

HONG KONG / JUDGMENT

CHO MAN KIT v. BROADCASTING AUTHORITY

COURT

Court of First Instance

DECIDED

25 September 2007

CASE / FILE NUMBER

HCAL69/2007

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCAL 69/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST NO.
69 OF 2007

BETWEEN CHO MAN KIT Applicant and BROADCASTING AUTHORITY Respondent

Before : Hon Hartmann J in Chambers Date of Hearing : 25 September 2007 Date of Ruling : 25
September 2007

R U L I N G

AUTONUMOUT I have before me an inter partes summons filed on 17 September 2007. The respondent, the Broadcasting Authority, seeks extra time to file its evidence for use at the substantive hearing of the application for judicial review. What is sought is an extension of 21 days calculated from today. The application is opposed. AUTONUMOUT Order 53, rule 6(4) of the Rules of the High Court, states Any respondent who intends to use an affidavit at the hearing shall file it in the registry as soon as practicable and in any event unless the court otherwise directs, within 56 days after service upon him of the documents required to be served [by the applicant]. AUTONUMOUT In the present case, the respondent was under a duty to file its evidence by 20 August 2007. AUTONUMOUT Prior to that date, the solicitors representing the respondent sought an extension of time from the applicant's solicitors. An extension was agreed until 3 September 2007. Thereafter, upon a further request from the respondent's solicitors, a second extension was agreed until 17 September 2007. AUTONUMOUT Regrettably, even with those two extensions, the respondent was not in a position to file its evidence. Indeed, counsel

for the respondent informs me that the evidence is not ready today for filing. That is why a further 21 days is sought. AUTONUMOUT Counsel for the applicant accepts that there is no immediate prejudice to it caused by the delay on the part of the respondent. However, counsel relies on paragraph 1.7.3 of the Practice Directions which reads Although the maximum period allowed to the respondent for filing affidavits in reply is 56 days, that does not relieve the respondent from his obligation under Order 53, rule 6(4), to file affidavits in reply as soon as practicable. The maximum period of 56 days was fixed because the previous period of 21 days was generally regarded as unrealistically short. The period of 56 days must be strictly adhered to. Although the period may be extended, it should be clearly understood that extensions of time will only be granted in exceptional circumstances [my emphasis] AUTONUMOUT Counsel for the applicant also referred me to an earlier judgment of mine in the matter of Bui Hoai Thu v. Commissioner of Registration (unreported) HCAL 85/2006. In that judgment, I looked to the reason why promptness is integral to the judicial review process, observing that Insofar as an applicant is concerned, a failure to act promptly, and in any event within three months, constitutes of itself undue delay and an applicant who sleeps on his rights may well expect the door to judicial review to be locked against him. There are good public policy reasons for this. Judicial review provides a relatively quick and straightforward procedure for identifying and redressing public law wrongs. But it must be recognised that the procedure, dealing as it does with decisions made by public bodies in the complex business of managing our society, not only has the potential to disrupt the orderly administration of public services, but also the potential to cause hardship and in some instances prejudice to third parties, persons, for example, who may already have acted upon the decision that is challenged. It is for this reason that there is a necessity for an early notification that a public law decision is being challenged and, importantly in the present case, for an early resolution of that challenge. If applicants are obliged to act promptly, respondents for the same reason are also obliged to act promptly. AUTONUMOUT I continued in that judgment by commenting that It is not simply a question of what prejudice, if any, may accrue to an applicant. There can be occasions and I consider this to be one when the general principle of promptness must be taken into account. As I have said, an applicant who sleeps on his rights may be barred from pursuing his rights in judicial review even though his case may be meritorious. Equally, a respondent who sleeps on his rights may find himself at a disadvantage. AUTONUMOUT In the present case, counsel for the respondent has been unable to describe any circumstances causing the delay on the part of the respondent which may be described as exceptional. I am informed by counsel that the solicitors were only briefed in July to represent the respondent. I am informed that senior counsel was briefed without delay but unfortunately counsel had holiday plans and was out of Hong Kong for an extended period of time. Upon counsel s return from holiday, I am told that an affirmation in reply was drafted. This was done by 12 September, leaving 5 days before the expiration of the extended deadline. It appears, however, that the affirmation could not be settled within that period and, on the basis of counsel s submissions, a further 21 days is still required. AUTONUMOUT In blunt terms, therefore, I am told that counsel was on holiday, that being the initial cause of delay, and that the respondent itself has been unable to confirm that the affirmation drafted on its behalf is correct even though its representatives had some 5 days within which to consider the draft document.

Manifestly, these reasons do not and cannot amount to exceptional reasons. If counsel, for whatever reason, cannot fulfil his obligations under his brief within the required time limit then another counsel must be briefed. That is an everyday issue of case management. Equally, if the midnight oil has to be burnt in order to edit and approve draft documents, then that too is an everyday issue in case management. AUTONUMOUT I am therefore in a position where no exceptional reasons have been put before me by counsel; indeed, no good reasons even have been put before me. However, I must still retain a discretion whether or not to allow further time. In my judgment, it is a discretion which is to be exercised by having regard to all the circumstances. That means that, in addition to considering the general interests of promptness in the judicial review process, I must also give consideration to the dynamics of the particular case before me. AUTONUMOUT In the present case, if the Broadcasting Authority is unable to put its own evidence before the court, it will materially reduce the court's ability to give a fully rounded judgment in respect of issues of profound public importance. These are issues which go, on the one hand, to the freedom of the media to advance often controversial ideas without hindrance and, on the other hand, the obligation of the respondent to secure proper standards of both sound and television broadcasting. AUTONUMOUT In the present case, I am of the view that it is of overriding importance that the court has full evidence before it. Without that evidence, counsel for the respondent will have no foundation of any value upon which to advance his arguments and the decision of the court a decision of public importance will be the poorer for it. For this reason, I will grant a further extension. That extension will be until the close of the Registry at 4.30 p.m. on Friday, 28 September. AUTONUMOUT Although it is not part of my order, I see no reason why any further extension need be granted and I give a warning that it will not be granted unless the most exceptional reasons are put before me. In short, those representing the respondent must immediately start burning the midnight oil. AUTONUMOUT This leaves the issue of costs. Costs quite clearly must go to the applicant who has on two occasions agreed to an extension of time and who now comes before the court on the basis that a further extension, unless sanctioned by the court itself, will go against the fundamental principle of promptness. AUTONUMOUT The only issue in contention is the level at which costs are to be calculated. In my judgment, there has been mismanagement on the part of the respondent. Important issues of public law must be determined. These are issues which go to on-going good governance. As I have said earlier, there is not even a good reason, let alone an exceptional reason, for the delay. The court's refusal to sanction such delay must be expressed. Accordingly, I am of the view that costs are to be awarded to the applicant on an indemnity basis. If those costs cannot be agreed, they are to be taxed and paid forthwith upon taxation. (M.J. Hartmann) Judge of the Court of First Instance, High Court Ms Leesha Khemlani of Messrs Vidler & Co., for the Applicant Ms Florence Chan of Messrs Wilkinson & Grist, for the Respondent PAGE - 1udk 1udk &`#\$ "@AB9D HHzbr Zk_UR %i?l ZorB r7Fv, 2wx^ #gP| %i?l r7Fv Zk_U #gP| & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=58768

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/cho-man-kit-v-broadcasting-authority-2007>

Prepared on 27 October 2026 · Esheria