

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. HBA 15 of 2014

BETWEEN: **AUTOMART LIMITED**

Appellant

AND: **SAT DEO**

Respondent

Before: **Hon. Acting Chief Justice Kamal Kumar**

Counsels: Mr T. Sharma for Appellant

Respondent in Person

Date of Judgment: **26 May 2020**

JUDGMENT

Introduction

1. On 30 June 2014, Appellant filed Grounds of Appeal against Learned Magistrate's decision delivered on 11 June 2014, in Civil Appeal No. 12 of 2013 refusing Appellant's Application to extend time to appeal Order of Referee in Small Claims Tribunal No. 17 of 2013.
2. Appeal was called in this Court on 14 November 2014, when it was adjourned to 17 February 2015, for parties to confirm receipt of Copy Record.

3. On 17 February 2015, parties were directed to file Submissions and Appeal was adjourned to 28 April 2015, for hearing.

Background Facts

4. On 28 March 2013, Respondent filed Claim in Small Claims Tribunal (**SCT**) against the Appellant.
5. Hearing of SCT Claim was conducted by the Referee and after that Referee on 31 July 2013, made an Order against the Appellant with Appellant granted 14 days from thereof to appeal the Referee's Order.
6. Appellant filed Appeal against Referee's Order on 14 August 2015.
7. Appeal from Referee's decision was called at Magistrate's Court Nausori when both parties were present and Appeal was adjourned to 20 November 2013 (Page 19 of Copy Record).
8. On 20 November 2013, Learned Magistrate who sat in Court on that day dismissed the Appeal due to non-appearance of the Appellant.
9. On 29 January 2014, Appellant filed Application for Leave to Appeal out of Time in Magistrates Court.
10. Learned Magistrate heard the Application and delivered decision on 11 June 2014, when he dismissed the Application.

Appeal

11. Appellant is appealing Learned Magistrate's Order dismissing the Application for Leave to Appeal Referee's Order in exercise of Learned Magistrate's discretion.

12. The principle in dealing with Appeals against exercise of discretion has been stated in **Gosai v Nadi Town Council** [2008] FJCA 1.ABU116.2015 (22 February 2008) as follows:-

“28. APPEAL ON INTERLOCUTORY DECISION

*In coming to the decision that the appeal should be refused, the Court has also had reference to the High Court’s decision in **Heffernan v. Byrne and Ors** HCF Civil Action No. HBM 105 of 2007 (19 February 2008). There, in refusing leave to appeal against an interlocutory decision, His Lordship set out a comprehensive collocation of the authorities, referring to **Kelton Investments Limited and Tappoo Limited v. Civil Aviation Authority of Fiji and Motibhai & Company Limited** [1995] FJCA 15, ABU 0034d.95s; **Edmund March & Ors v. Puran Sundarjee & Ors** Civil Appeal ABU 0025 of 2000; and **KR Latchan Brothers Limited v Transport Control Board and Tui Davuilevu Buses Limited** Civil Appeal No. 12 of 1994 (Full Court).*

29. As His Lordship observed, in **Edmund March & Ors** this Court said:-

*As stated by Sir Moti Tikaram, President Fiji Court of Appeal in **Totis Incorporated, Sport (Fiji) Limited & Richard Evanson v. John Leonard Clark & John Lockwood Sellers** (Civ. App. No. 33 of 1996 p. 15):*

It has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal. Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed. The Fiji Court of Appeal has consistently observed the above principle by granting leave only in the most exceptional circumstances.

30. Further, as His Lordship also noted, in **KR Latchan Brothers Limited** a Full Court of Appeal (Tikaram, Quillam and Savage JJ) said:

... The control of proceedings is always a matter for the trial Judge. We adopt what was said by the House of Lords in **Ashmore v. Corp. of Lloyd's** [1992] 2 All ER 486 –

Furthermore, the decision or ruling of the trial judge on an interlocutory matter or any other decision made by him in the course of the trial should be upheld by an appellate court unless his decision was plainly wrong since he was in a far better position to determine the most appropriate method of conducting the proceedings.”

13. Appellant will need to establish that the Learned Magistrate exercised his discretion in refusing Application for Leave to Appeal Referee’s decision was plainly wrong and there are exceptional circumstances.
14. It is well established that the factors which Court considers in dealing with Application to extend time are:-
 - (i) **Length of Delay;**
 - (ii) **Reason for Delay;**
 - (iii) **Chances of Appeal succeeding if Leave is granted;**
 - (iv) **If Respondent will suffer prejudice.**
15. Learned Magistrate considered these factors in his Ruling.
16. Learned Magistrate did not err in any respect when he applied the principle in **Sheet Metal v Plumbing (Fiji) Ltd.** [1999] 45 FLR 80 (14 April 1999).
17. Upon analysis of the Appellant and Respondent’s Submissions this Court finds that Appellant has **failed** to establish the exercise of discretion by Learned Magistrate was plainly wrong and there are any exceptional circumstances for this Court to set aside Learned Magistrate’s decision.

Costs

18. The Court takes into consideration that both parties filed Submissions and relied on it.

Orders

19. This Court orders that:-

- (i) Appeal is dismissed and struck out.
- (ii) Appellant do pay Respondent's costs of Appeal assessed in the sum of \$500.00 within fourteen (14) days of this Judgment.



A handwritten signature in blue ink, consisting of a large, stylized 'K' followed by a vertical line and a horizontal stroke.

Kamal Kumar

Acting Chief Justice

At Suva

26 May 2020

Tirath Sharma Lawyers for the Appellant
Respondent in Person