

**IN THE COURT OF APPEAL, FIJI**  
**APPELLATE JURISDICTION**

**CIVIL APPEAL NO. ABU 17 OF 2022**  
**(Lautoka High Court Civil Action No. HBC 101/2021)**

**BETWEEN** : **TRUSTEES OF SOUTH SEAS CLUB**

**Appellant**

**AND** : **CHUNG LEE, MANSUR KHAN, RAJENDRA SAMI, JOHN MAHENDRA, SANJAY PRASAD, HAROON MOHAMMED, BEN SINGH, CECIL JAMES, KANDA SAMI, MUDALIAR, BRIJESH CHAND, ANIL KUMAR, RAYMOND SINGH, RAMESH CHAND & NARENDRA SAMI**

**Respondents**

**Coram** : **Filimone Jitoko, VP**

**Counsel** : **Mr. P. Gounder for the Appellant**  
**Ms. S. Chand for the Respondents**

**Date of Hearing** : **27 April 2023**

**Date of Ruling** : **2 June 2023**

**RULING ON NOTICE**

[1] This is an application to reinstate Appeal CA No. ABU 17 of 2022 after it had been deemed abandoned by the Registrar of the Court of Appeal, for non-compliance under Rule 18 of the Court of Appeal Rules.

[2] Rule 18 deals primarily with the preparation and costs of the record on appeal. Rule 18(1) recognizes that the primary responsibility vests with the appellant. The contents of the record are detailed at Rule 18(2) and the documents are required to be verified through the Registrar's certificate before the appellant prepares the case record (Rule 18(3)).

[3] In case the record is incomplete or has errors or deficiencies, the appellant is given by the Registrar 21 days to remedy it, and within 21 days thereafter the Registrar is required to certify the record as correct (Rule 18(7)). The appellant within 28 days from the Registrar's certification then serves notice on all the parties to the appeal that the case record is ready for collection.

[4] Rules 18 (9) and (10) state:

*“(9) Following lodgment of the case records of the Registrar must forthwith list the appeal for the next or any subsequent call-over date.*

*(10) If any provision of this Rule is not complied with, paragraphs (2) and (3) of the Rule 17 apply as if the non-compliance were non-compliance with sub-section (1) of that Rule.”*

[5] I have gone into great detailed setting out the provisions of Rule 18 to show how important and sequential the procedures to be followed closely by the appellant under the guidance of the Registrar before a case is heard on appeal. It not only ensures order in the judicial system but also importantly, guarantees that all the parties to the proceedings are given equal opportunity to present their case before the Court.

[6] The chronology of events in this matter is well known to both parties, the most relevant being:

*(i) 18 February, 2022 - Ruling by Tuilevuka J against the appellant.*

*(ii) 4 March 2022 - Notice of Appeal filed.*

- (iii) 22 April 2022 - *Security for Costs fixed at \$3,000.00 to be paid within 28 days.*
- (iv) 10 May 2022 - *Ex-parte Summons by the appellant for Stay pending appeal.*
- (v) 17 May 2022 - *Interim Stay ordered by the President Court of Appeal until 25 May 2022.*
- (vi) 25 May 2022 - *Interim stay extended till the date of the Ruling to be delivered. Submission in the meantime filed by the respondent, and Court directed that submission to be filed by appellant by 16 June 2022, and respondent (if necessary) by 23 June 2022.*
- (vii) 30 September 2022 - *Notice of appointment of new solicitors for the appellant, filed.*
- (viii) 31 October 2022 - *Ruling by the President of the Court of Appeal that Stay Order granted “pending the hearing determination of the Appeal by the full court” and that “The Registrar is directed to list this matter on the next call over date to set time lines for the filing of written submissions and fix the appeal for hearing in the 2023 February session.”*

[7] It is clear from the Registry’s file that the case was not called at the November call over date which would have triggered a February 2023 hearing date. Both parties lamented the fact that the case failed to be called at the November, 2022 call over date. Counsel for the respondent, Mr Pillai, noted in his correspondence with the Registry of 1 March 2023 that the Court in October 2022 had directed that the matter be listed for the next call over date and for hearing by the 2023 February session, and regretted that it had not materialized. Mr. Singh, one of the appellants, likewise in his letter of 2 March, 2023 to the Registry, stated:

*“We were also advised that we were to await the Registrar’s directive as per the Ruling dated 31 October 2022 – Order 2 which states:*

*The Registrar is directed to list this matter on the next call date to set timelines for the filing of written submissions and fix the appeal for hearing in the 2023 February session.*

*However this matter was not called in November 2022 which was meant for directions to be given in terms of the way forward.”*

- [8] With respect, both Counsel have misinterpreted Order 2 of the Court’s Ruling of 31 October, 2022. The next call date is subject to the provisions of Rule 18(9) as cited above, that is, when the Registrar has accepted the lodgment of the case record. The Registrar therefore, may only list a case for a call over date if the case record has been filed and all the other provisions of Rule 18 are fulfilled. Mr Singh seems to also suggest that the parties were subject to further directions of the Registrar, which again is an exaggeration of the role and the function of the office.
- [9] Time and again the Registry staff had made it clear that the appellant has failed to file the case record despite it been given all the court records including the Judge’s Notes and Audio transcripts since June, 2022.
- [10] The file record of exchange of correspondence between the Registry and the parties, show very clearly that the appellant, through trustee Aman Singh, had not been able to collate the case record in the time frame the appellant is legally required to from 31 October Order date.
- [11] The court notes that on 30 September, 2022 a Notice of Change of Solicitors for the Appellant was filed into court. They did not appear to remain for long neither did they file any documents or assist the appellants in their appeal On 2 March 2023, Mr Singh informed the Registry that their solicitors had ceased practicing in February as the principal had not renewed his practicing certificate, and asked for further time to collect the appellant’s files and compile the case record.

[12] The President of the Court of Appeal on 10 February 2023, gave the appellant a further 10 days extension.

[13] In the absence of the President and the Resident Justice of Appeal, this matter was brought before me, after the appellant had once again missed the 10 day extension deadline and the Registrar had issued his Notice of Non-Compliance under Rule 18 (10) on 21 March, 2023. The appellant had subsequently attempted to file its case record on 28 March, 2023, but was rejected by the Registry.

### **Consideration**

[14] It has been more than 14 months since the Notice of Appeal against Tuilevuka J was filed into Court. Mr. Singh for one or other reason(s), decided to file an ex-parte summons for Stay Pending Appeal on 17 May 2022 straight to the Court of Appeal instead of the High Court as required under the Rules. The Counsel for the respondent had quite correctly pointed out that under Rule 26 (3) of the Court of Appeal Rules the application for stay pending appeal from the High Court, “*shall be made in the first instance to the Court below.*” However, the appellant submitted that the combined effect of Section 20(1) (e) of the Court of Appeal Act, together with Rules 26 (3) and new Rule 27 of the Court of Appeal Rules, and the “*exceptional circumstances*” of the case, gave the Court of Appeal jurisdiction to hear the Summons for Stay, which the Court duly granted with an order for an interim stay of 7 days until 25 May, 2022. At the hearing on 25 May, the Stay Order was extended until the Court was to deliver its Ruling after submissions from both parties. For its part, the respondent relied in its submissions at the 25 May 2022 hearing.

[15] The Ruling with the Orders of the Court was handed down on 31 October, 2022. The Court after analyzing and concluding that notwithstanding the limitations of the forum for appeal under Rule 26 (3), the Court of Appeal has still the jurisdiction to entertain the

stay application, and having satisfied itself that there were sufficient grounds to granting a stay, ordered:

- “1. A stay of all the High Court Orders put in issue in this matter, beginning with its Ruling of 18 February 2022 is granted pending the hearing and determination of the Appeal by the Full Court.*
- 2. The Registrar is directed to list this matter on the next call over date to set time lines for the filing of written submissions and fix the appeal for hearing in the 2023 February session.”*

[16] There is no doubt that the appellant has through its own tardiness, and inactive principal personnel and coupled with unfortunate circumstances had contributed enormously to the delay in bringing this case for hearing.

[17] In respect of the Registrar’s Certificate of Non-Compliance, it would, I agree been perfectly valid if it had first received the sanction of the Court and to the extent that the Court had indicated that it was going to issue the requisite penal consequence if the appellant failed to meet the final deadline, the Non-Compliance Notice pursuant to the Court’s direction would have been perfectly valid. This Court is nonetheless guided by the decisions in **Sun (Fiji) News Ltd v Kewal Chand** [2020] FJCA167 and **Maria Yunisa v Emosi Lutu & Ors** [2020] FJCA 162.

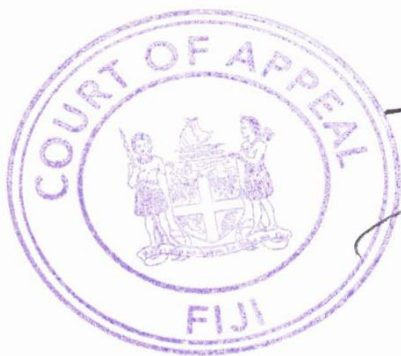
[18] While the Court appreciates that the principal advocate on behalf of the Trustees resides overseas, this should not prevent the appellant from filing and documents and complying with the Court’s directions and orders on time.

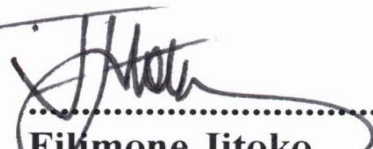
[19] I agree with His Lordship the President of this Court in granting the stay for reasons not only of the unplanned disruption and delay caused by the ceasure of the appellant’s solicitors to continue to act on its behalf and more so by their failure to inform the parties

and the court accordingly, but also for the important reason, the Court had concluded, that the appeal has merit.

[20] In the end, the Court makes the following Orders:

1. *The appellant's application for reinstatement of the appeal is allowed*
2. *The Registrar's Notice of Non-Compliance is hereby set aside.*
3. *The appellant, within 14 days, to comply with all the requirements of Rule 18 of the High Court Rules, and failure to do so, the appeal stands dismissed under Rule 18 (10)*
4. *The Registrar shall forthwith list the appeal to the next call-over date.*
5. *I make no award as to costs.*



  
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**Filmone Jitoko**  
**Vice President, Court of Appeal**