

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(Civil Division)

NO: CA 5/2003

**IN THE MATTER OF an application for extension of time
to appeal**

BETWEEN Fanau Tepapaura Nicholas

Appellant

AND George Taaviri Nicholas

Respondent

Mr N George for Appellant
Mrs T Browne for Respondent
Hearing 8 May 2003.

Reasons for Judgment of Greig CJ
20 May 2003.

1. This was an application made out of time to the High Court for leave to appeal and for an extension of time to bring the appeal. Judgement was given on 18 March 2003. The time for appeal expired within 21 days after that date (Judicature Act Section 54(2)). This application was made on 17 April 2003. I held that I had no jurisdiction to entertain the application. That it was a matter for application to the Court of Appeal for leave.
2. This question of the jurisdiction of the High Court to hear and adjudicate on applications to appeal out of time has been before me on a number of occasions. It has not been the subject of full argument and so my view which I have declared before has been made without the assistance of such argument. The reasons, which I now state, are therefore subject to that caveat and are made without prejudice to the right of Counsel on another occasion to argue to the contrary.

3. The High Court has a jurisdiction as to enlargement of time under Rule 130 of the Code of Civil Procedure of the High Court 1981. That may be exercised even though the application is made after the time has expired. The jurisdiction is however limited to the times fixed by the rules. It cannot apply to times fixed by Act or other rules. It is to be noted that the R.130 makes specific provision for dealing with applications made after the time has expired. There is I believe an implication, which accords with the general understanding about time limits, that the normal rule is that time may not be enlarged after the time has expired.

4. The Court of Appeal Rules 1981 make two separate provisions for enlargement and extension of time to appeal. R.17 declares that no appeal shall be brought after 21 days "from the time the appellant first had notice thereof". This restates but with additional provision the terms of s. 54 of the Act. The rule then provides that the Court of Appeal or the High Court may enlarge the time for appeal. There is no provision for dealing with enlargement after the time has expired. I consider that this means that enlargement may be granted only if the application is made within the 21 day period. That view is reinforced by the provisions of R.18. R.18 gives the Court of Appeal but not the High Court power to extend the time for appealing. That rule gives a very wide power to make any order which "will ensure the determination of the merits of the real question in controversy." There is I believe a distinction between enlargement (R.17) and extension (R.18). Coupled with that very wide additional power under R.18 I believe that the Court of Appeal has jurisdiction to extend the time for appeal even when the application is made after the time has expired.

5. The provisions of an Act take precedence over the provisions of rules made under that Act. Section 54 of the Act is plain. The time limit thereby imposed is not made under the Rules in the Code so R.130 has no application. The Court of Appeal rules so far as they empower the High Court are limited to enlargement for applications made before the expiry of the time. The High Court has no jurisdiction to grant an extension of time to appeal when the application is made after the time has expired.

Laurie Greig CJ

