

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

CIVIL APPEAL NO. ABU0037 OF 2006
(High Court Civil Case No. HBC 527 of
1997)

BETWEEN: **RUPENI SILIMUANA MOMOIVALU** *Appellant*

A N D : **TELECOM FIJI LIMITED** *Respondent*

Hearing: 30 April 2007

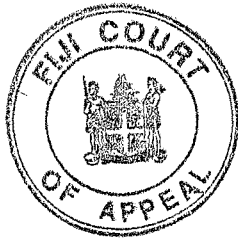
Ruling : 3 May 2007

Counsel: Applicant/appellant in person
Ms Neelta for respondent

RULING

- [1] On 3 March 2006 Winter J, in the Suva High Court, granted an application by the present respondent to strike out the plaintiffs claim for wrongful dismissal for want of prosecution. The Order was sealed on 15 March 2006 and shows that both parties were represented, the plaintiff (the present applicant) by Ms Fa and the defendant by Ms Neelta. On 20 April 2006, a notice of appeal by the present applicant was filed by a different lawyer, Mr Seru, and was served on the respondent on 27 April 2006.

- [2] No further step in the appeal was taken in accordance with rule 17(1) and so the appeal was deemed to be abandoned on 4 May 2006.
- [3] By rule 17 (2), a further notice of appeal could be filed within the time set out in that subsection but it was not done.
- [4] On 7 July 2006, a summons for leave to enlarge time for appeal was filed, and the case was listed before me on 8 August 2006. I ordered that the application had to be made to the full Court under rule 17 (3) which provides:
- “(3) Except with the leave of the Court of Appeal, no appeal may be filed after the expiration of time specified in paragraph (2)”
- [5] Notwithstanding, on 5 February 2007, the applicant filed a “Notice of intention to act in person” and fresh application for leave to appeal out of time. The affidavit in support generally blames the previous lawyers for any failures to pursue the appeal and alleges that they failed to do so because of various conflicts of interest.
- [6] It is clear that the provisions of rule 17(3) still apply and the applicant must make this application to the full Court as I ordered in July 2006. The appellant must file any submissions within 28 days and the respondent its submissions in reply within 28 days thereafter. The case will then be listed for the next call over.
- [7] This application was incorrectly brought and the applicant must pay the respondent’s costs of today in the sum of \$200.



A handwritten signature in black ink, appearing to read "Gordon Ward".

Gordon Ward
PRESIDENT