

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 036 OF 2024
[Suva High Court: HBC 138 of 2021]

BETWEEN : **RAJNAL ROHNESH KUMAR** *1st Appellant*
PARMESHNI LATA *2nd Appellant*

AND : **NAGARAJU THANDU** *Respondent*

Coram : Qetaki, RJA

Counsel : Ms. P. Lal for the Appellants
Mr. R. P. Singh for the Respondent

Date of Hearing : 23 April, 2025

Date of Ruling : 27 June, 2025

RULING

(A). Background

[1] The 1st and 2nd Appellants applied under Rule 27 of the Court of Appeal Rules 1949, for grant of Enlargement of Time to file grounds for leave to appeal in this matter. The decision sought to be appealed was made on 9th September, 2022 at the High Court in Suva in Civil Action No. HBC 138 of 2021 by His Lordship, A.L.B. Brito-Mutunayagam.

[2] The Appellants had filed an Affidavit in Support sworn on 4th April 2024 by a Aannapurna Chand, Solicitor, of Messer's Nambiar Lawyers, Barristers and

Solicitors, 16 Bau Street, Suva on 4th April 2024 the legal firm that had the carriage of the case for the Defendants in the High Court.

[3] The Respondent had sought Summary Judgment under Order 14 of the High Court Rules and the trial judge made the following Orders:

(a) The first and second defendants shall pay the plaintiff a sum of \$242,179.00 together with interest at the rate of 30% per annum from 8th May, 2020 (as provided in the Agreement) till full payment in full.

(b) The first and second defendants shall pay the plaintiff a sum of \$2000.00 as costs summarily assessed to the plaintiff.

(B). The Facts

[4] The facts as distilled from the impugned judgment are:

The plaintiff in his affidavit says the second defendant is the sole Director and shareholder of Aper Motors Pte Ltd, (the company). The first defendant made representation to assist the defendants to start a business venture in Fiji by importing second hand motor vehicles and selling. He lent and advanced \$242,179,00.00 to the first and second defendants between 20th September, 2018, and 18th November, 2018. The defendants defaulted in payment. In March, 2020, when first defendant was in India, he executed an Agreement acknowledging in writing to refund the sum borrowed by 8th May 2020. The first defendant told plaintiff that he held a Power of Attorney for the second defendant and also executed the India Agreement, as the second defendant's Attorney. The first defendant confirmed that he was a Director of the company in the Agreement when he was not. On 13th and 27th May, 2020, the first defendant held a meeting of the company and held himself out as the Managing Director of the company. The second defendant was aware that the plaintiff lent the sum of \$242,179.00 and confirmed verbally that the defendants would return the sum.

(C). High Court Judgment dated 9th September, 2022

[5] The learned Judge delivered a short judgment (10 paragraphs including Orders) on the Summons seeking summary judgment, the central features of which are discussed below.

- [6] The learned Judge referred to the plaintiff's statement of claim for a sum of \$242,179.00 lent and advanced by the plaintiff to first and second defendants.
- [7] That the defendants had filed their statement of defence to which the plaintiff had filed a reply.
- [8] On 16th September, 2021 the plaintiff filed interlocutory summons for summary judgment together with supporting affidavit. In the Affidavit in support, the Plaintiff states that the second defendant is the sole Director of Aper Motors Pte Ltd, (the company). The first defendant made representation to assist the defendants to start a business venture in Fiji by importing second hand motor vehicles and selling. He lent and advanced a total sum of \$242,179.00 to the first and second defendants between 20 September, 2018 and 18th November, 2018- See paragraphs 1 to 3 of judgment.
- [9] The learned trial judge stated that the defendant defaulted in payment. Further (paragraph 4 of judgment):

“In March 2020, when the first defendant was in India, he executed an Agreement acknowledging in writing to refund the sums borrowed by 8th May, 2020 .The first defendant told him that he held a Power of Attorney for the second defendant and also executed the India Agreement, as the second defendant's Attorneys. The first defendant in the Agreement confirmed that he was a Director of the company, when he was not. On 13th and 27th May, 2020, the first defendant held a meeting of the company and held himself out as the Managing Director of the company. The second defendant was aware that the plaintiff lent the sum of \$242,179,00 and confirmed verbally that the defendants would return the sum.”

- [10] The learned trial Judge stated (paragraph 5) that on 30th November, 2022 and 25th February, 2022, the Plaintiff was represented by Roopesh Singh and the defendants by Mr. N. Nambiar. On 30th November, 2022 both Counsel stated that both parties agreed to enter judgment on liability in terms of the interlocutory summons for summary judgment and the quantum to be assessed. That on 25th February, 2022, he made the following Orders:

“Defendants agree that they are liable to the Plaintiff and the quantum is to be determined. Hearing on 29th April 2022 at 10am.”

(Note: On checking the above dates, I found that the date 30th November 2022 is a wrong date, it should be deleted and to be substituted by 30th November 2021)

- [11] The learned trial Judge stated that the only issue before him is *the quantum* of the debt, as the defendant's admitted liability. He proceeded to refer to key clauses of the Agreement between the plaintiff and the defendants dated 11th March, 2020. He indicated that he had examined those clauses, and expressed the view that the amount claimed by the plaintiff is a liquidated demand, a specific sum of money due and payable under the Agreement- see paragraphs 6, 7 and 8 of judgment.
- [12] The learned trial Judge stated in paragraph 9 of judgement that the plaintiff is entitled to judgment for the sum of \$242,179.00 against the first and second defendants with interest at the rate of 30% per annum from 8th May 2020 (as provided in the Agreement) till payment in full- see paragraph 9.

(C). Grounds of Appeal (Proposed)

- [13] The grounds of appeal are:

- (1) *The learned trial Judge erred and/or misdirected himself in law and in fact that he did not take into account that the Agreement entered into by parties was executed in the Jurisdiction of India and no original or certified documents pertaining to the said Agreement was tendered in Court.*
- (2) *The learned trial Judge erred and/ or misdirected himself in law and in fact that he did not take into account that there was no Power of Attorney being held by the first defendant on behalf of the second defendant and neither was such copy deposited before the Court.*
- (3) *The learned Judge erred and/or misdirected himself in law by holding that the Appellants were liable when money was given to the Company of Aper Motors PTE Limited and NOT the Appellants in their individual capacity.*
- (4) *The learned Judge erred and/or misdirected himself in law and in fact in holding that the admission to liability was for the amount claimed by the Respondent when not quantum was agreed to and neither had the Appellants wholly admitted the entire debt.*

- (5) *The learned trial Judge erred and/or misdirected himself in law and in fact in holding that Share Purchase Agreement executed on 11th day of August 2018 was between the Plaintiff and Defendants in their individual capacity whereas the said Agreement clearly shows that it was between two companies namely Aper Motors PTE LTD and Winnovatia Business Solutions PVT LTD.*
- (6) *The learned trial judge erred and/or misdirected himself in law in failing to consider that the Agreement made on 11th March 2020 was made in the name of Aper Motors and not the first named Appellant in his individual capacity.*
- (7) *The learned trial Judge erred and/or misdirected himself in law in failing to consider the Arbitration clause in the share Purchase Agreement dated 11th August 2018 which explicitly covered that in the event of a dispute both parties (the Appellant and the Respondent) were to resort to arbitration first before exhausting legal remedy.*
- (8) *The learned trial Judge's decision is wrong and erroneous and tantamount to a wrongful exercise of discretion having regard to all the facts and circumstances of the case and the evidence on the whole.*

(D). The Law

[14] The factors that will be considered by a Court for granting enlargement of time are as follows:

- (i) *The reason for the failure to file within time.*
- (ii) *The length of the delay.*
- (iii) *Whether there is a ground of merit justifying the Appellate Court's consideration.*
- (iv) *Whether there has been a substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
- (v) *If time is enlarged, will the Respondent be unfairly prejudiced.*

See: **Kamalesh Kumar v State; Sinu v State** FJSC 17; CAV0001.2009 (21 August 2012), and **Rasaku v State** [2013] FJSC 4; CAV0009.0013.2009 (24 April 2013).

(E). Affidavit of Applicants In Support Dated 5th April, 2024

- [15] The Applicants state that the Respondent had initiated two concurrent applications against them. Firstly, a Winding – Up application dated 28 June 2021, the second, a Writ of Summons under Civil Action No. 138 of 2021, through which the Respondent sought compensation totaling FJD 242,179.00 and interest on the said sum at the rate of 30%. The Winding Up application was withdrawn-Paragraphs 16 and 17 of Affidavit.
- [16] The Applicants filed their Statement of Defence around 14 September 2021 to Civil Action No. 138 of 2021. Subsequent to filing of Respondent’s defence, the Respondent filed an application for Summary Judgment.
- [17] The possibility of the Applicants consenting to judgment was explored, which prompted consultations between the Applicants and their Solicitors, and after a brief recess the Applicants, who were not in Court, gave consent for judgment on liability, through their Counsel - see paragraphs 18 to 22 of the Affidavit.
- [18] The Order for liability was given and a hearing date for the quantum was fixed. (Paragraph 23). Paragraph 24-27 of the Affidavit explain the reasons or justification for the *quantum* hearing. These reasons were not stated in the Court judgment now being appealed. Paragraphs 29 to 31 confirmed the Orders made by the trial judge.
- [19] On 1st November 2022, the Applicants filed an application in the High Court for leave to file appeal out of time, the application was heard on 1st November 2023, and the Court granted leave for the Appellants to apply for appeal out of time - Paragraph 34.
- [20] Orders were sealed and served on Respondent. Appeal was not filed due to unanticipated events as set out in paragraph 36. The reasons are set out in paragraphs 37 to 41 of the Affidavit.
- [21] Grounds of Appeal/Submission, (Paragraphs 42 to 51) will be referred to in the *Analysis* below.
- [22] Prejudice – (Paragraphs 52 to 58) will be referred to in the *Analysis* below.
- [23] Plea to this Court (Paragraphs 59 to 63) will be referred to in the *Conclusion* below.

(F). Affidavit of Respondent in Response Filed 16th October, 2024

- [24] The Respondent Nagaraju Thandu swore an Affidavit on his own behalf as Respondent. He denied paragraphs 5 to 14 of the Applicants' Affidavit in Support. He explained the circumstances under which he met the Applicants and the nature of their relationship and the circumstances under which he lent funds to the Applicants. In doing so, he repeated matters deposed in his Affidavit sworn on 30th of August 2021 and filed on the 16 of September 2021 in support of his application for Summary judgment, now sought to be appealed. These were set out in paragraphs 4.1 to 4.11 of the Affidavit.
- [25] The Respondent states that on 25th February 2022 the Applicants admitted liability in terms of Statement of Claim. That the Applicants' Affidavit is raising issues which were raised previously and which were responded to.
- [26] The Respondent states that with respect to paragraphs 18 to 23 of the Applicant's Affidavit, he states that:
- (i) The applicants have been represented by the current Solicitors in the lower Court;
 - (ii) That on 25th February 2022, the consent orders were entered;
 - (iii) These orders were entered unconditionally;
 - (iv) That at the time consent orders were entered, the Applicants' Solicitors were present in Court and has consented with their client's instructions; and
 - (vi) That he is advised that that the Applicants were not present in person before the Court but that does not change the fact that their Solicitors had full authority to represent and obtain orders before the Court on behalf of the Applicants on 25th February 2022.
- [27] The Respondent states that in paragraph 24 of the said Affidavit, the Applicants' Solicitors are now raising that the proper instruction was not obtained prior to entering into consent orders before the High Court. The issue was never raised before the High

Court, and the Respondent has been informed by Counsel and he believes that the Solicitor of the Applicants agreed and consented to liability against the claim and the consented order has not been set aside.

[28] The Respondent refers to paragraphs 32 to 36 of the said Affidavit, and he states that the Applicants were granted leave to file appeal out of time within 14 days from 7th December 2023. The Applicants had to file Grounds of Appeal, which expired on 21st December 2023. The Applicants failed to file the Grounds of Appeal within the time allowed by the High Court.

[29] That the present application has also been filed out of time on 5th April 2024, which is 139 days after the initial leave had expired. The Respondent believes that the Court had already granted opportunity to the Applicants to file an appeal which they fail to do. Further, the Order which the Applicants are seeking to leave to appeal out of time were granted by the High Court on 9th September 2022. He states that he has been advised by his Solicitors, and it is his belief, that it is 1 year and 7 months later that the Applicants have made the present application and the Applicants have not taken any steps to appeal within reasonable time.

[30] The Respondent states that paragraphs 37 to 41, and paragraphs 42 to 51 of the said Affidavit amount to legal submissions and his Solicitors will deal with them at the hearing of the application. As for paragraphs 42 to 51, the Respondent says that he has been advised by his Solicitors and believes, that they do not disclose any reasonable grounds for the Court to rely on to grant leave to appeal out of time. The Applicants had admitted liability by consent.

[31] The Respondent denies paragraph 52 of the said Affidavit and says that the Applicants had informed the Court that the Grounds of Appeal are ready for filing, however at paragraph 36(a), the Solicitors for the Applicants are deposing that they were waiting for instructions from the Applicants for filing of an appeal- see paragraph 19.

[32] At paragraph 20 of his Affidavit, the Respondent says that he has suffered prejudice. That the judgment sum was granted on 9th September 2022 in his favor and the Applicants have not paid any monies and he is suffering in terms of monetary loss such as investment and interest.

- [33] The Respondent says that paragraphs 55 to 58 of the said Affidavit amount to legal submissions and his Solicitors will address the issues raised therein at the hearing of the application.
- [34] As to paragraphs 59 to 60 of the said Affidavit, the Respondent says that the Applicants failed to file the appeal within time.
- [35] As to paragraphs 61 to 63 of the said Affidavit, the Respondent says that their contents amount to legal submission and the same will be dealt with by his Solicitors at the hearing of the application. However, emphasized that the Applicants has delayed the filing of the appeal when leave was granted.
- [36] The Respondent says with respect to paragraph 64 of the said Affidavit that, he seeks that the Applicants' application be struck out with indemnity costs in his favour.

(G). Applicant Affidavit In Reply Filed on 30th October 2024

- [37] An Affidavit in response to the Respondent's Affidavit in Reply ('the said Affidavit') was sworn by Rajnal Rohmesh Kumar of Lot 24, Vuci Road, Nausori, and the 1st Applicant.
- [38] The 1st Applicant denies paragraphs 4.3 to 4.10 of the said Affidavit. Disagreed with paragraph 4.10 of the said Affidavit. In respect to the contents of such paragraphs, the 1st Respondent says, the Respondent expressed an intention to invest in the 2nd Appellants Company and terms and conditions of such investment were discussed. An investment agreement dated 11th day of August 2018 was entered into between Aper Motors Pte Ltd and Winnovatia Business PVT Ltd was also duly entered into relating to this. That the company information was shared to the Respondent for him to make an informed decision but the said representation were not made directly to him in his personal capacity but his company being Winnovatia Business Solution PVt via Aper Motors Pte Ltd representatives. -See paragraphs 9 and 10.
- [39] The 1st Applicant did not require the funds. The Respondent sought to invest in the company for their own benefit which Aper Motors Pte Ltd was willing to consider, contingent upon obtaining all necessary statutory approvals. The 1st Applicant says that as per the Agreement, they were to apply for investor permit but he insisted that

he wanted to apply for a work permit. The 1st Applicant denies signing the Agreement and puts the Respondent to strict proof of the same.

[40] Denied paragraph 4.11 of the said Affidavit.

[41] The 1st Applicant says with respect to paragraph 5 of the said Affidavit that, at the time he received the instruction from his counsel, he was driving and not physically present which limited my ability to fully comprehend the advice given. It is important to note that 1st Appellant was not in Court as he was travelling west for urgent business matters. He did not have sufficient time to fully consider the information provided, and it would be unjust to rely on that.

[42] Strongly denies the contents of paragraph 6 (6.1 to 6.3) with respect to shareholding. To increase shares or to make any changes in a company there are strict regulatory approvals that needs to be obtained. This pertains to Investment Fiji approvals, and approvals from the Reserve Bank of Fiji and Fiji Revenue and Customs Services. In order to obtain these approvals the Respondent was required to submit documentation and paperwork both in relation to him and his company which his company did not do.

[43] No comments on paragraph 7 of the said Affidavit.

[44] The 1st Applicant in response to paragraph 8.2 of the said Affidavit states that the consent orders were entered on liability but not quantum which was to be agreed upon, when these were not agreed to the matter had proceeded to Hearing as there was no agreement on the quantum of liability and he further reiterate that circumstances under which counsel informed him of the need to agree to the claim made by the Plaintiff. He was travelling and not present in Court. He referred to paragraph 24 of Affidavit in Support.

[45] The 1st Applicant disagrees with paragraph 9 of the said Affidavit and says that his Solicitors advised the court on the day of the hearing that the liability was not being admitted as per the explanations given in paragraph 24 of the Affidavit in Support explaining the background to the consent orders pertaining to the liability aspect of the order which was not fully admitted. This Solicitor did advice the court on the day

- [46] Do not wish to respond to paragraph 10 of the said Affidavit.
- [47] Denies paragraph 11 of the said Affidavit.
- [48] As to paragraph 12 of said Affidavit, the reason for the delay has already been explained in the Affidavit in support.
- [49] Disagrees with paragraph 13 of the said Affidavit on delayed filing of application. The grounds of appeal were taken for filing sometimes in the second last week of January 2004. After a letter was written to the Court registry on or about 30 January 2024 to seek further directives on filing of the grounds of appeal and which our Solicitors received sometime in the first week of April and hence the application was filed on the 5th of April 2024.
- [50] Disagreed with paragraphs 17, and 24 of the said Affidavit.
- [51] Disagreed with paragraph 18 of the said Affidavit and state that with reference to judgment granted on 7 December 2023, it clearly indicates there were grounds of meritorious appeal highlighted within the said judgment.
- [52] With respect to paragraph 19 of the said Affidavit, the 1st Applicant says that he agrees grounds were ready, it was important that instructions were obtained before filing of the document to ensure that they continued to agree on the same.
- [53] With regard to paragraph 20 of the said Affidavit, the 1st Applicant says that there is no prejudice as the dealing was between two companies Winnovatia Business Solutions PVT Ltd apart from the Summons and Aper Motors Ltd pursuant to an investment agreement signed on 11th August 2018 which covered that any dispute is to be dealt within India. Nowhere in the agreement it states that the agreement was between Nagaraju Thandu and Rajnal Rohnesh Kumar and Parmashni Lata.

(H). Analysis

- [54] The Applicants are applying for enlargement of time to file an application for leave to appeal out of time. An earlier similar application was made before the High Court. It was successful, however, the Applicants were not able to cease the opportunity by filing their Notice and Grounds of Appeal, within the 21 days' time limit, as such the

grant lapsed. They now file a fresh application for enlargement of time by filing a Summons with an affidavit in Support.

Factors to be taken into account.

[55] The five (5) factors to be taken into account (see paragraph [14] are, the reasons for the failure to file within time; the length of the delay; whether there is a ground of merit justifying the Appellate Court's consideration; whether, there has been a substantial delay, nevertheless is there a ground of appeal that will probably succeed?

Reason for failure to within time file and Length of delay:

[56] The Applicants' application for enlargement of time to appeal in the High Court was granted on 7th December 2023 (paragraph 34 of Applicants' Affidavit) and the order was sealed on or about 12th January 2024 and purportedly served on the Respondent on 1 February 2024 (paragraph 35 of said Affidavit). However, the Appellants did not file the grounds of appeal due to the following:

(a) *The Applicants had to travel overseas due to a death in the family. The Solicitors were unable to obtain and confirm written instructions from the Applicants prior to filing of the appeal documents.*

(b) *An error was made by the Solicitor in the carriage of the matter at the said legal firm.*

(c) *The legal firm promptly contacted the Court of Appeal Registry and upon filing the application, was informed that the filing was late by 8 days.*

[57] The Applicants explained the reasons for the delay as "*not a consequence of negligence*" as it was "*an administrative oversight by counsel*". The Applicants have not specifically stated the duration (How long) of the delay. The Respondent submits that the delay is substantial and due to the Applicants and their Solicitors. The Affidavit in support clearly attribute the delay to the Applicants' Solicitors office. See paragraph 39 of the Affidavit in support. The Applicants submit that the duration of the delay are genuine and sufficiently justify the deviation from the stipulated timeline. If put in context the delay is not extensive.

[58] The delay is substantial taking account of the similar earlier application, before the High Court. The Applicants were unable to file grounds of appeal, after the initial extension of time was granted on 7 December 2023. The problem and mistake in calculation of dates was not caused by the Applicants personally, nor themselves not instructing the Solicitors or the Registry in its delayed response to queries after the 8 days delay. Under the circumstances and in consideration of the untenable justification for the delay, I hold that the delay is substantial and unreasonable under the totality of the circumstances of this case and the unconvincing reasons given. Leave can still be granted despite the substantial delay, but only if there is a ground of merit.

Is there a ground of merit although the delay is substantial and unreasonable?

[59] I have considered the comments by the learned Acting Puisne Judge on the grounds of appeal proposed to be urged if leave is granted to Appellants, and having considered those proposed grounds, and paragraphs 39 to 51 of the Affidavit filed in support of the Summons. However, when considering the grounds of appeal, I cannot overlook the fact that the Applicants were represented at the hearing of the case by their Counsel, Mr Nambiar on 30th November, 2022 and 25th February, 2022, and was fully aware of the matters raised on those occasions. In paragraph 5 of the said judgment the learned Judge stated:

“5. On 30th November, 2022, and 25th February, 2022, the plaintiff was represented by Mr Ropesh Singh and the defendants by Mr N. Nambiar. On 30th November, 2022, both counsels stated that parties agreed to enter judgment on liability in terms of the interlocutory summons for summary judgment and quantum to be assessed. 25th February, 2022, I made Order as follows:

“Defendants agree that they are liable to the plaintiff and the quantum to be determined.

Hearing on 29th April, 2022 at 10am.””

[60] The impugned judgment was delivered on 9th September, 2022, it would appear the judge had got the date wrong, which should be 30th November, 2021. Between 25th February 2022 and 29th April, 2022 (the date of hearing on quantum, a period of approximately 2 months), is ample or sufficient time for the Appellants and their

Counsel to discuss the Appellants' position and approach on the resolution of the quantum issue. Within that period, Counsel could have obtained relevant instructions from the Appellants, or, the Appellants could have instructed Counsel directly on their stance on the matter.

- [61] If they were serious in contesting the quantum, why didn't they ensure their position was clarified before the hearing on quantum fixed for 29th April, 2022? It would appear that at that hearing, the Appellants' Counsel did not raise any of the issues which are now being raised in the proposed grounds. Raising them now will prejudice the Respondent as will be discussed below. There are no arguable grounds for leave to appeal. The grounds have no merits and were not raised at the hearing of the quantum hearing nor at the full earlier hearing where the Appellant had admitted liability.
- [62] Proposed grounds (1) to (8) in my view raise issues which ought to be raised at the hearing in the High Court. In the High Court proceedings, the Counsel for the Appellants was in attendance, Counsel did not actively participate in the proceedings as evidenced in the record and in the judgment. The judgment did not refer to any legal argument presented by the Counsel for the Appellants. It is also pertinent to consider that that judgment is in response to a Summons for Summary judgment under Order 14 of the High Court Rules. The Court orders were made in line with the said Order (Summary Judgment).
- [63] It was open to the 3rd Respondent, through its Solicitors to utilize the procedures set out in Order 14 to protect its client's interest prior to the hearing, during the hearing and after the hearing. However, the judgment was entered by consent, as to liability. A hearing on the *quantum* was also held (see paragraph [65] below. In my view, considering that liability was Ordered by Consent; the Summons is for Summary Judgment, the facts and circumstances and the totality of the evidence available to the learned trial Judge, the ineffective legal representation, the eight (8) Grounds of Appeal have no prospect of success. They have no merit.

Will the Respondent be unfairly prejudiced?

[64] There is a need to consider the interests of the Appellants and their right to have an opportunity to present and argue their case, based on the proposed grounds of appeal. Respondent will face further delays in enjoying the fruits of success. Appellants did not take matters seriously after the earlier grant of extension of time, and reasons were not acceptable.

[65] **Chronology of events:**


- (i) *30th November 2021 at 2:30pm Counsels have agreed to enter judgment on liability in terms of the Interlocutory Summons for Summary Judgment. Quantum is to be assessed. Matter to be called after 2 months to see if settlement can be reached.*
- (ii) *Called on 1st December 2021 to explore settlement. Adjourned to 8th February 2022.*
- (iii) *On 8th February, 2022 called, but matter cannot be settled, but defendants cannot be present. Call on 25th February, 2022. Both Counsels agree on liability, quantum to be assessed.*
- (iv) *Hearing on 29th April, 2022 at 9:30am Judgment on notice. Any representation by the Appellants?*


Conclusion

[66] Having considered the foregoing and the circumstances under which this application is made, I am of the firm view that the application for enlargement of time is not made out. The duration of the delay is substantial. The reasons for the delay are not convincing, reasonable, or justifiable under the circumstances. The grounds of appeal are not arguable and have no merit given the nature of the application for summary judgment and, the fact that in my view justifiable conclusions were arrived at by the learned Judge after the quantum hearing.

Order of Court

1. *Application for Enlargement of Time is refused.*
2. *Applicants to pay the Respondent \$3000.00 as costs within 21 days from today.*




Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors

Nambiar Lawyers for the Appellants
Patel & Sharma Lawyers for the Respondent