

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL NO: ABU 32 of 2014
(High Court HBC 159 of 2011)

BETWEEN : AISA BI

Appellant

AND : PETRIE LIMITED

Respondent

Coram : Calanchini P

Counsel : Ms S Chandra for the Appellant
Mr S Krishna for the Respondent

Date of Hearing : 23 April 2015

Date of Ruling : 17 July 2015

RULING

[1] This is an application for an enlargement of time to appeal. The power of the Court of Appeal to enlarge the time for appealing is derived from the Rules of the High Court by virtue of section 13 of the Court of Appeal Act Cap 12 (the Act). The power of the Court to enlarge time may be exercised by a justice of appeal pursuant to section

20(1) of the Act. This application is made to the Court under Rule 27 of the Court of Appeal Rules (the Rules).

- [2] The application was made by summons dated 23 April and filed on 25 April 2014. The application was supported by an affidavit sworn on 23 April 2014 by Aisa Bi. The application was opposed. The Respondent filed an answering affidavit sworn on 13 November 2014 by Chandrasekaran Murugiah. The Appellant filed a reply affidavit sworn on 31 December 2014. Both parties filed written submissions prior to the hearing of the application.
- [3] The background to the application is complicated and as a result is set out in some detail. The Respondent had commenced proceedings in the High Court at Lautoka for the recovery of possession of land under section 169 of the Land Transfer Act Cap 131. The application was opposed. Following a hearing on 30 July 2012 the Master made ex tempore orders granting vacant possession of the land (Lot 28 DP 2967 on CT13825) to the Respondent with a stay of 14 days. The Master also ordered the Appellant to pay costs fixed summarily in the sum of \$1000.00 to the Respondent within 14 days. Those orders were sealed by the Court on 31 July 2012. The ex tempore orders were final orders in accordance with the decision of **Goundar -v- The Minister for Health** (ABU 75 of 2006; 9 July 2008). It should be noted that the Master did not deliver written reasons for his orders at the same time.
- [4] The Appellant filed a notice and grounds of appeal on 8 August 2012 pursuant to Order 59 Rule 8 of the High Court Rules. The appeal was filed within time under O59 R9. It would appear that the summons was also served within the required period of 21 days.
- [5] The appeal was listed for mention on 23 August 2012 before the High Court Judge (Fernando J) at Lautoka. The learned Judge made the following orders (taken from paragraph 6 of the affidavit in support):

“(i) Master’s Order with reasons to be typed out and made available with the right to obtain copies by the parties within 1 month of today.

- (ii) *The Defendant Appellant to serve a copy of the Master's Order with the reasons within 2 months of today on the Plaintiff Respondent.*
- (iii) *Parties to file their written submissions within 3 months of today.*
- (iv) *Matter fixed for hearing for 27 November 2012 at 10am (Hearing of 27 November 2012 at 10am)."*

[6] The Master's written reasons for his ex tempore orders were not typed and made available within the time prescribed by the Judge and nor were they ready by 27 November 2012. As a result the hearing date of 27 November 2012 was vacated. The Master's reasons were eventually typed and delivered in a Ruling dated 4 February 2014. By that time the Master had been appointed a puisne judge. The Appellants appeal was called before the High Court (Abeyguneratne J) on 21 March 2014. The Appellant appeared in person. In paragraph 10 of the affidavit in support the Appellant deposes that the judge dismissed the appeal. It would appear that the appeal was summarily dismissed. There was no written decision with reasons. There were apparently no orders subsequently sealed by the Court. The affidavit material filed by the parties appears to indicate that the appeal was summarily dismissed for non-compliance with the High Court Rules. The nature of the non-compliance is not immediately apparent from the material that is presently before the Court.

[7] The summary dismissal of the Appellant's appeal by the High Court is the only decision that can be appealed to this Court. There is no jurisdiction under section 12 of the Act to hear an appeal from a decision of the Master. The appeal from the High Court's order is an appeal from the High Court exercising its appellate jurisdiction and as a result is restricted to any ground of appeal that raises a question of law only (section 12 (1) (c) of the Act).

[8] Pursuant to Rule 16 of the Rules the Appellant was required to file and serve her notice of appeal to this Court within 42 days from the date the decision was pronounced. The summary dismissal was ordered on 21 March 2014. As a result the Appellant was required to file and serve a notice of appeal no later than 2 May 2014. For reasons which are not clear the Appellant has instead filed on 25 April 2014 a

summons for an extension of time to appeal the orders made by the Master on 30 July 2012 and the subsequent written Ruling dated 4 February 2014.

[9] As mentioned earlier the orders made on 30 July 2012 were orders made by the Master. In my judgment the subsequently delivered Ruling with reasons must necessarily be regarded as the Master's reasons for the Master's orders. In my judgment it is of no consequence that the reasons for his orders were given by the Master after his appointment as a judge. (See: iTaukei Land Trust Board -v- Lal and Apisai and Bansi ABU 6 of 2015; 14 May 2015).


[10] In my judgment this Court has no jurisdiction to hear an appeal from the orders made by the Master or the reasons subsequently delivered for those orders. This Court does have jurisdiction to hear an appeal from the decision of the High Court summarily dismissing the Appellant's appeal from the Master's decision. From a reading of the summons filed on 25 April 2014 it appears that the application does not relate to that decision of the High Court. There was no application by Counsel for the Appellant to seek leave to amend the summons.

[11] As a result the application must be dismissed. The Appellant is ordered to pay the Respondent's costs summarily fixed at \$1800.00 within 28 days from the date of this Ruling.

Order:

1. *Application dismissed.*
2. *Appellant to pay costs of \$1800.00 to the Respondent within 28 days from the date of this Ruling.*





Hon. Mr Justice W.D. Calanchini
PRESIDENT, COURT OF APPEAL