

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Appeal No. 05 of 2015**

**BETWEEN** : **NARAYAN C. SAMI**

**APPELLANT**

**AND** : **JONE NAQOLI**

**RESPONDENT**

**BEFORE** : **Hon. Justice Kamal Kumar**

**COUNSEL** : **Plaintiff in Person**

: **Defendant in Person**

**DATE OF HEARING** : **1 October 2015**

**DATE OF JUDGMENT** : **31 March 2016**

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**JUDGMENT**

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## **Introduction**

1. On 2 December 2014, Appellant filed Notice of Intention to Appeal the Magistrates Court decision delivered on 27 November 2014, in Miscellaneous Action No. 7 of 2014 in respect to Appeal by the Appellant of Referees Order in SCT Claim No. 1984 of 2011.
2. On 18 December 2014, Appellant filed Grounds of Appeal.
3. This matter was called in this Court on 6 March 2015, when Appellant appeared in person but Respondent failed to appear when this matter was adjourned to 1 May 2015, for mention and the Court directed that Notice of Adjourned Hearing (**NOAH**) be served on the Respondent.
4. This matter was next called on 3 July 2015, when it was adjourned to 7 August 2015 at 9.30 am to enable parties to collect Copy Records and NOAH to be served on the Respondent.
5. On 7 August 2015, this matter was adjourned by consent to 1 October 2015 at 9.30am for hearing.
6. On 1 October 2015, parties made Submissions and the appeal was adjourned for judgment on notice.

## **Background Facts**

7. Appellant filed claim in Small Claims Tribunal in SCT Claim No. 1984 of 2011.
8. On 18 November 2011, the Referee made Order for Respondent to pay Appellant \$1480.03.
9. Respondent applied for re-hearing of the SCT Claim on the ground that Claim was not served on him and after re-hearing the Claim, the same Referee on 30 March 2012, dismissed Appellant's claim.
10. On 5 May 2014, the Appellant filed Application in Magistrates Court for Leave to Appeal Referee's Order out of time which Application was returnable on 16 May 2014.

11. On 16 May 2014, the then learned Magistrate directed parties to file Submission and the Application was adjourned to 15 July 2014 for mention.
12. On 15 July 2014, Appellant (Applicant) was granted time to respond to the Submission and the Application was adjourned to 18 August 2014.
13. On 27 November 2014, the then learned Magistrate delivered his Ruling whereby the Appeal was dismissed.

### **Appeal**

14. The then learned Magistrate determined the appeal and dismissed after making the finding that Respondent's brother was the tenant and not the Respondent.
15. This Court fails to understand on what basis the then learned Magistrate determined the appeal and considered the merits of the appeal when all he had to do was to determine the Appellant's Application to extend time to file appeal out of time.
16. This Court should first consider whether the then learned Magistrate should have granted Appellant leave to appeal Small Claims Tribunal Order made on 30 March 2012, out of time.
17. The then Learned Magistrate should have considered the following factors in respect to Application to extend time to appeal:-

- “(i) length of delay;*
- (ii) reason for the delay;*
- (iii) chances of appeal succeeding if time for appealing is extended,*
- (iv) degree of prejudice to the Respondent if the application is granted.”*

**CM Van Stilleveldto v. E L Carriene Inc.** [1983] 1 ALL ER 699 of 704;  
**Norwich and Peterborough Building Society v. Steed** [1992] 2 ALLER 830 at 83; **Ist Deo Maharaj v. BP (South Sea) Co. Ltd.** Civil Appeal No. ABU0051 of 1994S - FCA; **Nand v. Famous Pacific Shopping (NZ) Limited** (2010) FJHC 619; Civil Appeal No. 6 of 2009.

### **Length of Delay**

18. The Appellant was to file his appeal in respect to SCT decision by 13 April 2012 (i.e. 14 days from 30 March 2012).
19. Appellant filed application for extension of time to file Appeal out of time on 5 May 2014 (after lapse of almost two years). (page 22 - Copy Record)
20. The delay obviously was inordinate.

### **Reasons for Delay**

21. In **Kamlesh Kumar v. State** Criminal Appeal No. CAV0001/09 and **Mesake Sinu v. State** Civil Appeal No. CAV001/10 his Lordship the Honorable Chief Justice Gates, President of the Supreme Court of Fiji stated as follows:-

***“[7] The rights of appeal are granted by statute within a framework of rules. Enlargement normally can only be granted because of specific powers granted to the appellate courts. No doubt because of a need to bring litigation to finality, once there is non-compliance, the courts can only exercise a limited discretion. Viliame Caubati AAU0022.03S 14th November 2003 at p.5.*”**

22. His Lordship also quoted the following from Rhodes Cr App. R 35 at 36:-

***“A short delay may be disregarded by the Court if it thinks fit, but where a substantial interval of time a month or more elapses, it must not be taken for granted that an extension of time will be allowed as a matter of course without satisfactory reasons.”***

23. I have read the Affidavit in Support of Application to extend time (page 23 - Copy Record) and note that Appellant had not provided any reason as to why he failed to file Appeal within the prescribed time.
24. Since the Appellant did not provide any reason for delay, the Application should have been dismissed.

### **Chances of Appeal Succeeding**

25. It is settled that that there are only two grounds of appeal from SCT award or order and they are:
  - (i) The referee did not have jurisdiction to make the order;
  - (ii) Referee acted in an unfair manner.
26. Appellant needed to establish that the Referee acted unfairly towards him when the Referee dealt with his claim.
27. Appellant cannot challenge the merits of Referees decision even if it was legally wrong.

**Sheet Metal Plumbing (Fiji) Ltd v. Deo**[1999] FJHC 26; HBA0007d.99s (14 April 1999)

28. No evidence was provided to Magistrates Court to establish the above grounds.
29. Before I conclude, I make following observation which supports the decision of the then learned Magistrate when he dismissed the Magistrates Court Appeal:-
  - (i) The Tenancy Agreement was between Amar Babu Narayan and Sailosi Natadra (Page 15 - Copy Record);
  - (ii) The parties to SCT Claim and Magistrates Court Appeal and this Court were not parties to the Tenancy Agreement;
  - (iii) In 2009 when Tenancy Agreement was made Respondent was a student at University of South Pacific (page 18 - Copy Record);
  - (v) When this Court enquired with Appellant as to who is Amar Babu Narayan (the lessor) he stated that he is his son, Appellant manage his properties and has Power of Attorney;
  - (vi) However, no Power of Attorney was produced in Small Claims Tribunal, the Magistrates Court or this Court;
  - (vi) Since Appellant was not privy to the Tenancy Agreement he had no basis to claim for any monies due under the Tenancy Agreement.

### **Conclusion**

30. I make following findings:-

- (i) Appellant applied to Magistrates Court for extension of time to appeal Referee's Order made on 30 March 2012, in SCT Claim No. 1984 of 2011;
- (ii) The Applicant was not entitled to extension for time to file appeal against Referee's Order made on 30 March 2012, for following reasons:-
  - (a) There was substantial delay in filing the application for extension of time;
  - (b) No reason was given for such delay;
  - (c) No evidence was provided to show that the Referee acted in unfair manner towards the Appellant in respect to SCT Claim No. 1984 of 2011.

31. In any event the appeal should be dismissed on basis of my observation at paragraph 29 of this Judgment and reasons stated at paragraph 30 hereof.

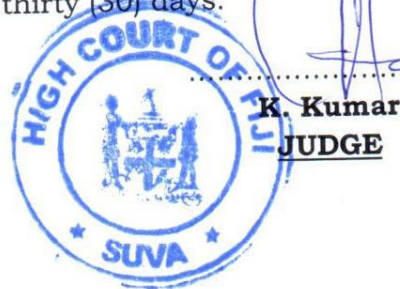
### **Costs**

32. In respect to costs I take into consideration that Appellant filed Application for extension of time some two (2) years after the SCT Order and he was not a party to the Tenancy Agreement.

### **Order**

33. I make following Orders:-

- (i) Appeal be dismissed and struck out;
- (ii) Appellant do pay Respondent's costs assessed in the sum of \$750.00 within thirty (30) days.



At Suva

31 March 2016

**Plaintiff in Person**

**Defendant in Person**