

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABUOO59 of 2001
High Court Civil Action No. 348 of 1998

BETWEEN: JONE SIQILA

Appellant

AND: FIJI DEVELOPMENT BANK

Respondent

In chambers: Tuesday, 16 November 2001

Counsel: The appellant in person
D.Prasad for the respondent

Date of Judgment: Wednesday 21 November 2001

JUDGMENT OF TOMPKINS JA

On 25 July 2000 Shameem J gave judgment for the respondent in an action brought by the appellant in the High Court claiming damages for personal injury. The appellant has applied to this Court for an enlargement of the time to file a notice of appeal.

On 6 September 2000 the appellant, acting on his own behalf, filed a notice of appeal against that judgment and paid the appropriate filing fee. However, he did not serve a copy of the notice of appeal on the respondent until 6 August 2001. Accordingly, he did not comply with the requirements of s 16 of the Court of Appeal Act, which requires the notice of appeal to be filed and served within, in this case, six weeks of the date on which the judgment or order of the Court below was perfected.

After a series of interlocutory appearances before the Deputy Registrar relating to an application for security for costs in which the appellant was also appearing on his own behalf, the notice of appeal was, on 27 September 2001, dismissed by the Deputy Registrar "due to lapse of time". This application for leave to appeal was then filed in this Court on 17 October 2001.

In support, the appellant has filed an affidavit in which he says that at the time of filing the notice of appeal in the Court of Appeal he inquired about the service of the notice of appeal and was told that he could serve it any time within 12 months and that upon service, the Court shall be moved within 14 days to fix security for costs. It was in reliance on this information, he says, that he served the notice of appeal on 6 August 2001.

The appellant's affidavit describes in some detail his medical condition that he says results from the injuries he received in the accident. No medical evidence is

produced, but I do not consider that this evidence of his medical condition is of any particular relevance in deciding whether leave should be granted.

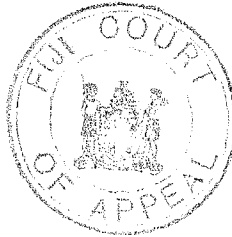
Neither the appellant's affidavit nor his submissions deal with an issue relevant to the granting of leave, namely the likelihood of the appeal succeeding. In her judgment the Judge deals at some length with the factual situation including the appellant having signed an agreement accepting payments of workers' compensation for his disabilities resulting from the injuries received in the accident. She did not accept the appellant's claim that he did not understand that the agreement was a bar to future civil proceedings against the respondent in respect of the same injury, there being evidence from a witness on behalf of the respondent to the contrary. I accept that on an appeal, this is a finding of fact from which the appellant may have difficulty in persuading the Court of Appeal to differ.

However, having considered this and other relevant factors, I am satisfied that leave should be granted. I reach that conclusion for three principal reasons. First, the appellant filed his notice of appeal within time. Leave has only become necessary because he omitted to serve the notice within time. While I doubt that he would have received the advice he said he received from the Court staff, I am prepared to accept that he may have been confused about his obligation to serve the notice within six weeks. Secondly, the appellant is acting on his own behalf. He did not have the benefit of legal advice. Thirdly, Mr Prasad for the respondent fairly

acknowledged that the respondent had not been prejudiced by the delay in serving the notice of appeal.

Result

The time for filing the notice of appeal is enlarged to 14 days from the date of this judgment. Costs are reserved to be costs in the cause.



A handwritten signature in black ink, appearing to read "Tompkins JA", written over a horizontal dotted line.

Tompkins JA