

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

**APPEALATE JURISDICTION**

***Civil Appeal No: HBA 16 OF 2016***

**BETWEEN :**        **RAJESHWAR SINGH T/A SINGHS LIBRARY** Businessman, of  
Vusuya Road, Raralevu Nausori.

**DEFENDANT / APPELLANT**

**AND**        :        **SANJAY SINGH VERMA** Businessman, Raralevu Nausori

**PLAINTIFF / RESPONDENT**

**BEFORE:**        **Hon. Justice Fredrick Indran X.A. Nicholas**

**COUNSEL:**        Ms. Naomi Raikaci for the Appellant  
Mr. Kunal Singh for the Respondent

**DATE OF RULING:**        **16<sup>th</sup> May, 2017**

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**RULING**

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## THE MATRIX

1. The instant case is an appeal before this Court against the decision of the Magistrate's Court at Nausori made on 11<sup>th</sup> day of July, 2016.

2. Before the learned Magistrate was a Notice of Motion dated 23<sup>rd</sup> July 2015 (with a supporting affidavit); seeking the following orders:

- i) *That the Defendant be granted leave to appeal out of time a Consent Judgement of the said Court dated 18<sup>th</sup> February 2015;*
- ii) *That execution of a Writ of Fieri Facias issued on 22<sup>nd</sup> June 2015 be stayed pending the determination of this application; and*
- iii) *That costs of this application be costs in the cause.*

3. On 11<sup>th</sup> July 2016, the learned Magistrate issued the following orders:

- "i) Applicant / Defendant is refused leave to appeal out of time;*
- ii) Applicant / Defendant to pay Plaintiff / Respondent cost of this action assessed in the sum of \$500.00 by 11<sup>th</sup> August 2016."*

4. It is to this ruling that the appeal was heard before this Court on the 20<sup>th</sup> April 2017 and 8<sup>th</sup> May 2017.

5. The matter was then set down for a ruling to be delivered on notice.

## **THE ISSUE**

6. The issue before this Court concerns the substantive ruling of the learned Magistrate, which can be found in its entirety at pages 125 to 131 of the '*Copy Record of the Magistrates Court at Nausori*' ('the Copy Record').
7. It is to be noted that this Court has taken into careful consideration and reflected upon the submissions and authorities tendered by learned Counsel for each of the parties hereto; and that notwithstanding that their individual input is not rehashed here, the ruling hereinafter appearing has their respective contributions well in contemplation.
8. Having stated the above and as this is an appeal against the learned Magistrate's ruling of 11<sup>th</sup> July 2016, this Court can do no better than to scrutinize and consider the import of that ruling in itself; and draw particular reference to its salient points here.
9. Although I commit the folly of repeating myself, but for the ease of narration, I state again that the Defendant / Appellant in this case filed a Notice of Motion on the 23<sup>rd</sup> July 2015 with a supporting affidavit; seeking the following orders:

- i) *That the Defendant be granted leave to appeal out of time a Consent Judgement of the said Court dated 18<sup>th</sup> February 2015;*

- ii) *That execution of a Writ of Fieri Facias issued on 22<sup>nd</sup> June 2015 be stayed pending the determination of this application; and*
- iii) *That costs of this application be costs in the cause.*

10. What must always be kept in mind is that the impugned decision concerned a Consent Judgement (a copy of which can be found at page 123 & 124 of the Copy Record).

**THE SUBSTANCE OF LEARNED MAGISTRATE'S DECREE AND THIS COURT'S RULING / FINDINGS UPON IT**

11. The learned Judicial Officer began his ruling by noting that both parties were before him in court on the day in question (18<sup>th</sup> February 2015); where the Defendant / Appellant had waived his right to legal counsel; and had gone on to inform the court that he had been properly served with the summons and did indeed agree with the claim. As the Defendant / Appellant did not dispute the claim, judgement by consent was duly ordered.

12. The learned Magistrate then went on to deal with a '*Preliminary Issue*' in that the Defendant / Appellant had failed to file a '*Notice of Intention to Appeal*' and his '*Grounds of Appeal*' in this case.



13. To that issue the learned Magistrate ruled that his court ***did*** have the jurisdiction / discretion to extend the time for filing of the '*Notice of Intention to Appeal*' and the '*Grounds of Appeal*'; and he found support for this by reference to the cases of '**Katafono v. Brown** Unreported Civil Action No. HBC 135 of 2014 and '**Jans Rental Cars (Fiji) Limited v. Nand and Lutz** Unreported Civil Action HBM 147 of 2014.'

### ***RULING ON POINT***

14. Notwithstanding the thread of the learned Magistrate's ruling on this point; but taking into consideration his subsequent final decision in this case; this Court does not find it necessary to enter into the fray, so to speak, of the dichotomy of judicial pronouncements in this area of the law. There are two lines of judicial thinking that are diametrically opposed on this point; but suffice for me to say that under the circumstances this Court will not disturb the said ruling of the Magistrate; and will allow it to stand as it is, for what it is worth.

15. The learned Magistrate then proceeded to look at the following; based upon the cases of '**Loks Crane and Contractors Limited v. Clutch System (Fiji) Limited** Unreported Civil Appeal 31 of 1999 Lautoka delivered 17<sup>th</sup> July 2002 per Gates J. (as His Lordship then was) and '**Nand v. Famous Pacific Shopping (NZ) Limited** (2010) FJHC 619; Civil Appeal No. 6 of 2009:

- (a) The length of delay;
- (b) The reasons for the delay;
- (c) The merits of the proposed appeal; and
- (d) Any prejudice likely to result to the Respondent

16. He took each in turn, thus:

**(a) The length of delay**

17. In gist, the learned Magistrate was unimpressed by the Defendant / Appellant's apparent lethargy in taking any action at all and in a timely fashion for the protection of his own legal welfare. He sat on his interests and allowed a period of 5 months to elapse before he was stirred to move by the Bailiff bearing a *Writ of Fieri Facias* upon him. The Magistrate stood guided by the case of **Revici v. Prentice Hall Incorporated & Ors.** [1969] 1 ALL ER 772, per Denning M.R.

***RULING ON POINT***

18. Based upon the learned Magistrate's reckoning, supported by the authority that he cited; no interference by this Court is necessary nor called-for here.

**(b) The reasons for the delay**

19. The learned Magistrate considered various authorities on this issue which included:

- i) **Revici v. Prentice Hall Incorporated & Ors.** [1969] 1 ALL ER 772;
- ii) **Gallo v. Dawson** [1990] 64 ALJR 458 @ 459;
- iii) **Tevita Fa v. Tradewinds Marine Ltd. & Anor.** Civil Appeal No. ABU 0040 of 1994 (FCA) – Thomson J.;
- iv) **Jawant Singh v. Peter Francis** (Action No. 57 of 1973 FCA – Marsack JA); and
- v) **Attorney General of Fiji & Anor. v. Paul Praveen Sharma** Civil Appeal No. ABU 0041/93 S – FCA.

20. The learned Magistrate observed that the Defendant / Appellant ventured to explain away the delay by his seeming ignorance of the implications of a consent judgement; and that by the time he got to appreciate the very real consequences, time and circumstance had turned against him.

### ***RULING ON POINT***

21. The learned Magistrate correctly opined that ‘a lack of knowledge is a misfortune, not a privilege’ recognised by the law. It does not act as a shield for consequential repercussions that may flow from laid-back inaction. The stated reason then, for the delay, was entirely unsatisfactory; in short ~ the oft quoted latin axiom ~ “*Ignorantia juris non excusat*” (“ignorance of the law excuses not”) is most apt here. It follows thus, that this Court is on all fours with the learned Magistrate.

### **(c) The merits of the proposed appeal**

22. The learned Magistrate here again was unimpressed and remained unmoved by the Defendant / Appellant’s pleas on the issue.

23. The Magistrate considered the following cases in his decision making process:

- i) **Avery v. No. 2 Public Service Appeal Board & Ors.** [1973] 2 NZLR 86, per Richmond J.; and
- ii) **Tevita Fa v. Tradewinds Marine Ltd. & Anor.** Civil Appeal No. ABU 0040 of 1994 (FCA) – per Thomson J.



24. And went on to state:

*“From the proposed grounds of appeal it can be noted that the Applicant’s proposed grounds of appeal is that the plaintiff is an illegal moneylender, circumventing the Money Lending Act by charging default fee of \$20.00 per day which indirectly represents interest, an unlicensed moneylender, the Plaintiff has no enforceable action in any court of law, and that the order of the Court was ultra vires [SIC].*

*The Court is of the view that the Applicant’s proposed ground of appeal generally lacks merit. The Applicant does not deny any agreement or dealing with the Plaintiff. The Court finds that the argument that one needs licence to lend money to another and any money lent otherwise cannot be recovered through the Court to be debatable. Main emphasis is on the Money Lending Act.”*

25. Learned Counsel for the Defendant / Appellant urged this Court to view adversely an ostensible admission by the Plaintiff / Respondent that he was an “unlicensed moneylender”. Counsel drew this Court’s attention to *Clause 10* of an ‘*Affidavit In Response*’ dated 17<sup>th</sup> August 2015 filed by the said Plaintiff / Respondent (found at page 38 of the Copy Record) which went like this:

“10. That I disagree with the contents of \*Paragraph 13 of the said Affidavit. Plaintiff (*should read “Defendant”*) was always aware that I was not a licensed money lender.”

26. And for ease of reference \*Paragraph 13 (found at page 28 of the Copy Record – *i.e.* the Defendant / Appellant’s ‘*Affidavit In Support*’ of his Notice of Motion of 23<sup>rd</sup> July 2015) reads:

“13. **THAT** I have now been informed and have reason to believe that the



Plaintiff is an unlicensed money lender who has been operating an illegal money lending business.”

27. In response, learned Counsel for the Plaintiff / Respondent submitted that at the Magistrate’s Court not a shred of evidence was moved to this effect, *viz.* whether or not the Plaintiff / Respondent was an unlicensed moneylender. In the upshot, plainly and simply, the impression that is brought to mind is that this was merely a desperate attempt, both at the Magistrate’s Court and in this appeal, at muddying the waters, as it were, with supposition, speculation and insinuation, without more.

28. When asked by this Court if the relevant agreement between the parties hereto, for what it is worth, was put before the learned Magistrate and / or could be found in the Copy Record, the response was in the negative.

### ***RULING ON POINT***

29. It is the considered view of this Court that taken on its own, the alleged “*admission*” by the Plaintiff / Respondent found at page 38 of the Copy Record, is certainly not proof positive on a balance of probabilities, that the Plaintiff / Respondent was indeed an unlicensed moneylender. In point of fact, it is moot whether it was even an “*admission*”, in the first place.

30. Having said that, this Court can find nothing improper in the learned Magistrate’s ruling with regard to the ‘*general lack of merit*’ in the appeal.

**(d) Any prejudice likely to result to the Respondent**

31. It was the learned Magistrates view that it is trite that a successful litigant was entitled to the fruits of litigation without undue delay; and had this to say when an assertion was made by the Defendant / Appellant that the Plaintiff / Respondent was "*a man of substances*" and thus "*will not be prejudiced if leave is granted ...*" (at page 131 of the Copy Record):

"The fact that one party is better off is not the issue. Every litigant has a right of appeal and given the fact that Applicant's delay in filing application for enlargement of time was inordinate, the reason for delay is unsatisfactory; the proposed ground of appeal lacks merits [SIC]. The Applicant in this action has taken things lightly. He came to Court and agreed to settle the sum owed to the Plaintiff. He did not settle the sum. When the Plaintiff pursued the claim and served FIFA the Applicant literally "woke up". His arguments in this Court basically showed that he did not take the matter seriously and did not act within the stipulated time[;] therefore for these reasons his application to seek leave to appeal out of time is refused."

***RULING ON POINT***

32. Upon reflection of the fact pattern of this case as a whole, this Court can find no fault in the decision of the learned Magistrate in refusing leave to appeal out of time to the Defendant / Appellant. The four key issues for such like cases, as stated above, were considered and duly addressed; and it would appear that there was naught that manifest itself as unseemly or inappropriate in the Learned Magistrate's reasoned decision.

## THE FINAL ORDER

33. In the premise, and based upon the foregoing, it is the ruling of this Court, which it hereby so holds, that this appeal is duly dismissed; with costs summarily assessed in the sum of \$1,000.00; to be paid by the Defendant / Appellant to the Plaintiff / Respondent within 30 days from the date hereof.

Handed Down And Dated this 16<sup>th</sup> day of May, 2017.



.....  
**Fredrick Indran X.A. Nicholas**  
**JUDGE of the High Court of Fiji**  
**At Suva**



**RAVONO & RAIKACI LAW for the Appellant**  
**KS LAW for the Respondent**