

THE COURT OF APPEAL, FIJI  
[ON APPEAL FROM THE HIGH COURT]

Civil Appeal No. ABU 0043 of 2021  
(Suva High Court No. HBC 126 of 2017)

BETWEEN : GANGA RAM

*Appellant*

AND : PUSHPA WATI

*Respondent*

Coram : Dr. Almeida Guneratne, P

Counsel : Mr V Bukayaro for the Appellant  
: Respondent – absent and unrepresented

Dates of Hearing : 9<sup>th</sup> June, 2023.

Date of Decision : 30<sup>th</sup> June, 2023

**DECISION**

[1] The present application before this Court is a summons seeking leave to appeal out of time the decision of the High Court of Suva dated 19<sup>th</sup> April, 2021.

- [2] By that decision the High Court made order that, “*The Applicant-Defendant’s notice of motion filed on 5<sup>th</sup> August 2020 seeking re-instatement of the summons for appeal on 29<sup>th</sup> June, 2020 in hereby dismissed.*” That was in relation to a decision of the Master.
- [3] In his attempt to explain the length and reasons for the delay, the Appellant in his affidavit dated 4<sup>th</sup> October, 2021, supporting his summons referred to “*the COVID situation.*”
- [4] The Respondent has not filed an affidavit in opposition thereto.
- [5] Consequently, I accept the reasons adduced by the Appellant in his affidavit of 4<sup>th</sup> October, 2021.
- [6] If so, was I then obliged to grant leave to appeal treating the Appellant’s present application on par with a leave to appeal application filed within time?
- [7] I posed that question on account of a series of my own past decisions, to name one, **Pacific Energy (South-West Pacific) PTE Limited –v- Ashay Amar Chaudhary etal** [ABU 0020 of 2022], 30 December, 2022.
- [8] However, in those cases, the Applicant had urged before Court specific grounds of appeal as having “*reasonable prospects of success*” and/or “*at least a prima facie arguable case.*” if leave was to be granted on the time tested single judge Supreme Court decision in **NLTB v Khan** [CBV 2 of 2013, 15 March, 2013 (per Gates, P)].
- [9] Even if one were to surmise that, the said decisions appear as amounting to a distancing from the **NLTB** thinking, in so far as the present case is concerned, in the Appellant’s affidavit of 4<sup>th</sup> October, 2021, he merely avers that there are “*meritorious grounds*” to appeal (vide: paragraph 9 thereof).

[10] Other than that ipse dixit of the Appellant, I had no other material to grant leave to appeal for which reason, I must confess I had to fall back on the thinking and the judicial wisdom reflected in the NLTB decision (supra), to see whether I could find a basis to grant leave by looking at the impugned decision of the High Court dated 19<sup>th</sup> April, 2021 which reasoned thus:

- “25. It was the fault on the part of the Applicant/Defendant, Ganga Ram and his Solicitors representing him that they both failed to appear on the returnable hearing date of the reasons explained in his Affidavit of 4<sup>th</sup> August 2020 resulting in the dismissal of the Summons for non-appearance.*
- 26. It will be noted from the Court Records that his was not the first occasion during the proceedings that the Applicant/Defendant, Ganga Ram had either failed to comply with Court Directions and/or filed an application and failed to appear either in person or by Counsel representing him.*
- 27. The Applicant/Defendant, Ganga Ram is only to blame himself for his own admission of non-appearance at the hearing of the Summons seeking Leave to Appeal and Stay the decision delivered on 3<sup>rd</sup> of June 2020.*
- 28. Hence, for the aforesaid rationale, I have no alternative but to dismiss the current application before Court seeking Re-instatement of the Summons seeking leave to appeal and stay filed on 29<sup>th</sup> June 2020 accordingly.”*

[11] I could not find any reason to find fault with the reasoning of the learned High Court Judge.

[12] Before proceeding to make a final determination in this matter I wish to record the fact that, there were a number of mention dates in this matter where this Court showed indulgence when finally on the 9<sup>th</sup> June, 2023 Mr Bukayaro (for the Appellant) submitted to Court (the Respondent being absent and unrepresented) that, he was not filing any written submissions on his Client’s behalf and moreover that, the Appellant has vacated the land which was the subject matter in dispute and has handed over vacant possession of the same to the Respondent.

[13] Learned Counsel concluded that, he would be content in receiving whatever Order this Court may deem fit and proper to make.

**Determination**

[14] On the basis what I have recounted above I proceed to make my orders as follows.

Orders of Court

- 1) *The application of "the Appellant" is refused and dismissed.*
- 2) *I make no order as to costs.*



A handwritten signature in blue ink, which appears to read "Justice Almeida Guneratne".

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**Hon. Justice Almeida Guneratne**  
**PRESIDENT, COURT OF APPEAL**

**Solicitors:**

Bukayaro Esquire for the Appellant  
No appearance for the Respondent