

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

**MISC. ACTION 19 OF 2006S**  
**(High Court Action No. 593 of 1998)**

**BETWEEN:**

**ILAISA SENIMOLI**

**Applicant**

**AND:**

**MARITIME & PORTS AUTHORITY OF FIJI**

**Respondent**

**In Chambers:**

**Hon Justice Gordon Ward, President of Court of Appeal**

**Hearing:**

**Tuesday, 23<sup>rd</sup> January 2007, Suva**

**Counsel:**

**R Singh for the Applicant  
T Tuitoga and A Reddy for the Respondent**

**Date of Ruling:**

**Tuesday, 30<sup>th</sup> January 2007, Suva**

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**RULING**

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- [1] This is an application for leave to appeal out of time. The judgment from which appeal is sought was delivered by Coventry J on 21 April 2006 and sealed on 24 April 2006. It was served on the appellant's solicitor the following day.
- [2] The action itself has had a very long, if largely static, history. The writ was issued by the present applicant on 5 November 1998 and was a claim for damages of over half a million dollars for unlawful dismissal. The defence was filed in December 1998 and lists of documents exchanged in March 1999.

- [3] It appears that the next movement in the action was on 21 August 2003 when the plaintiff filed notice of change of solicitor from Jamnadas and Associates to Q B Bale and Associates. Again the action went to sleep until it was struck out by the High Court on 14 July 2005 on the ground that the delays in prosecuting the claim amounted to an abuse of process. Q B Bale and Associates was advised by the Court registry on 27 July 2005. On 25 August 2005 the action was reinstated on the plaintiff's application and was heard by Coventry J in March and April 2006.
- [4] The time for appealing expired on 5 June 2006 and the respondent filed a bill of costs on 11 July 2006. It is clear that, by 18 August 2006 when a hearing was held before the Master, the present solicitors had taken over the case from Q B Bale and Associates.
- [5] On 29 September 2006 the respondent filed and served an amended bill of costs. They were taxed on 28 November 2006 and the present solicitor was present at the costs hearing. This application for leave to appeal out of time was filed on 29 November 2006.
- [6] The applicant has filed a short affidavit in support sworn on 28 November 2006. He states that Q B Bale and Associates "did not act on my instructions to appeal the decision". No date is given for those instructions.
- [7] He continues, "I therefore picked up my documents from Q B Bale and Associates and started looking for solicitors who could act for me in the appeal. ... I had difficulty in finding solicitors who was willing to accept the instructions." Again no dates or details of the solicitors approached are given. However, he explains, "In the meantime I was doing my own research on the matter after which I approached Messrs Kohli and Singh who agreed to assist me in the appeal two weeks ago." The appearance before the Master by Mr Singh of Kohli and Singh was on 18 August

2006 - more that fourteen weeks before the affidavit was sworn. The applicant does not help his application by such careless, incorrect statements.

- [8] In Kenneth John Hart v Air Pacific Ltd; Civ App 23 of 1983, this Court adopted the principle stated in Avery v No 2 Public Service Appeal Board and others [1973] 2 NZLR 86 that, once the time for appealing has passed, the onus is on the applicant to satisfy the court that the justice of the case requires that he be given a chance to pursue his appeal. In order to reach a decision, the court will consider the length of and reason for the delay, the chances of success should the appeal proceed and the degree of prejudice to the other side if leave is granted.
- [9] The respondent has filed a detailed affidavit and comprehensive submissions. I am grateful for their industry. I have considered them and they strongly support their opposition. However, I decide this case on the basic failure of the applicant to make any attempt properly to satisfy this Court on any ground that the justice of the case favours a grant of leave. I do not accept the reasons either for the delay or for its length have been stated truthfully. There has been no attempt to explain the chances of success, apart from the bald statement that the deponent believes his grounds are meritorious, or on the prejudice, save to state that "there is no prejudice caused to the defendant by this delay".
- [10] Applicants must understand that the onus stated in Avery's case is not satisfied simply by a suggestion that they have not been well served by their lawyer or that they have had difficulty finding one. The onus is on them to file an affidavit containing sufficient detail to satisfy the court of the various matters it will need to determine.
- [11] In this case, no proper attempt has been made to supply that information or to argue the issues the courts have repeatedly stated need to be considered.

- [12] The application for leave to appeal out of time is refused. The documents filed by the respondent clearly required a considerable amount of time and research and I order the applicant shall pay costs of this application in the sum of \$500.



*Gordon Ward*

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**Justice Gordon Ward  
President  
COURT OF APPEAL, FIJI**