

In the High Court of Fiji
At Suva
Appellate Jurisdiction

Civil Appeal No. HBA 27 of 2020

Nileshwari Bandana

Applicant

v

Sanjay Singh

Respondent

Counsel: Mr N. Begg for the applicant
Mr F. Haniff for the respondent
Date of hearing: 17th March,2021
Date of Judgment: 12th May,2023

Ruling

1. The applicant seeks leave to appeal out of time a decision of the Resident Magistrate of 21st October 2020. The application is made under Or 3, r 4(1)(2).
2. The applicant in her supporting affidavit states that she was unable to attend the hearing in the action commenced by the respondent against her in the Small Claims Tribunal, (SCT) as she was employed at the Social Welfare Department and Children and Poverty Alleviation. The copy of the Order in the SCT is attached. The Order was served on her on 8th October, 2019. The time for appeal has lapsed. The respondent filed a JDS in the Magistrates Court. On 21st October, 2020, a means test was done. She could not file her Notice and Appeal within time. The applicant states that she has a right to appeal the order by the SCT.

3. The applicant's proposed grounds of appeal are contained in his supplementary affidavit.
4. At the hearing, Mr Haniff, counsel for the respondent pointed out that the applicant's supporting affidavit does not refer nor attach the decision of the Magistrate Court from which leave to appeal is required, as conceded by Mr Begg, counsel for the applicant
5. The applicant states that she could not file her Notice and Appeal within time.
6. Or 37, re 4 of the Magistrates Court Rules requires an appellant to give notice of intention to appeal within 7 days of the decision.
7. The filing of notice of intention to appeal is mandatory. This has not been complied with.
8. As Amaratunga J held in *Auto World Trading (Fiji) Ltd v Raidruta*, [2017] FJHC 251; HB04.2017 (21 March, 2017) and referred to by Mr Haniff :

The first step for an Appeal against a Magistrate's Ruling is to give Notice of Intention to Appeal...

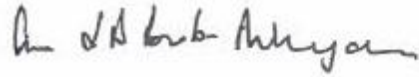
Without a Notice of Intention to Appeal, there cannot be an Appeal and this is a requirement that cannot be overlooked or substituted by an alleged 'Leave to Appeal'.

There is no provision either in the High Court Rules of 1988 or in the Magistrates' Courts Act or Magistrates' Courts Rules that requires Leave to Appeal from a decision of the Magistrate. So the need to seek extension of time to file Leave to Appeal, does not arise.
(emphasis added)

9. The applicants' summons seeking leave to appeal out of time is misconceived and struck out.

10. **FINAL ORDERS**

- a. The applicants' summons for leave to appeal out of time is declined.
- b. The respondent shall pay the appellant costs summarily assessed in a sum of \$1000.00.



A.L.B. Brito-Mutunayagam
JUDGE
12th May, 2023

