

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

CIVIL APPEAL ABU 0059 OF 2016
(High Court HBC 56 of 2014)

BETWEEN : THE NEW INDIA ASSURANCE COMPANY LIMITED
Appellant

AND : PANACHE INVESTMENT LIMITED
Respondent

Coram : Calanchini P

Counsel : Mr K Patel for the Appellant
Mr E Maopa for the Respondent

Date of Hearing : 29 March 2017

Date of Ruling : 12 May 2017

RULING

- [1] This is, in the first place, an application for leave to appeal the Ruling of the High Court delivered on 6 May 2016. There were also applications for an enlargement of time to appeal and for stay in respect of a number of decisions in the court below.

[2] The applications were made by summons dated 27 May 2016 and were supported by an affidavit sworn on 26 May 2016 by Avinesh Rai. The applications were opposed. An answering affidavit was sworn on 5 July 2016 by Rajesh Patel and filed on behalf of the Respondent. A reply affidavit sworn on 25 August 2016 by Avinesh Rai was subsequently filed on behalf of the Appellant. Both parties subsequently filed supplementary affidavits. The parties filed written submissions prior to the hearing.

[3] The summons states that the application for leave to appeal is made pursuant to section 12(2)(f) of the Court of Appeal Act 1949 (the Act). It is therefore made on the basis that the Ruling is an interlocutory ruling of the High Court for which leave of the court below or the Court of Appeal is required. In accordance with the requirement of Rule 26(3) of the Court of Appeal Rules (the Rules), the Appellant first sought leave to appeal from the court below. Leave was refused by the learned High Court Judge in his Ruling delivered on 6 May 2016.

[4] However the correct procedure to follow when leave to appeal is refused by the court below (i.e. the High Court) is to renew the application for leave to appeal before the Court of Appeal. This is the effect of Rule 26(3) which states:

“wherever under these Rules an application may be made either to the court below or to the Court of Appeal, it shall be made in the first instance to the court below.”

[5] It must be noted that there is simply no right to appeal a refusal by the court below to grant leave to appeal under section 12(2)(f). The only course of action permitted under the legislation is to renew the application by way of a fresh application for leave to the Court of Appeal.

[6] The issues that are to be considered in an appeal are not the same as the issues that are considered when a renewed application for leave to appeal comes before a single judge of the Court under section 20(1) of the Court of Appeal Act. As a result the application for

leave to appeal the Ruling of the court below refusing leave to appeal the earlier decision of the High Court delivered on 17 July 2015 is dismissed for want of jurisdiction.

[7] It is necessary to make some comment on the remaining applications in the summons. As a result of the dismissal of the application for leave to appeal, there are no proceedings before this Court for which a stay could be granted. Secondly, once an application for leave to appeal has been filed within the 21 days prescribed by Rule 16 of the Court of Appeal Rules, there is no further requirement to apply for an enlargement of time to appeal either before the court below or before this Court.

Orders:

1. *Application for leave to appeal is dismissed.*
2. *Appellant is to pay costs in the sum of \$1800.00 to the Respondent within 21 days from the date of this Ruling.*



W. D. Calanchini

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