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

MISCELLANEOUS APPEAL NO. 13 OF 2007
(High Court Civil Case No. HBC 0057 of 2006)

BETWEEN: FIJI BANK AND FINANCE SECTOR EMPLOYEES UNION

1st Appellant

A N D : ROSHNI DEVI

2nd Appellant

A N D : BANK OF BARODA

1st Respondent

A N D : MINISTRY OF LABOUR, INDUSTRIAL RELATIONS & PRODUCTIVITY

2nd Respondent

Hearing: 17 and 21 May 2007
Ruling : 29 May 2007

Counsel: A Singh for applicant
W Hiuare for first respondent
S Sharma for second respondent

RULING

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[1] This is an application for leave to appeal out of time.

[2] In September 2004, the second applicant was employed by the first respondent. The terms of her employment provided that she was on probation for the first six months. She was dismissed in March 2005 and brought a claim for unfair dismissal. It appears this was not resolved and so the Union, which has a collective agreement with the Bank, took it up on her behalf. It was still not resolved and was reported as a trade dispute.

[3] By originating summons, the first respondent sought a declaration that the Union does not have locus standi to institute the trade dispute and an order that the trade dispute action is null and void.

[4] It was heard by Coventry J and, on 23 June 2006, he made the declaration, based primarily on his finding that the second applicant had not been a member of the Union, but he declined to make the order on the basis that it was not possible to ascertain exactly what was being sought. It appears that the judgment was sealed on 29 August 2006.

[5] The present summons for leave to appeal out of time was filed on 26 April 2007.

[6] In the affidavit in support, the solicitor who represented the present applicants in the High Court states that his firm was awaiting instructions from the appellants and, by the time they were received, the time to appeal had expired. He adds:

> "5. That subsequently we undertook to do research on the prospects of appeal in particular in the area of the law concerning the making of a finding on affidavit evidence and this caused further delay."

[7] He then points to the judge's findings on a matter of fact and continues:

> "8. That there was a further delay because I had to carry out a research in order to see that the appellants had good chances of success in this appeal."

[8] In applications of this nature, the court should consider the length of and reasons for the delay, the chances of success in the appeal and the possible degree of prejudice to the parties.

[9] In the present case, the delay is considerable. The time for entering an appeal is six weeks from the judgment. The judgment was sealed on 29 August 2006 and so the six weeks would have expired on 3 October 2006. The affidavit does not state when instructions to proceed with the appeal were received. However, by the time the period allowed for appeal had expired, the lawyers and the appellants had had a considerably longer time than six weeks to consider the position because more than nine weeks had already passed before the judgment was sealed. By 3 October 2006, there had been a total of more than fifteen weeks.

[10] Counsel reminded the Court that the events of 5 December 2006 when the military forcibly removed the elected government had left the country in a state of relative turmoil. He offers that as an additional reason for the delay. Of course, by that time, there had been a passage of a further eight weeks and, once the military take-over had occurred there was more than twenty more weeks before the application was eventually filed.

[11] The only reason advanced for such a delay was the need to research the case. That is not a sufficient reason. Lawyers are expected to know the law. I accept it would be unrealistic to assume knowledge of all aspects of law sufficient to preclude any need for research. On the contrary, any competent and sensible lawyer will always ensure he allows time to research the facts and law before presenting a case in court or, as in the present case, filing grounds of appeal. It is also clear that some cases may involve a novel aspect of the law which is unclear or has not been considered previously by the courts. In such cases the courts will accept the need for research and even a considerable time for research.

[12] However, this is not such a case. The grounds of appeal do not raise any novel issue and it is unrealistic to consider adequate research could not be completed in a few hours. It is certainly a totally inadequate explanation for a delay of more that forty weeks.

[13] When there is a delay of such a length and no reasonable explanation, the court need go no further. However, I note that I have considered the other aspects of the application and briefly state that the grounds of appeal do not suggest even a reasonable chance of success and that the only prejudice to the respondents should leave be given would be that they still have no finality in the action.

[14] This was a very long and unsatisfactorily explained delay and the application is refused with costs of $450.00 to the first respondent and $150 to the second respondent.

Gordon Ward
PRESIDENT