IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0011 OF 1997
(High Court Civil Action No. 38 of 1994)

BETWEEN:

HON. MAJOR GENERAL SITIVENI RABUKA
& OTHERS

APPELLANTS

-and-

RATU VILIAME DREUNIMISIMISI
& OTHERS

RESPONDENTS

Mr. K. Bulewa for the Appellants
Mr. S. Matawalu for the Respondents

Date and Place of Hearing	:	13 August 1997, Suva
Date of Delivery of Decision	:	13 August 1997

DECISION

Early in 1994 in High Court Civil Action No. HBC0038 of 1994 the seven respondents to this appeal sought declarations that their expulsion from the Soqosoqo ni Vakavulewa ni Taukei, a political party, was unlawful. It was a case of some national importance and Fatiaki J heard and determined it with admirable expedition, delivering his judgment on 12 April 1994.

Subsequently the seven respondents commenced High Court Civil Action No. HBC0523 of 1994 in which they sought damages of $300,000 for their unlawful expulsion from that party. Default judgment was entered in their favour.

In February 1997 the defendants in both those actions, including the Prime Minister, sought in the High Court leave to appeal out of time against Fatiaki J's judgment in Civil Action No. HBC0038 of 1994. Fatiaki J made an order by consent granting that leave on condition that the notice of appeal was filed within 14 days. Also by consent, he stayed further proceedings in Civil Action No. HBC0523 of 1994 pending this Court's determination of the appeal.

The defendants filed their notice of appeal on 5 March 1997. However, they then failed to comply with rule 17 of the Court of Appeal Rules which requires inter alia application to the Registrar, within 30 days of service of the notice of appeal, for the amount and nature of security for costs to be fixed.

On 24 June 1997 a summons to dismiss the appeal for non-compliance with rule 17 was issued. Subsequently on 15 July 1997 the appellants filed a notice of motion seeking an extension of time to comply with rule 17.

The summons to dismiss the appeal required the defendants to show cause why the appeal should not be dismissed. The appellants filed an affidavit in support of its application for an extension of time but not in response to the summons to show cause.

However, it did contain material relevant to that. Essentially it said that their solicitor, being a member of the Joint Parliamentary Select Committee on the Constitution and of its Legal Sub-Committee, had been too busy with the activities of the Committee and the Sub-Committee to give his attention to what needed to be done to comply with rule 17.

If the defendants had taken steps expeditiously to appeal against the High Court's judgment or, if out of time, had applied for leave to appeal soon after losing the right of appeal we might have been more inclined to regard their failure to comply with rule 17 as an isolated aberration. But they did not seek leave to appeal for nearly three years. The condition imposed by the learned judge was an indication that they must proceed expeditiously thence forward. We accept that the work of the Committee and the Sub-Committee was of national importance. However, we cannot accept that Mr. Bulewa's involvement in it excused his failure to give the appeal his proper attention and to pursue it expeditiously by taking promptly all the steps required by the Court of Appeal Rules.

In **Venkatamma v Ferrier-Watson** (Supreme Court Civil Appeal No. CBV0002 of 1992: judgment delivered on 17 November 1995) the Supreme Court said at page 3 of the typed judgment:-

> ***"After hearing counsel on the question the Court intimated that in the special circumstances the appeal would be allowed to proceed. We took into account that, surprisingly, counsel for the appellants had evidently not been fully alive to the importance of compliance with the Rules, but that this is an early case under the Rules; that questions arise of some general significance between landlords and tenants of agricultural holdings; and that there had been mistakes on both sides, as already explained. We now stress, however, that the Rules are there to be obeyed. In future***

practitioners must understand that they are on notice that non-compliance may well be fatal to an appeal; in cases not having the special combination of features present here, it is unlikely to be excused."

On 7 August 1997 Mr. Bulewa informed us that, as asserted in the affidavit sworn on 15 July 1997, there were good prospects of the respondents agreeing to "settle" their dispute with the appellants. He asked for time until 11 August to try to effect the settlement. We gave him until to-day, as the dispute has its origins in the political dealings of the parties with one another and it could have been in the national interest if a settlement were achieved which resolved political differences. However, this morning he informed us that two of the respondents had agreed to settle the dispute but one had refused to do so. Two others were dead, one seriously ill and one overseas; he had been unable to pursue settlement with them or their personal representatives. Mr. Bulewa sought a further adjournment to enable him to do so. Of most significance was the fact that one respondent was unwilling to agree to settle the dispute. We consider that the grant of a further adjournment would be likely to result only in further delay.

In all the circumstances, having regard to the history of the proceedings in the High Court and bearing in mind what the Supreme Court said in **Venkatamma**, we have decided that the proper course for us to follow now is to reject the application for further time to comply with rule 17 and to dismiss the appeal.

The application for extension of time is dismissed; the appeal is dismissed. The appellants are to pay the respondent's costs of the appeal to-date.

.....
Mr. Justice I. R. Thompson
Judge of Appeal

.....
Mr. Justice Savage
Judge of Appeal

.....
Mr. Justice J. D. Dillon
Judge of Appeal