

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No. HBC 347 of 2014

ON APPEAL FROM THE RULING OF MASTER VISHWA DUTT SHARMA

DELIVERED ON 14TH SEPTEMBER, 2016

BETWEEN

STAR AMUSEMENT LIMITED a limited liability company

having its registered office at Suva.

PLAINTIFF-APPELLANT

AND

THE REGISTRAR OF TITLES.

FIRST DEFENDANT-RESPONDENT

AND

THE ATTORNEY GENERAL.

SECOND DEFENDANT-RESPONDENT

Counsel : Mr. V. Maharaj for the Plaintiff-Appellant
Ms. S. Taukei for the Defendants-Respondents

Date of Hearing : 25th July, 2017

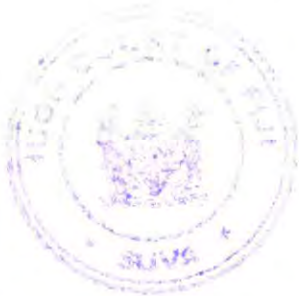
Date of Order : 14th August, 2017

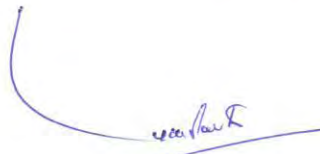
RULING

(On the objection to the maintainability of the appeal)

- [1] The plaintiff sought leave to appeal from the decision of the learned Master delivered on 14th September 2016. This court by its order dated 11th May, 2017 granted leave to appeal and the hearing of the appeal was fixed for 25th July, 2017 on which day an objection was taken to the maintainability of the appeal by the learned counsel for the 1st and 2nd defendants-respondents on the ground that the notice and grounds of appeal have not been filed and served on the defendants as required by Order 59 rule 17 of the High Court Rules 1988, after the leave to appeal was granted.
- [2] Order 59 rule 9 of the High Court Rules 1988 provides that;
- An appeal from an order or judgment of the Master shall be filed and served within the following period-
- (a) 21 days from the date of the delivery of an order or judgment; or
(b) in the case of an interlocutory order or judgment, within 7 days from the date of granting of leave to appeal.
- [3] Order 59 rule 17 of the High Court Rules 1988 provides as follows;
- (1) The appellant shall, upon serving the notice of appeal on the party or parties to the appeal, file an affidavit of service within 7 days of such service.

- (2) The appellant shall, within 21 days of the filing of notice of appeal, file and serve a summons returnable before a judge for directions and a date for the hearing of the appeal.
- (3) If this rule is not complied with, the appeal is deemed to have abandoned.
- [4] It is not a fact disputed by the plaintiff-appellant that it did not comply with the above provisions. In fact, the learned counsel for the plaintiff has, in his submissions, stated that by 19th May, 2017 the appeal had been abandoned.
- [5] The learned counsel also submitted that the court has a discretion to restore the appeal to the cause list. The plaintiff-appellant did not make a formal application for the consideration of the court whether it has the power to restore the matter to the cause list. The plaintiff-appellant filed summons to have the matter restored to the cause list after the date of hearing and before the court make its order on the objection taken by the defendants-respondents. For the reasons set out above the objection taken by the defendants-respondents to the maintainability of this appeal is upheld.
- [6] The decision of the court is that the plaintiff-appellant has abandoned the appeal.




Lyone Seneviratne

JUDGE

14th August, 2017