

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC No.: 229 of 2013

BETWEEN : **PATRICK JOHN JAY** of Waituri Road, Vuci, Nausori, Retired
Businessman
PLAINTIFF

AND : **SEMITI DIDITAKI** of Vuci Road, Nausori, Military Officer
DEFENDANT

Counsel : **The Plaintiff appearing In Person**
Mr. A. Rawaya for the Defendant

Dates of Hearing : **7th November, 2014**

Date of Decision : **10th November, 2014**

DECISION

INTRODUCTION

1. This is the application for the extension of time for seeking for appeal against the Master. The decision of the Master was regarding the striking out of the application for eviction in terms of the Section 169 of the Land Transfer Act (Cap131) delivered 28th November, 2013.

ANALYSIS

2. The applicant is seeking extension of time to appeal in terms of Order 59 rule 10(1) and (2). The application after the expiration of time needs to be before a judge and supported by an affidavit. The Plaintiff (Applicant) had filed an affidavit in support.
3. In the said affidavit in support of the extension of the time Plaintiff had indicated proposed grounds of appeal in paragraph 2. But in the paragraph 3-6 alleging certain facts against the Defendants and their behaviour, after the pronouncement of the decision by the Master, which are irrelevant to the present application.

4. The Plaintiff has failed to explain the long delay for the appeal in the said affidavit in support. The said decision was delivered nearly one year ago on 28th November, 2013.
5. The time for appealing against a Master's decision is contained in Order 59 rule 9 of the High Court Rules of 1988. Accordingly, the time period for appeal was 21 days from the decision.
6. There are no reasons stated in the affidavit in support for extension for more than 9 months. So, on that ground alone this application seeking extension of time should be struck off.
7. In Safari Lodge Fiji Ltd v Rosedale Ltd [2008] FJHC 139; Civil Action 319.1999 (5 February 2008)(unreported) it was held,

'4.7 As a starting point, however, it is important to bear in mind that time limits and time lines exist in the justice system for good reason: so that justice may be dispensed expeditiously, so that parties have a timely opportunity to know where they stand vis-à-vis litigation, and in the recognition that 'justice delayed is justice denied' – this from the perspective of all parties. As the High Court acknowledged in Rajendra Prasad Brothers Ltd v. FAI Insurances (Fiji) Ltd [2002] FJHC 220, at 8; and Bank of Hawaii v. Reynolds [1998] FJHC 82, at 6, adopting the principle from Ratnam v. Cumaraswamy and Anor [1964] 3 All ER 933:

The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, the party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation: at 935'

8. Though the court has power to extend time period in fit and proper case, at least there should be some explanation as to the delay and reason for deviating from the usual time limit specified. This is more applicable when the lapse of time is as long as 9 months.

9. In Safari Lodge Fiji Ltd v Rosedale Ltd (supra) it was further held,

Extension of time generally lies within the discretion of the Court. Guidance can be taken from matters including

- *whether an applicant formed a bona fide intention to seek leave to appeal and conveyed that intention to the opposition party within the prescribed time;*
- *whether counsel moved diligently;*
- *whether a proper explanation for the delay has been offered;*
- *the extent of the delay;*
- *whether granting or denying the extension of time will unduly prejudice one or other of the parties; and*
- *the merits of the application for leave to appeal.*

4.5 The ultimate question is always whether, in all the circumstances and considering the above matters, the justice of the case requires an extension of time.

10. Considering all the factors stated above there is no justification in extension of the time period for more than 9 months in this case. The proposed grounds of appeal failed to establish even an arguable case. The application for the extension of time is struck off. This application is an abuse of process by the Plaintiff. The perusal of the case record shows that Plaintiff was represented by a counsel till the decision of the Master. After that, Plaintiff appearing in person made a previous application for seeking leave to appeal. It was struck off without costs, as it was not made within 21 days. Even the said previous application was filed after 7 months from the decision of the Master. The cost of this application is summarily assessed at FJ\$500 to be paid within 28 days.

FINAL ORDERS

- a. The motion seeking extension of time for leave to appeal against the Master's decision is struck off.
- b. Cost of \$500 to be paid by the Plaintiff to the Defendant within 21 days.

Dated at Suva this 10th day of November, 2014.



Amulya
.....
Justice Deepthi Amaratunga
High Court, Suva