

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

CIVIL APPEAL NO. ABU 111 OF 2006
(High Court Civil Case No. HBJ10/11/16 of
2003)

BETWEEN: **TRANSPORT WORKERS UNION**

Appellant

AND : **1. ARBITRATION TRIBUNAL**
 2. AIR PACIFIC LIMITED

Respondents

Hearing: **26 June 2007**

Ruling : **28 June 2007**

Counsel: **H Nagin for appellant**
 S Sharma for first respondent/applicant
 N Barnes for second respondent.

RULING

- [1] This appeal was filed and security for costs ordered. It was paid but whether it was paid in time depends on whether the period of the Christmas vacation was excluded.
- [2] The registry took the view that it was excluded and that the payment was, therefore, in time. The second respondent challenges that interpretation and has filed notice of motion to have the appeal deemed to have been abandoned under the provisions of rule 17(2).

- [3] Following a deemed abandonment, the appellant may file a fresh notice of appeal within 21 days for an interlocutory order and 42 days in any other case. In the present case, that was not done because of the impression held by the appellants and clearly shared by the registry that the security had been paid in time.
- [4] Once that time has expired, the Court may grant leave to file outside that time.
- [5] I shall allow time but, in view of the short time available to me, I shall only give very brief reasons.
- [6] The issue of whether or not the Christmas vacation should be excluded has been the subject of conflicting rulings by this Court. The majority of earlier decisions have tended to the view that the time is excluded.
- [7] Counsel for the second respondent points to the actual terms of the Notice issued by the Chief Justice in the Gazette. It was issued under the High Court Act and it states clearly that, during the period of the vacation, the “business of the High Court will be conducted” in the manner set out.
- [8] The last paragraph reads:
- “(4) The time of the vacation shall not be reckoned in the computation of the times appointed or allowed by the High Court Rules for amending, delivery, or filing any pleadings.”
- [9] There is no similar notice for the Court of Appeal and the issue is whether these provisions apply to this Court.
- [10] I do not set out the opposing arguments of counsel although I have, of course, considered them.

- [11] I am satisfied that the words “appointed” and “allowed” in the passage set out above both relate to time limits under the High Court Rules. They are further limited to the amending, delivery or filing of pleadings.
- [12] Those terms cannot be seen as applying to any procedures required in this Court under the Court of Appeal Act or Rules. If any such dispensation is to apply to the Court of Appeal, it will need a separate order from the President of the Court.
- [13] As I have stated, the majority of rulings in the past have run counter to this decision and I acknowledge that I have advised the registry staff on a similar basis in the past. Most were done without specific reference to the limited terms of the Gazette Notice.
- [14] It is clear, therefore, that the payment was out of time and should not have been accepted by the registry. The appeal must be deemed to have been abandoned at the expiry of the time ordered for payment of security for costs. In view, however, of the circumstances, I give leave for the filing of a fresh notice of appeal out of time without any fee for the filing, if such is payable, within fourteen days of this ruling. The security already paid shall be accepted as having been paid under an Order of the Court within time for the fresh appeal and the progress of the appeal shall then follow the timetable set out in Practice Direction 1 of 2004
- [15] Whilst the present application is successful, I make no order for costs.



Gordon Ward
PRESIDENT
FIJI LAW SOCIETY

