

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL ABU 61 of 2014
(High Court HBC 425 of 2008)

BETWEEN : **PRAKASH SINGH** *Appellant*

AND : **HUANG TAN HSIANG** *Respondent*

Coram : **Calanchini P**

Counsel : **Appellant in person**
Ms S Colavanua for the Respondent

Date of Hearing : **27 July 2015**

Date of Ruling : **27 January 2016**

RULING

- [1] This is an application for an enlargement of time to file a notice of appeal against the final judgment of the High Court delivered on 15 November 2013.
- [2] The jurisdiction 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 Court's jurisdiction to enlarge time may be exercised by a

justice of appeal pursuant to section 20(1) of the Act. This application is made to this Court under Rule 27 of the Court of Appeal Rules (the Rules).

- [3] The application was made by summons dated 11 August 2014 and filed on the same day. The application was supported by an affidavit sworn on 31 October 2014 by Prakash Singh. It would appear that the documents were served by the Appellant personally on the Respondent by leaving them at the office of the legal practitioners who had appeared for the Respondent in the court below. The issue of service was not subsequently raised by the Respondent. The application was opposed. The Respondent filed an answering affidavit sworn on 26 November 2014 by Huang Tan Hsiang. The Appellant filed a reply affidavit sworn on 18 December 2014 by Prakash Singh. The Appellant eventually filed written submissions dated 27 June 2015 and the Respondent's submissions were dated 27 July 2015.
- [4] In proceedings commenced in the High Court by writ the Appellant claimed an amount of \$9,800.00 being the balance of the consideration of \$60,000.00 for the purchase of six acres of land by the Respondent as purchaser from the Appellant as vendor. Relying on an executed and registered transfer instrument the learned High Court Judge rejected the claim. The transfer clearly stated that the Appellant (the transferor) acknowledged receipt of the sum of \$60,000.00 from the Respondent (the transferee). The learned Judge also concluded that the claim was made outside the limitation period as pleaded by the Respondent in his Defence.
- [5] In the same action the Appellant also sought the recovery of 2½ acres of land. The land described in the certificate of title the subject of the transfer was an area of 8½ acres. The Appellant alleged that the Respondent had promised to transfer back to a person named as the second Plaintiff the 2½ acres in excess of the agreed area to be sold. The Respondent maintained that he had paid a further \$25,000.00 for the additional 2½ acres. On the evidence before him and having assessed the reliability and credibility of the witnesses the learned Judge concluded that on balance the Respondent had paid a further \$25,000.00 for the additional 2½ acres. The learned Judge dismissed the Appellant's claims and ordered the Appellant to pay costs fixed at \$2,000.00.

- [6] Whether the application for an enlargement of time to appeal should be granted involves the exercise of a discretion. To ensure that the discretion is exercised in a principled manner the Supreme Court in NLTB -v- Ahmed Khan and Another (CBV 2 of 2013; 15 March 2013 per Gates CJ) indentified the factors that should be considered as being (a) the length of the delay, (b) the reasons for the delay, (c) whether there is a ground of merit justifying the appellate court's consideration or, where there has been substantial delay, nonetheless is there a ground that will probably succeed and (d) if time is enlarged, will the Respondent be unfairly prejudiced. These factors assist the Court to determine whether it would be just in all the circumstances to grant or refuse the application. The onus is on the Appellant to show that in all the circumstances time should be enlarged.
- [7] In this case the judgment of the Court below was pronounced on 15 November 2013. Pursuant to Rule 16 of the Rules the Appellant was required to file and serve the notice of appeal within 42 days from that date, that is by 27 December 2013. The summons seeking the enlargement of time was filed on 11 August 2014 and was served on 31 October 2014. The Appellant is about 10 months out of time in terms of compliance with Rule 16. The delay is substantial and requires an explanation.
- [8] There is no explanation provided by the Appellant in his supporting affidavit sworn on 31 October 2014. Nor is there any explanation for the delay in his reply affidavit sworn on 18 December 2014. In his written submissions the Appellant submits that he is a farmer without the benefit of legal advice. He has since obtained legal advice. The relevant question is why he did not obtain legal advice earlier. There is no answer to that question in the material before the Court.
- [9] In my judgment, on account of the substantial delay and the absence of any reasonable explanation for that delay, the Appellant must establish to the Court's satisfaction that his appeal will probably succeed.
- [10] The grounds of appeal upon which the Appellant proposes to rely in the event that an extension of time is granted are set out in an attachment to his supporting affidavit:

- “1. *The Learned Judge erred in law and in fact holding that the full consideration sum had been paid by the Respondent.*
2. *The Learned Judge erred in law and in fact holding that the Appellant's claim was statute barred.*
3. *The Learned Judge erred in law and in fact holding that the Respondent had paid for the extra two and half acres of the land.*
4. *The Learned Judge erred in law and in fact holding that section 59(d) of the Indemnity Guarantee and Bailment Act applied to the extra two and half acres.*
5. *In the circumstances, the learned Judge erred in law and in fact in holding that the Appellant's evidence was unreliable.”*

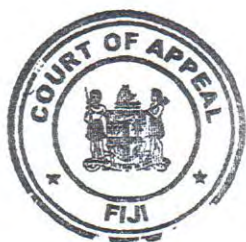
[11] Grounds 1, 3 and 5 relate to findings of fact made by the learned trial Judge and the quality of the evidence adduced by the Appellant. It is unlikely that an appellate court would consider itself in a position to disturb those findings. Even if arguable, none of the grounds can be said to be likely to succeed.

[12] Ground 2 challenges the conclusion that one of the claims was out of time. The learned Judge concluded that the claim for \$9,800.00 was out of time by 12 years. The issue is not addressed by the Appellant in his brief written submissions. The Respondent pleaded the issue of time limitation in his Defence without particulars. The Appellant's Reply to the Respondent's Defence pleads that the sale agreement was made on 13 October 1995. The instrument of Transfer signed by the vendor was dated 10 April 1996. The writ was issued out of the High Court on 21 November 2008. The period of limitation for an action based on simple contract is six years under section 4 of the Limitation Act Cap 35. However in the case of an action for, amongst others, the recovery of proceeds of the sale of land the period of limitation is 20 years under section 8 of the Limitation Act. The Limitation Act distinguishes between a simple contract and a “*specialty*” without defining either type of contract. Where a sale and purchase of real property takes place with an exchange of contracts followed by the execution of an instrument of transfer, the question arises whether the limitation period for an action seeking the recovery of money allegedly owing as proceeds of the sale of land after the instrument of transfer has been registered is 6 years or 20 years.

- [13] In this application it is not necessary for the Court to consider this issue other than to say that even if the limitation period had not expired, the learned Judge has concluded that on the evidence the Appellant has not established his claim.
- [14] The final ground to be considered is ground 4. In this ground the Appellant alleges that the learned trial Judge erred in his conclusion that section 59(d) of the Indemnity Guarantee and Bailment Act Cap 232 "*applied to the extra two and a half acres.*" This issue can be considered in terms of the pleadings in the Court below. The Appellant alleged in his claim that the Respondent had "*promised to transfer*" two and a half acres of the land back to the Appellant since it had been included in the contract and transfer by mistake. The Respondent did not plead section 59(d). The Judge concluded that there was no such promise made and that the initial contract included all 8½ acres. There was no requirement for the learned Judge to consider the Indemnity Act and any evidence adduced in relation to that matter was inadmissible.
- [15] I have no hesitation in concluding that there is insufficient merit in any of the grounds of appeal to justify the granting of an enlargement of time. In all the circumstances there is no basis for concluding that the justice of the case requires that the application should be granted.
- [16] The application for an enlargement of time is dismissed. The Appellant is ordered to pay cost summarily fixed in the sum of \$1,800.00 to the Respondent within 28 days from the date of this judgment.

Orders:

1. *Application dismissed.*
2. *Appellant to pay costs of \$1,800.00 to the Respondent within 28 days.*



W. Calanchini

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