

2. In a judgment delivered 1 May 2008 Hickie JA refused Mr Rosa leave to appeal out of time. That judgment sets out in detail a history of delay by Mr Rosa in prosecuting his proceedings, much of it deliberate. We do not propose to repeat this history in this judgment, suffice to say Mr Rosa waited more than 6 months before he sought leave to appeal the decision of Pathik J, when he did so by letter. No formal application for leave to appeal has ever been made.
3. As stated by this Court in *Vimal Constructions & Prakash v Vinod Patel & Co Ltd* [2008] ABU0093 pf 2006:

“litigants should assume that leave to bring or maintain appeals or other applications where those appeals or applications are out of time will not be given unless there are clear or cogent reasons for the delay. ‘Merit’ of an appeal or proceeding, without more, will rarely justify an extension of time except where the delay is minimal and no prejudice was occasioned by the delay.”

4. No reason clear or cogent reason has been advanced for the delay in making any sort of application, as required by the Rules or even by letter, for leave to appeal. More pertinently these are all matters that have been considered by the Court of Appeal.
5. Part II of the Court of Appeal Rules, which deals with appeals in civil cases, provides under Rule 16 that notices of appeal must be filed and served, in the case of an appeal from an interlocutory order, within 21 days, and in any other case within 6 weeks.
6. Part III of the Court of Appeal Act, which deals with appeals in civil cases, contains, relevantly, sections 16, 17 & 20.
7. Section 16 provides that *“Subject to the provisions of section 17, the Court of Appeal shall not entertain any appeal made under the provisions of this Part unless the appellant has fulfilled all the conditions of appeal as prescribed by the rules of Court”*.

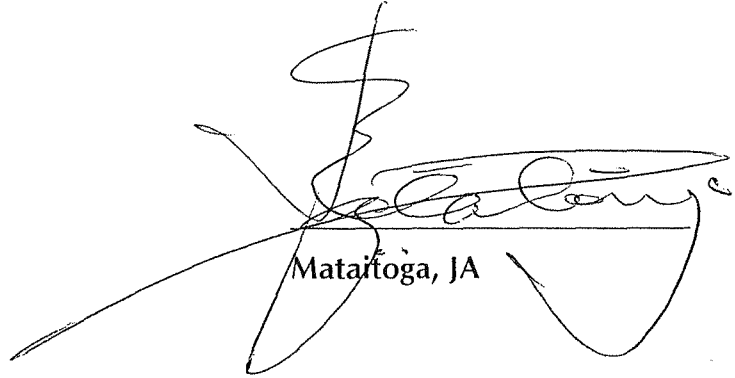
8. Section 17 provides that *“Notwithstanding anything hereinbefore contained, the Court of Appeal may entertain an appeal made under the provisions of this Part on such terms as it thinks just.”*
9. Section 20 provides:
 - (1) *A judge of the Court may exercise the following powers of the Court – (a) to give leave to appeal;*
10. The effect of the Court of Appeal Act and Rules is that in civil matters unless a Notice of Appeal has been filed in time, an appeal cannot be entertained unless the Court gives leave. An application for such leave is usually determined by a single judge of the Court.
11. If a single judge of appeal, exercising the power of the Court of Appeal to give or refuse leave, refuses leave, the unsuccessful applicant has no right to make a further application for leave to the Court of Appeal, whether that application is to a single judge or a full bench of the Court. Such further application would amount to an abuse of process.
12. That is what Mr Rosa is attempting to do.
13. Mr Rosa failed to appear when the matter came before the Court yesterday, which as set out in Hickie JA’s judgment, is consistent with past behaviour and must be regarded as being part of a pattern and as a tactic of delay. The application was determined in his absence.
14. The application for further leave must be refused with costs.
15. In his judgment of 1 May 2008 Hickie JA considered whether or not to declare Mr Rosa a vexatious litigant. He decided not to do so accepting Mr Rosa’s assurance that if the decision was to refuse him leave *“then this would be the end of the matter and there would be no need to proceed further and declare him a vexatious litigant in relation to these proceedings and/or matters generally raised in these*

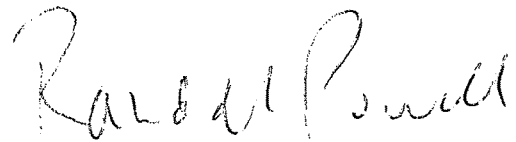
proceedings.” However Hickie JA put Mr Rosa on notice that should he attempt to bring any further application in relation to matters previously considered by Gates J in HAM027/03, by Pathik J in HBM 34/04 and by Hickie JA in the matter before him, the Court hearing such an application could consider making orders restricting Mr Rosa’s right to commence further legal proceedings.

16. Mr Rosa has brought this further application in full knowledge of the likely consequences and for these reasons, and the reasons set out in the 1 May 2008 judgment of Hickie JA, the Court will impose restrictions on Mr Rosa’s ability to conduct further litigation.

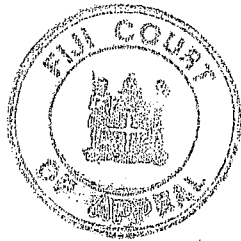
17. The Court makes the following orders:

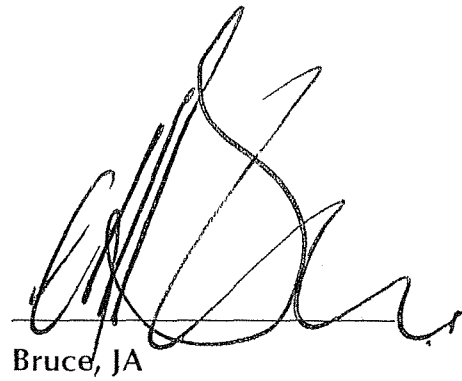
1. That Mr Rosa is prohibited from commencing without leave of the Court any further proceedings in respect of the claim or subject matter (as considered now in three judgments, that is by Gates J in HAM027/03, by Pathik J in HBM 034/04 and/or by Hickie JA as a leave application on 1 May 2008 in relation to file HBM 034/04).
2. If notice of such proceedings is given to any of the defendants or respondents in the above proceedings without leave first being obtained, the proceedings are to be automatically dismissed.
3. Leave to appeal the decision of Pathik J of 30 March 2006 is again refused.
4. The applicant Mr Rosa is to pay the respondents’ costs on an indemnity basis which the Court assesses at \$1,000.00.


Maitoga, JA



Powell, JA





Bruce, JA

Solicitors:

No appearance for the Appellant
Office of the Attorney-Generals Chambers, Suva for the Respondents