

IN THE HIGH COURT OF FIJI AT LAUTOKA

APPELLATE JURISDICTION

Appeal No. ERCA 07 of 2020

BETWEEN

MAHENDRA PRASAD, UDAY NARAYAN, RAKESH CHAND,

RAJENDRA SINGH, RAKESH KUMAR and

SAILEND NAIDU.

APPELLANTS/GRIEVORS

AND

PACIFIC TRANSPORT LIMITED a duly registered company incorporated

under the Companies Act of Fiji with its registered office situated

at 169-171 Foster Road, Waku Bay, Suva.

RESPONDENT/EMPLOYER

Counsel : Mr. Kumar M. for the Appellants
Mr. Koroi U. for the Respondent

Date of Hearing : 08th September 2023

Date of Ruling : 18th October 2023

RULING

(On summons for extension of time to file Notice & Grounds of Appeal)

- [1] The grievors who were bus drivers were dismissed by the employer and this matter was instituted in the Employment Relations Tribunal (the Tribunal) and the Learned Tribunal in his ruling delivered on 17th August 2018 ordered the employer to pay the grievors \$2,000.00 each as compensation.
- [2] The grievors on 07th July 2020 filed summons seeking the following orders:
1. The appellant/applicant be given enlargement of time to file Notice and Grounds of Appeal within seven (7) days from the date on which leave is granted to appeal the decision of the Resident Magistrate Mr. Ropate Green delivered herein on the 17th day of August 2018.
 2. The determination of the Employment Relations Tribunal dated 17th day of August 2017 be stayed.
 3. Alternatively, an Interim Order for stay until the determination of this application.
- [3] The orders 2 and 3 sought above do not arise for consideration in this ruling since the compensation awarded by the Tribunal has already been paid.

[4] In **Native Land Trust Board v Khan** [2013] FJSC 1; CBV0002.2013 (15 March 2013), the Supreme Court set down the factors which should be considered in determining an application for extension for extension of time to file notice and grounds of appeal. They are;

In applications of this kind appellate courts consider five factors to ensure a principled approach to the exercise of a judicial discretion. Those factors are:

- (a) The reason for the failure to file within time.
- (b) The length of the delay.
- (c) Whether there is a ground of merit justifying the appellate court's consideration.
- (d) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (e) If time is enlarged, will the Respondent be unfairly prejudiced?

[5] Section 247 (1) & (2) of the Employment Relations Act 2007 provides;

- (1) A party to proceedings before the Tribunal who is aggrieved by a decision of the Tribunal in the proceedings may appeal as of right or by leave of the Court.
- (2) An appeal to the Court must be made in the prescribed manner within 28 days from the date of the decision of the Tribunal.
- (3) A notice of appeal must specify –
 - (a) the grounds of appeal;
 - (b) the decision or part of the decision appealed from;
 - (c) the precise form of the order which the appellant proposes to seek from the court.

- [6] In the affidavit in support of Mahendra Prasad, the 1st named Appellant, it is averred that when they receive \$2000.00 they decided to appeal the award of the Tribunal and instructed their Solicitor to appeal the decision of the Tribunal and their solicitor Mr. Tunidau deducted \$1,000.00 to file the appeal and when they visited Mr. Tunidau to inquire about the appeal he said that it would take another two weeks for the appeal application to be issued to fix a date for its first call. When they inquired from the court registry they had been informed that no appeal had been filed and then they have reported it to the Legal Practitioners Unit (LPU) and he further avers that as lay people they were of the view that they had to wait till the LPU inquiry was concluded to retain another solicitor.
- [7] Ignorance of law is not an excuse. When it took such a long time they should have sought legal advice from another solicitor.
- [8] The learned counsel for the respondent submitted that only 1st named appellant had sworn the affidavit in support and there is no letter of authority from the other appellants attached to the affidavit. The 1st named appellant cannot swear an affidavit on behalf of the other appellants without their written authority.
- [9] In considering whether leave to appeal out of time should be granted the court must consider whether there is a meritorious ground justifying the appellate court's consideration or is there a ground of appeal that will probably succeed.
- [10] In this matter since the appellant have failed to file proposed grounds of appeal the court is unable to consider whether there are grounds justifying the grant of leave to appeal out of time after almost two years from the ruling sought to be challenged in appeal was delivered.

[11] For the above reasons the court is of the view that the appellants have failed to satisfy the court that there are sufficient grounds to grant leave to appeal out of time.

ORDERS

- (1) The summons filed on 07th July 2020 is struck out.
- (2) There will be no order for costs.


Lyone Seneviratne



JUDGE

18th October 2023