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IN THE FIJI COURT OF APPEAL  
(At Suva)

CIVIL APPEAL NO. 3 OF 1988

BETWEEN:

SURESH SUSHIL CHANDRA CHARAN

Appellants

- and -

SUVA CITY COUNCIL

Respondent

JUDGMENT

The appellants have applied by Summons dated 11.10.88 to a judge of this Court "for an order to extend the time to apply for conditional **leave** to appeal to the Supreme Court from the decision of the Fiji Court of Appeal delivered on 19.9.88 until the Petition for re-hearing of the appeal by the Court."

The appellants had instituted action 1173/84 in the High Court. They appealed against the judgment and on 19.9.88 this Court allowed the appeal on one issue and ordered a re-hearing of the same by the High Court.

The appellants feel that this Court should have determined the issue itself instead of remitting it to the High Court. They want to persuade this Court to change its order accordingly, and in the meantime they want to have time extended for appealing to the Supreme Court.

This application is hopelessly misconceived. In fact, I regard it as frivolous and vexatious.

The first appellant who conducted the appellant's case in person is rather prone. when met with a judgment which disappoints his expectations, to seek to get the Court concerned to change it. He has already done so in this case. He made an application to a Judge of this Court "for leave to apply to the Fiji Court of Appeal for the re-hearing of appeal or vary the judgment, delivered on the 19.9.88." In a reserved judgment, Sir Moti Tikaram, J.A. dismissed that application with costs on 7.10.88. That decision stands and in those circumstances the basis of the present application is gone and it cannot succeed on the grounds stated in it. But it cannot succeed in any event.

Appeals to the Supreme Court are regulated by the Judicature decree 1988, S. 19 and the Supreme Court Appeal Rules (No. 2) 1988.

Section 19 of the Decree and Rule 9, as far as is relevant to these proceedings, provide in essence that appeals lie from this Court:-

- '(a) as of right from final decisions on any constitutional question:
- (b) as of right from final decisions in any civil proceedings where the matter in dispute is of the value of \$20,000 or upwards;
- (c) with the leave of this Court, from decisions in any civil proceedings where in the opinion of this Court the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court."

At the time when this application was filed the Supreme Court Appeal Rules 1988 were in force. ("The old Rules"). They were repealed and replaced by the Supreme Court Appeal Rules (No. 2) 1988 on 1.12.88 ("The new Rules") Rule 7 of the old rules provided as follows:-

"Notwithstanding that an appeal lies as of right in cases specified in Section 19 subsection (1) of the Judicature Decree applications in all cases shall be made to the Court for conditional leave to appeal to the Supreme Court and shall be made by motion within 21 days of the date of the decision to be appealed from, and the applicant shall under the same period of 21 days give all other parties concerned notice of his intended application."

Therefore the applicants were correct in thinking at that time <sup>that</sup> they required conditional leave to appeal regardless of whether the proposed appeal was as of right or by leave; such an application would have had to be made within 21 days of the 19.9.88. No application for conditional leave has been made at all. On the 7.10.88 when Sir Moti Tikaram J.A. refused them leave to have the matter reheard by this Court the applicants were still in time to seek conditional leave to appeal. They knew then that the purpose for which they are now seeking an extension of time no longer existed, if it ever did exist.

In my view there is no power to extend the time for appealing in the present case. The old rules provided in Rule 14 that a notice of appeal must be filed within 21 days of the grant of final leave - which is of course subsequent to the conditional leave.

Rule 25 of the old rules provides for the extension of time for filing and serving the Notice of Appeal under Rule 14.

By the time I heard this application the new rules were in force. Rule 11 is as follows:-

"Leave to appeal"

- (1) Every application for leave to appeal under section 19(2) (a) of the Judicature Decree shall be made to the Court of Appeal by notice of motion supported by an affidavit setting out the reasons why leave should be granted on the ground that the question involved in the appeal is one that, by reason of its great general or public importance or otherwise ought to be submitted to the Supreme Court.

- (2) If leave is granted pursuant to sub-rule (1) above, the Court of Appeal under the hand of the presiding judge shall issue to the applicant a certificate to that effect."

Section 19 (1)(a) (Constitutional question) obviously has no application here. So leaving aside any question of time the applicants have two possible rights of appeal:-

- "(1) As of right in a \$20,000 type matter;  
 (2) By leave in a "great general and public importance" type matter."

With regard to (1) they submit the matter is in excess of \$20,000 but have advanced no evidence to support this bold assertion. But in any event, if it was such a matter they would have an appeal as of right and by reason of Rule 23(1) must apply to the Supreme Court for any extension of time.

Rule 23(1) provides as follows:-

- "(1) Where an appeal lies as of right the appellant shall lodge his notice of appeal within forty-two days from the date of the judgment appealed against unless the Supreme Court shall enlarge the time."

That being so. I do not comment in this context on whether the judgment in question is a final judgment as this ground is not within my jurisdiction.

Rule 23 further provides:-

- "(2) Where there is no appeal as of right the appellant shall lodge his notice of appeal within forty-two days from the date on which leave to appeal or special leave to appeal is granted.  
 (3) An application for leave or application for special leave to appeal shall be filed within forty-two days from the date of the decision of the Court of Appeal.

- (4) No application for enlargement of time in which to appeal shall be made after the expiration of thirty days from the expiration of the time prescribed within which an appeal may be brought. Every application for enlargement of time shall be by motion supported by an affidavit setting forth good and substantial reasons for the application and by grounds of appeal which prima facie show good cause for leave to be granted. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal."

With regard to "great general and public importance", the appellants claim that this Court having the power to draw inferences of fact and determine issues for itself should have done so and that its failure to do so constitutes a question of great general and public importance. The meaning of that phrase in this context is well understood and quite plainly what the appellants refer to is not within it. This Court has those powers (Court of Appeal Rules 22,23) but they are not mandatory and it has its own discretion in the matter. The applicants are clearly out of time. It is only in order to dispel any sense of grievance they may feel as a result of the change in the Rules that I mention the merits.

The appellants have completely failed to furnish what the rule requires or to satisfy me of prima facie good cause for leave to appeal. That being so I would regard it as quite mischievous to grant an extension of time, or as Sir Moti Tikaram J.A. put it in his judgment already referred to:-

"to connive at what I perceive to be an abuse of the due process of the law."

Even if I had power to extend time I would not do so on the merits.

The 1st appellant then shifted his ground, as he is prone to, and said he needed an extension of time as he was not sure whether the judgment of this Court was a "final" judgment and whether the Privy Council rules applied to appeals to the Supreme Court.

This ground, especially put forward 3 months after the judgment complained of, is ludicrous.

For this purpose let me say that the judgment complained of is clearly not final. The terminology as to this in the Judicature Decree and the Supreme Court Rules is similar to that employed in the Privy Council Rules and as at present advised I would interpret it in the same way. The authorities are to the effect that leave will not be granted to appeal to the Privy Council until the matter has been finally disposed of in the Courts of the country where the matter originated. See for example Conlon v Ozolins (No. 2) 1984, 1NZ LR 510 and Attorney General v Gray 1982, 2NZ LR 22.

Here, the appellants themselves contend that something further remains to be done, it is just that they want this Court to do it and not the Court of first instance.

This application is dismissed with costs to be taxed if not agreed.

30th June, 1989

M. D. Palmer  
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Judge of Appeal