

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Appeal No. HBA 16 of 2022

Magistrates Court Appeal No. 1 of 2021

SCT Claim No. 1787 of 2020

BETWEEN: **ZAREEN BI** trading as **786 DOMINION DRIVING SCHOOL** of Lot 20
Makosoi Road, Nasinu, Fiji.

APPELLANT/ ORIGINAL CLAIMANT

AND: **CARPENTERS FIJI PTE LIMITED** trading as **CARPENTERS MOTORS**
a limited liability company having its registered office at 34 Rodwell
Road, Suva, Fiji.

RESPONDENT/ ORIGINAL RESPONDENT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Chand A.** for the Appellant
Mr. Kumar A with Mr Kalim M. for the Respondent

Date of Judgment: **19th June, 2025**

JUDGMENT

[Appeal]

Introduction

1. The Appellant/ Original Claimant on 11th February 2021 filed a motion coupled with a Supporting Affidavit and sought Courts Leave to apply for an extension of time to Appeal and stay the **Small Claims Tribunal Decision dated 30th December 2020**.
2. On 09th August 2022, the Court granted the Leave to Appeal out of time, for stay of proceedings and further order for the Appellant to file his **Grounds of Appeal** within the next 14 days with parties bearing their own costs.
3. On 02nd September 2022, the Appellant filed the following **Grounds of Appeal**:
 - (i) That the Learned Magistrate erred in law and in fact in considering legal advice to be a justifiable reason to appeal out of time.
 - (ii) That the Learned Magistrate erred in Law and in fact in considering Covid-19 is a defence.
 - (iii) That the Appellant is liberty to amend its grounds of appeal.
4. Both parties to the proceedings furnished Court with their written submissions.

Analysis and Determination

5. Before I proceed to deal with the Appellant's two (2) Grounds of Appeal, it is proper for me to First deal with the fact '**whether the Appellant filed its Grounds of Appeal in terms of the orders of the presiding Acting Chief Magistrate of 09th April 2022 within the 14 days' time period?**'
6. As is evident that the Appellant was granted with the order to file its Grounds of Appeal within 14 days on 09th April 2022.
7. However, the Grounds of Appeal was supposed to be filed by 23rd August 2022 rather filed way out of time on 02nd September 2022, after a lapse of some 23 days.
8. The Appellant was aware of the orders of the Learned Acting Chief Magistrate and should have carried out the strict compliance of the orders made therein and failing to do so will have its repercussions.
9. Therefore, I find that the Appellants failure in complying with the Acting Chief Magistrates order of 09th April 2022 in particular fails to file/serve his Grounds of Appeal within the grant of extended time frame of 14 days, prompts me to dismiss the Appellants Grounds of Appeal of 02 September 2022 in its entirety and hence, I proceed to do so accordingly.
10. However, I will still deal with the Appellant's two (2) Grounds of Appeal together and determine the impending Appeal accordingly.

Grounds 1 and 2

11. The presiding Acting Chief Magistrate took into consideration the primary obligation of the Appellant to convince the Court that they failed to file an Appeal on time due to justifiable reason and that they had taken all reasonable measure to act with diligence after the time limit.
12. Bearing above obligation of the Appellant, the Court then went ahead to consider whether 'Delay was Justifiable, and if so, whether leave be granted to the Appellant to Appeal out of time.
13. It was then that the Appellant submissions to the Court was that **the delay in filing the Appeal was due to the Appellant seeking Legal Advice from them as to the possibility of filing an appeal?**
14. The presiding Acting Chief Magistrate also had borne in mind in summons the case of **Prasad v Prasad** [2016] FJCA 116 where the principles was established in the case of **Avery v No. 2 Public Service Appeals Board and others** [1973] 2 NZLR 86 as per Richmond J at page 91-
'.....The onus rests upon the Appellant to satisfy the Court that in all circumstances, the justice of the case requires that he be given an opportunity to attack the judgment from which he appeals'.
15. The power to extend the time for Appeal is discretionary and has to be exercised judicially having regard to established principles.
16. Further, following factors are normally taken into account in deciding whether to grant an extension of time:
 - (i) The length of delay
 - (ii) The reason for delay
 - (iii) The chances of the Appeal succeeding if time is extended; and
 - (iv) Prejudice to the Respondent.
17. The presiding Acting Chief Magistrate very carefully took into account the Appellant's submissions and explanation on 'Delay'. She noted that the Appellant did attempt to obtain leave to file his Appeal out of time when he was out of time by 43 days.
18. The Appellant's Explanation for delay was that they were seeking **legal advice** and had provided a reason for their delay.
19. In terms of consideration of the '**chance of Appeal succeeding**' if time is extended, she took into account of the Affidavit in Support at paragraph 8 dealing with Pandemic; no intention to delay and effect of lockdowns and flight restrictions contributing to Covid-19 and that the delay was initiated via a *Force Majeure Covid-19*.
20. She concluded that the issues raised by the Appellant were evidentiary in nature which in her opinion will require the adjudicator to dwell into the merits of the case already determined by the Referee of the Tribunal. Hence, the Presiding Acting Chief Magistrate accordingly extended the time for appeal and allowed for the stay of proceedings.
21. Upon the careful perusal of the Presiding Acting Chief Magistrate's ruling of 09th April

2022 coupled with her reasonings and analysis, I am satisfied that she has very thoroughly heard and determined the Appeal before her and has quite correctly arrived at her ruling granting the orders therein.

22. For the aforesaid reasons, the Appellants Appeal on the stated Grounds of Appeal are accordingly dismissed in its entirety.

Costs

23. The parties to the Appeal proceedings furnished Court with written submissions and argued the Grounds of Appeal which was time consuming.
24. It is only appropriate, just and fair that the Appellant/Original Claimant pay the Respondent, Carpenters Fiji Pte Ltd a summarily assessed costs of \$1,000 within 14 days timeframe.

Orders

- (i) The Appellant/Original Claimant's Appeal on the stated Grounds of Appeal fails and dismissed in its entirety.
- (ii) The Appellant/Original Claimant to pay the Respondent/Original Respondent, Carpenters Fiji Pte Ltd a summarily assessed cost of \$1,000 within 14 days' time frame.
- (iii) File Closed.

Dated at Suva this 19th day of June ,2025.




VISHWA DATT SHARMA
JUDGE

Cc: PATEL SHARMA LAWYERS, SUVA
ANIL CHAND LAWYERS, NAUSORI