

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action HBC 290 of 2012

BETWEEN : **LEVANI VULALIMA** of Wailea Settlement, Vatuwaqa, Suva
in the Republic of Fiji.

APPLICANT/APPELLANT
(Original First Defendant)

A N D : **SALANIETA COKANASIGA** of Lot 51 Vosavosa, Road,
Vatuwaqa, Suva.

RESPONDENT
(Original Plaintiff)

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

COUNSEL : Mr N. Nawaikula for the Applicant
Mr. H. Nagin for the Respondent

DATE OF JUDGMENT: 31 March, 2016

RULING

(Application For Leave To Appeal Out of Time)

1.0 **Introduction**

1.1 On 4 August 2015, the Applicant filed an Application by Notice of Motion seeking following Orders:-

(i) That the Court Order dated 12th November 2014 be stayed pending appeal; and

(ii) That leave be granted to the Defendant to appeal out of time the decision of Justices Kamal Kumar dated 12th November 2014

(iii) That leave is granted to the Defendant to issue Third Party Notice against Merewalesi Nai;

(iv) Any other further Orders of his Honourable Court deems just and expedient in the circumstances.

(v) That the costs of this application be in the cause of the application.

(“the Application”)

1.2 On 2nd October 2015, parties were directed to file Affidavits and Submissions and the Application was adjourned for ruling on notice.

1.3 Following Affidavits were filed by Applicant and the Respondent:-

For Applicant (Defendant)

(i) Affidavit of Applicant in Support sworn and filed on 4 August 2015 (**“Applicant’s Affidavit”**);

For Respondent (Plaintiff)

Affidavit in Reply of Respondent sworn on 30th October 2015 (**“Respondent’s Affidavit”**)

2.0 Application for Leave To Appeal out of Time

2.1 Judgment in this matter was delivered on 10 June 2014, (not 12 November 2014, as stated in the Application) and as such Applicant was to file Notice of Appeal and Grounds of Appeal by 22 July 2014 (42 days).

- 2.2 On 4 August 2014 Applicant filed Application for Extension of Time to File Appeal.
- 2.3 Notice of Motion states that the Application for extension of time is made pursuant to Inherent Jurisdiction of this Court.
- 2.4 Legal Practitioners should by now know that this Court will only exercise inherent jurisdiction where there is no rule of Court or legislation which deals with the issue before the Court.
- 2.5 In this instance, the rule for filing of appeal from decision of this Court to Fiji Court of Appeal is stated in Court of Appeal Rules.
- 2.6 Therefore parties should comply with these rules.
- 2.7 Rule 16 of Court of Appeal Rules provides:-

“ 16.Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph (4) of rule 15 within the following period (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that it to say-

(a) in the case of an appeal from an interlocutory order,21 days;

(b) in any other case, 6 weeks.”

- 2.8 Applicant not having filed the Notice of Appeal by 22 July 2014 filed the present Application on 4 August 2015, which is after the lapse of more than a year.
- 2.9 It is surprising to note that the Counsel for the parties from the time the Application was called until the date of hearing completely disregarded and failed to address the Court on **Rule 27 of Court of Appeal Rules** the very provision dealing with the Extension of time to Appeal.
- 2.9 Rule 27 of Court of Appeal Rules provide as follows:-

“27, Without prejudice to the power of the Court of Appeal, under the High Court Rules as applied to the Court of Appeal, to enlarge the time prescribed by any provision of these Rules, the period for filing and serving notice of appeal under rule 16 may be extended by the Court below upon application made before the expiration of that period.”

- 2.10 Hence, pursuant to this Rule, this Court has no jurisdiction to extend the time to appeal when Application is made to Court after the prescribed time for Appeal has expired.
- 2.11 It is not disputed that the time for filing Notice of Appeal expired more than one year ago when the Application was filed in this matter.
- 2.12 The fact that Counsel for the Respondent failed to raise Rule 27 of Court of Appeal Rules at the hearing or in Respondent's Submissions I do not think it is just to award cost against the Applicant.

3.0 Conclusion

3.1 I make following orders;

- (i) Applicant's Application for leave to appeal out of time, stay of execution of Judgment delivered on 10 June 2014, and to file Third Party Notice by Notice of Motion dated and filed on 4 August 2015, is dismissed and struck out.
- (ii) No order as to cost.



At Suva

31 March 2016

Vakaloloma & Associates for the Applicant

Sherani & Co. for the Respondent