

Citation: 2011TCC277

Date: 20110715

Docket: 2009-301(IT)I

BETWEEN:

ADELEKE D. KESHINRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

ORDER AND REASONS FOR ORDER

[1] The Appellant seeks to have an Order for dismissal set aside pursuant to subsections 18.21(1), (2) and (3) of the *Tax Court of Canada Act*. I had ordered that his appeal be dismissed when he did not appear in Court at the scheduled continuation of the trial of October 7, 2010. The Appellant has not provided me with sufficient information to support setting aside the Order.

[2] On October 6, 2010, this matter proceeded to trial at 2:00 p.m. The Appellant had taken the witness stand and presented evidence on his own behalf. The Appellant was cross-examined for some time, and just when Respondent's counsel only had about five questions left in the cross-examination, at 4:53 p.m. the Appellant announced to the Court that he had a problem; his problem was that his twelve year old daughter had been out of school since 3:30 p.m. and he was supposed to pick her up between 2:30 and 4:30 p.m. He said he needed to leave the Court in order to pick her up, not having made any arrangements for her pick up even though his trial was scheduled to commence at 2:00 p.m. on October 6, 2010.

[3] Prior to adjourning the matter to resume the following day, October 7, 2010 commencing at 8:30 a.m. The following exchange took place:

Justice Rossiter: We will start here tomorrow morning at 8:30 a.m. You will be here at 8:30 a.m. Do you understand?

Mr. Keshinro: Yes sir.

Justice Rossiter: That's 8:30 a.m. here to start. Not 8:35 a.m. but 8:30 a.m. Are you going to be here tomorrow morning at 8:30 a.m.?

Mr. Keshinro: Yes sir. I am a school teacher.

Justice Rossiter: You can forget about school tomorrow. You're going to be here at 8:30 a.m. tomorrow morning, we are going to finish your case tomorrow morning.

Mr. Keshinro: Yes sir.

Justice Rossiter: If we don't finish it by 9:30 a.m., when this gentleman is finished here at 9:30 a.m. we are going to jump over and come back and finish it later on tomorrow. Do you understand?

Mr. Keshinro: Okay, sir.

Justice Rossiter: You can take the whole day off. You could be here the whole day.

Mr. Keshinro: I have to do that. Thank you very much.

Justice Rossiter: Is that all right with you, sir?

Mr. Torchetti: Absolutely Justice.

The Registrar: Order, please. This court is adjourned until tomorrow morning at 8:30 sharp.

Whereupon proceedings adjourned at 4:56 p.m. to be resumed on Thursday, October 7, 2010 at 8:30 a.m.

[4] On October 7, 2010 Court resumed at 8:33 a.m. The Court was advised, at the time, that the Appellant was going to be late that morning and I stated to let the record show that at 8:33 a.m. the Court was convened, the case was called and the Appellant was not present and the Appellant had apparently left a message that he would be there in about one hour. At that time, I adjourned the case to be called later in the day.

[5] At 11:03 a.m. Court was resumed, the Appellant's case was called and again, the Appellant had failed to appear. In the meantime, I caused a review of the premises to determine whether or not the Appellant was present and, as far as could be determined, the Appellant was nowhere on the premises. The Respondent made a

motion for dismissal of the Appellant's appeal under section 18.21 of the *Tax Court of Canada Act*. I heard and granted the motion dismissing the appeal for failure of the Appellant to attend the hearing as scheduled.

[6] On October 15, 2010 the Tax Court of Canada received correspondence from the Appellant which states as follows:

May I hereby plead that my Appeal which was dismissed for reasons of my absence before the Court on 7th October, 2010 be restored and listed for fresh hearing. I called the court Clarke (sic) when I realized that this was happening and came in to the court late.

Truly I was scheduled to be in Court on that day but I had to take my young son, Master Adekola Keshinro for Medical Treatment for a sudden ailment. I have attached a copy of the Physician's Note to prove this emergency.

I am desirous of prosecuting this Appeal and I fervently pray for a second chance to be heard in the ultimate interest of justice.

[7] Attached to that letter was a note from the Appletree Medical Group Inc. dated October 13, 2010 from a Dr. Robert S. Laham which said:

Re: Adeleke Dennis Keshinro
217 Stone Briar Drive
Maple, ON L6A 4A3

He was late for court last week October 07/10 due to child care responsibilities.

[8] This note does not demonstrate that the Appellant visited the doctor with his son on October 7, 2010 and that this was what prevented him from appearing in Court. The physician's letter does not make mention of a visit by the Appellant to the doctor on October 7, 2010, the date of the hearing. The Appellant asserts that he had to take his son for medical treatment on October 7, 2010 but there is nothing other than the correspondence of the Appellant to substantiate this assertion. The Appellant faxed the physician's note dated one week after the hearing of the matter and the note only states that the Appellant "was late for court last week Oct. 07/11 due to child care responsibilities".

[9] I was not particularly impressed with the Appellant and his evidence at the trial. Notwithstanding his level of education, the presentation of his appeal and his own evidence was convoluted, mixed up, lacked any organization, and it was almost impossible to follow and to get any thread of consistency to his story. At

the time of his failure to appear on October 7, 2011 the Appellant had not discharged the burden upon him as an Appellant – if anything, his evidence confirmed the assumptions of the Respondent and his appeal ought to have been dismissed in any event.

[10] The Appellant has not satisfied me that it is reasonable in all of the circumstances to have the Judgment set aside and for these reasons, I dismiss the Appellant’s application to set aside the Judgment of October 14, 2010.

Signed at Charlottetown, Prince Edward Island, this 15th day of July, 2011.

“E.P. Rossiter”

Rossiter A.C.J.

CITATION: 2011TCC277

COURT FILE NO.: 2009-301(IT)I

STYLE OF CAUSE: ADELEKE D. KESHINRO v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 6 and 7, 2010

REASONS FOR ORDER BY: The Honourable Associate
Chief Justice E.P. Rossiter

DATE OF ORDER: June 16, 2011

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada