 rules 10(1) and 15 and Order 3, rule 5. Accordingly, Order 3, rule 5(1) states:

> "The court *may*, on such terms as it thinks just, extend or abridge the period within which a person is required or authorised by these Rules, or by any judgement, order or direction, to do any act in any proceedings."

[30] As the time limit in question in the present case is not enshrined in a statutory provision containing a dispensing power and is rather a time limit imposed by rules of court, this court has a discretionary power to extend time.

[31] The judgment of Lowry LCJ in *Davis v Northern Ireland Carriers* [1979] NI 19 remains the guiding authority in this area. Where, as here, the time is imposed by rules of court which embody a dispensing power, Lowry LCJ said that the court must exercise its discretion in each case, "and for that purpose the relevant principles are:

> "(1) Whether the time is sped: a Court will, where the reason is a good one, look more favourably on an application made before the time is up;
>
> (2) When the time limit has expired, the extent to which the party applying is in default;
>
> (3) The effect on the opposite party of granting the application and, in particular, whether it can be compensated by costs;
>
> (4) Whether a hearing on the merits has taken place or would be denied by refusing an extension;
>
> (5) Whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) to be made which could not otherwise be put forward; and
>
> (6) Whether the point is of general, and not merely particular, significance.
>
> To these I add the important principle:
>
> (7) That the rules of court are there to be observed."

Lowry LCJ went on to observe:

> "In this connection I could not hope to improve on what Lord Guest said in *Ratman v Cumarasamy* [1965] 1 WLR 8,12:
>
> > 'The rules of court must prima facie be obeyed, and in order to justify a court in extending time during which some step in time requires to be taken there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules, which is to provide a timetable for the conduct of litigation …'"

[32] The appellant husband had 6 weeks from 22 January 2020 to lodge his notice of appeal under Order 59 rule 4 (1)(c) of the Rules of the Court of Judicature (NI) 1980. It was only served on the respondent's solicitor on 24 June 2024 when it should have been lodged and served by 4 March 2020. The notice of appeal is out of date by four years and three months. On any showing there has been extraordinary delay by the appellant in lodging his notice of appeal.

Discussion

[33] We note that during the family law proceedings the appellant has engaged in serious litigation misconduct resulting in his eventual imprisonment.

[34] The appellant contends that he could not have been reasonably expected to lodge a challenge much earlier than he did. This argument is undermined upon consideration of the relevant chronology. The appellant was represented by NA and Co Solicitors up until the week before the Decree Nisi Hearing. No application was advanced by them from July 2019 to January 2020 to have the Decree Nisi proceedings stayed, no application was made by them to have the Kosovo divorce of 13 December 2019 recognised by the High Court and no answer or cross petition was lodged by the appellant or his solicitor during this time frame. The appellant was then assisted by Mr Brennan in his capacity as a McKenzie friend from October 2022. Applications for extension of time to appeal the decisions of Master Sweeney were brought before Mr Justice McFarland in 2022 and 2023 but no appeal or application to extend time for a notice of appeal was brought in respect of the Decree Nisi. The appellant has been legally represented by Mr McHugh and Counsel (including Mr Brennan) since 15 January 2024. From 15 January 2024 to 24 June 2024 no application was served on the respondent's solicitor in respect of an appeal relating to the Decree Nisi, however, in the intervening four years, the appellant has been able to have two applications for an

extension of time to appeal determined by Mr Justice McFarland in respect of decisions of Master Sweeney.

[35] The appellant also criticises the management of the ancillary relief proceedings as a reason why his application is over four years late. The respondent rebuts this argument by drawing to the appellate court's attention the fact that the appellant did not comply or properly engage in the ancillary relief proceedings as evidenced by the successful committal application brought against the appellant in 2022. Very importantly, the appellant was also repeatedly referred by Master Sweeney at the reviews to the fact that the Decree Nisi had been made on 22 January 2020 and not appealed and Mr Justice McFarland reiterated the same when finding the appellant in contempt of court.

[36] In his skeleton argument, the appellant states that he had no legal representation in the lower court. This is the principal ground relied upon by the applicant to justify an extension of time. However, this submission is factually incorrect. There were significant periods of time when the applicant was legally represented and had access to legal advice and still did not lodge a notice of appeal. For example, even when legally represented from January 2024 until now no application to extend time and to appeal was served until June 2024.

[37] Joe Mulholland Solicitors represented the appellant in 2018, NA and Company from July 2019 to January 2020 and from 15 January 2024 to now McHugh and Lynam Solicitors. In the intervening period between January 2020 to January 2024 the appellant had the assistance of Mr Brennan, in his capacity as a McKenzie friend, and also a third party from the University of Ulster assisting the appellant. Therefore, it cannot be credibly contended that lack of legal representation in the lower court provides any ground, let alone the 'principal' ground, justifying the court in exercising its discretion to extend time. It is notable that the lack of legal representation did not prevent the appellant from lodging a notice of appeal in January 2023 against the decision of Master Sweeney or from engaging fully in the committal proceedings in 2022 where the appellant sought an extension of time to appeal the decision of Master Sweeney of 25 April 2022.

[38] The appellant has stated that there has been no irreparable prejudice to the respondent. The respondent contends that there has been irreparable prejudice to her. We prefer the respondent's argument. The ancillary relief proceedings have been extremely protracted as a result of the appellant's litigation misconduct however, the proceedings are now at an extremely advanced stage and awaiting the final hearing. In the intervening four years, there has been a multitude of reviews before Master Sweeney because the appellant has failed to either engage properly or at all in those proceedings. The appellant has sought to delay those proceedings by failing to engage and then seeking to appeal the decision of the Master. In addition to the delay that has been caused, considerable expense will be incurred by the respondent at the conclusion of all proceedings as the respondent is legally assisted and the statutory charge is applicable in the ancillary relief proceedings. Whilst the appellant has been

condemned in costs for some of the reviews and the committal proceedings, there has been an extensive amount of work undertaken on behalf of the respondent as a result of the appellant's refusal to comply with court directions. At the hearing on 21 May 2024, the appellant did not inform the Master that this notice of appeal was going to be filed. Nor was the respondent made aware that a Notice of appeal had been lodged. It was not served on the respondent until a date in June. The respondent contends that the filing of this Notice of Appeal is simply another delay tactic which the appellant is employing to (a) increase the respondent's costs and (b) delay the ancillary relief hearing again. We accept that the ongoing delay has prejudiced and is continuing to prejudice the respondent.

[39] The appellant contends that there is a legal point of substance to be made which could not have been put forward as there was no enquiry as to the validity of the divorce in Kosovo. The respondent rebuts this contention by referring to the transcript of the Hearing on 22 January 2020. In the six months between the appellant receiving the acknowledgement of service and the Decree Nisi Hearing, the appellant failed to file an answer and cross petition seeking to have the divorce proceedings stayed. Despite this failure to comply with the Family Proceedings Rules (NI) 1996 rule 2.14, Huddleston J did hear from the appellant. At its height the respondent argues that all that the appellant filed was an acknowledgement of service and documents he purported to be from Kosovo. Those documents the respondent says contained factual inaccuracies such as the acknowledgement of service stating that both the appellant and the respondent were domiciled in Kosovo when this was not the case for the respondent and stating that the Kosovo divorce proceedings were being heard on 2 October 2019. In the appellant's statement attaching to the acknowledgement of service and dated 17 September 2019, the appellant stated that he resided at 2 Killagan Bend in Belfast and that the marriage broke down on 22 June 2019. This is inconsistent with the information provided to the Kosovo court by the appellant as the appellant stated his address as being in Kosovo, that the parties had been separated since 2016 and the address he gave for the respondent to the Kosovo court was an address that the respondent had not lived at since the summer of 2018.

[40] There was evidence before Huddleston J that the papers in the Kosovan divorce proceedings were not served on the respondent and that the wrong address for the respondent in NI was given by the appellant to the relevant Kosovan authorities. During the decree nisi hearing on 22 January 2020 the respondent contended that section 51(3) of the 1986 Act is applicable and that she was unaware of the proceedings in Kosovo. The respondent contends that the circumstances of this case are similar to *Liaw v Lee* [2016] 1 FLR 533, in which Mostyn J held that the respondent was not served or put on notice of any proceedings in Kosovo. Similarly, *Ivelva v Yates* [2014] 2 FLR 1126 illustrates that exercise of discretion to refuse recognition of an overseas divorce should be informed by a sense of basic fairness. The respondent contends that this is the central point in this appeal, as the unfairness of the manner in which the appellant had allegedly obtained the divorce in Kosovo was in dispute at the decree nisi hearing, and eventually led the High Court to refuse recognition. It is further submitted that

the appellant "effectively cheated" the respondent by failing to provide the Kosovan Court with the correct address (see *Olafisoye v Olafisoye* [2011] 2 FLR 546).

[41] The respondent submitted that the appellant did not take reasonable steps to notify her of proceedings in Kosovo. The address provided to the Kosovan Court was incorrect, and it is submitted the appellant would have known this was the case. This deprived the respondent of an opportunity to participate in the most relevant part of the proceedings and make representations as to jurisdiction. The appellant did not notify the Kosovan Court that proceedings were happening in Northern Ireland. The respondent contends that that a divorce order must be obtained fairly and that due process rights are properly observed. As noted in *Kendall v Kendall* (1977) 3 WLR 251, the principles of comity do not require the court to recognise a decree which would surely have been set aside by a foreign court if that court were apprised of the proper facts.

[42] On this basis, the respondent contends that the appeal has no merit and should therefore be dismissed, with the Order of 22 January 2020 remaining in place.

[43] The appellant argues that the legal point of substance relates to validity of overseas divorces in this jurisdiction. The respondent contends that the point that the appellant is seeking to challenge is not a general point about validity of overseas divorces but the refusal of Huddleston J to dismiss the decree nisi hearing on 22 January 2020 on the specific facts of this case. We agree with Ms Rice that this is not a general issue, and neither is it an issue addressing a wider legal point of validity of overseas divorces. The appeal centres on whether the judge was correct to refuse recognition of a divorce granted in Kosovo where the appellant had not complied with the rules under the Family Proceedings Rules (NI) 1996 and where the evidence of the respondent wife was that she had not been put on notice of the proceedings in Kosovo. Article 51(3) of the Family Law Act 1986 states that a court may refuse recognition if the divorce was obtained without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or, without a party to the marriage having been given such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given. The respondent says it is very clear from the decision of the Basic Court of Pejë that the respondent was not put on notice of the proceedings or actually involved in the proceedings until after the divorce order was made on 13 December 2024). Furthermore, the respondent solicitor's correspondence remains unanswered as of 5 September 2019 regarding how the papers were served on the respondent by the appellant and his lawyer in Kosovo.

[44] Finally, the appellant contends that there has been no hearing on the merits. Against this, the respondent contends that the point which the appellant seeks to challenge was heard by Huddleston J on 22 January 2020 and under section 51 the judge was entitled to refuse recognition for the reasons set out. The respondent further contends that there is actually no merit in this appeal as both parties clearly

want to be divorced, the ancillary relief proceedings are listed for hearing and the assets in the case are limited to the proceeds of sale of the former matrimonial home (following repossession of the former matrimonial home when the appellant surrendered the property to the mortgage company) and the appellant's business interests in car washing companies in Northern Ireland. The respondent has contended that there is property in Kosovo which the appellant has transferred into the name of his second wife. We agree with the respondent's arguments.

Conclusion

[45] Applying the principles in *Davis,* we refuse to exercise our discretion to extend time because we consider that it would not be in the interests of justice to do so.

[46] The time for appeal is sped and no application to extend the time for appeal was lodged before the expiration date of 4 March 2020. The default is one of extraordinary delay and no proper explanation has been advanced by the appellant as to why it has taken him over four years to either seek an extension of time within which to lodge a notice of appeal or to have lodged an appeal notice. This is against a background of the appellant having already sought to appeal two orders of Master Sweeney out of time in 2022 and 2023 and were McFarland J refused to extend time for appealing. The appellant was therefore no stranger to the existence of time limits and the consequences of non-compliance. Accounting for the delay is of "paramount importance" [per Lowry LCJ in Davis at page 22 letter D].

[47] We do not accept that there is a point of substance that could not have been advanced at a much earlier stage. There has been extraordinary delay which has not been properly explained or justified. We share the concern of the respondent that these appeal proceedings might be a delaying tactic being deployed for ulterior purposes. Certainly, the history of these proceedings have demonstrated the appellant's willingness to engage in litigation misconduct.

[48] Nothing has emerged during the course of this case to make us consider that the interests of justice require an extension of time applying the principles in *Davis*.

[49] For the above reasons we refuse to extend time and dismiss the application.