

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

CIVIL APPEAL NO. ABU 47 OF 2014
(HBC 107 OF 2009; HBC 380 of 2004)

BETWEEN : ATUNAISA LACABUKA RASOKI

Appellant

AND : 1. ATTORNEY GENERAL OF FIJI
2. NATIVE RESERVE COMMISSION
3. SALESI TEMO
4. ITAUKEI LAND TRUST BOARD

Respondents

Coram : Chandra RJA

Counsel : Appellant in person
Ms. S. Taukei for the 1st Respondent
Ms. L. Komaitai for the 4th Respondent

Date of Hearing : 17 March 2017

Date of Ruling : 1 August 2017

RULING

[1] The Appellant has filed a summons seeking enlargement of time for leave to appeal on 18th August 2016.

[2] The summons has been filed along with an affidavit signed on the 9th of August 2016.

- [3] The Appellant filed written submissions in support of his application on 9 February 2017.
- [4] The 1st Respondent filed written submissions on 3 March 2017.
- [5] The 4th Respondent filed written submissions on 21 February 2017.
- [6] The summons seeking enlargement of time for leave to appeal of the Appellant states that the application is made pursuant to Section 20(1)(b) of the Court of Appeal Act and inherent jurisdiction of the Court.
- [7] The summons of the Appellant states that the application is in respect of the judgments delivered by Kamal Kumar J on 24 June 2014.
- [8] There have been several judgments delivered in respect of the Appellant's case and it would be relevant to set out them in chronological order(as set out in the written submissions of the 4th Respondent) :
- a) HBC No.107 of 2009; **Rasoki v AG & Others, Native Reserve Commissioner, Native Land Trust Board, Fiji Museum and Salesi Temo.**
- The decision was delivered on 12 February 2010 by Justice Calanchini granting Striking Out Orders by the 1st Defendant and the 3rd named Second Defendant, Fiji Museum.
- b) HBC No. 107 of 2009; **Rasoki v AG & Others, Native Reserve Commissioner, Native Land Trust Board, Fiji Museum and Salesi Temo.**
- The decision delivered on 19 July 2010 by Justice Calanchini granting Striking Out Orders by the Second defendant, NLTB.
- c) HBCNo.107 of 2009; **Rasoki v AG & Others, Native Reserve Commissioner, Ntive Land Trust Board, Fiji Museum and Salesi Temo.**
- Master Amaratunga had granted Striking Out Orders for the 1st named Second Defendant, Native Reserve Commission. The decision was delivered on 15 February 2013.

d) HBC No.107 of 2009; Rasoki v AG & Others, Native Reserve Commissioner, Native Land Trust Board, Fiji Museum and Salesi Temo.

The Appellant had sought leave to appeal out of time the decision of Justice Calanchini delivered on 12 February 2010 and 19 July 2010 and the decision by Master Amaratunga on 15 February 2013. Justice Kamal Kumar dismissed the application of the Appellant by judgment delivered on 24 June 2014.

e) HBC No.380 of 2004; Rasoki v AG, Native Reserve Commissioner/Native Land Trust Board, Salesi Temo.

Justice Kamal Kumar by his decision 24 June 2014 granted the striking Out Order by the 1st and 2nd Defendants.

- [9] The present application which is pursuant to section 20(1)(b) of the Court of Appeal Act confers a discretion on a single Judge of the Court of Appeal to grant an enlargement of time for leave to appeal. It is discretionary remedy and the Appellant must satisfy Court that his application sets out sufficient material and grounds to obtain any relief.
- [10] It is of primary importance to set out clearly the decision against which the Appellant is seeking leave and thereafter state the grounds which merit the exercise of the discretionary power of the Court for granting of leave.
- [11] In the summons filed by the Appellant, it is not certain as to which judgment he is referring to. What has been stated is “Judgments delivered by Honourable Justice Kamal Kumar J on 24 June 2014”. As pointed out above, there are two judgments which have been delivered by Justice Kumar on 24 June 2014. Therefore to start with there is an uncertainty as to which judgment the Appellant is referring to or whether he is referring to both.
- [12] In his Affidavit, which is vague sets out at paragraph 11 that Justice Kamal Kumar has no authority to strike out case. In the main body of the Affidavit there is reference to Justice Calanchini and Master Amaratunga but the context in which they are stated cannot be

comprehended. If the application was to review the decision of Justice Calanchini and/or the decision of the Master, the application should have specified these. But there is no such indication.


- [13] The written submissions filed by the Appellant running into 18 pages is also vague and the matters set out therein are not relevant to an application seeking enlargement of time. The contents therein cannot be comprehended in relation to the application made by the Appellant.
- [14] The 1st Respondent and the 4th Respondent have in their written submissions stated that there has been a considerable delay in filing the application, that no reasons have been set out for the delay, that there is no merit in the application, that prejudice would be caused to them if leave is granted.
- [15] The Respondents have also submitted that the affidavit is not clear that it is vague, that it has not identified which decision that has been appealed against.
- [16] The Respondents have relied on the factors that are taken into account when granting enlargement of time for leave to appeal as set out in NLTB v. Ahmed Khan and Another (unreported CBV 2 of 2013, 15 March 2013 per Gates CJ). In the present case there is no material to consider the necessary factors.
- [17] If the decisions of Justice Calanchini and Master Amaratunga were the decisions that the Appellant was seeking to appeal, the Appellant should have firstly identified the relevant decisions and made submissions in respect of them. The Appellant apart from identifying the relevant decisions has failed to adduce any matters to satisfy Court, for the Court to exercise its discretion in granting leave.

- [18] It is necessary in invoking the discretionary power of the Court in seeking enlargement of time to set out precisely the basis of the application and the grounds which satisfy that the appeal is likely to succeed.
- [19] The Appellant has failed to set out his application with clarity. It is vague and is prolix. Furthermore it is incomprehensive as to what the Appellant is seeking to achieve in his application.
- [20] In the above circumstances the application of the Appellant seeking enlargement of time for leave to appeal is refused.

Orders of Court :

- (1) *Application for enlargement of time for leave to appeal is refused and dismissed;*
- (2) *There shall be no costs.*




Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL