

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No.71 of 1981

Between:

MAKBUL ALI  
s/o Mohammed Umar

Appellant

and

SHELL FIJI LIMITED

Respondent

V. Parmanandam for the Appellant  
F.G. Keil for the Respondent

JUDGMENT

This is an application for leave to appeal after the time fixed by section 16 of the Court of Appeal Rules had expired. The facts are extremely complicated and I do not find it necessary to set them out in detail. On the 23rd Jly 1981 an order was made by the Supreme Court sitting at Suva granting an injunction restraining appellant from interfering in any way with the business of the service station known as the Edinburgh Drive Service Station. The original injunction was for a period of one week. This injunction was subsequently extended to the 11th of August 1981.

An action claiming damages against the respondent company was taken out by appellant on the 14th July 1981; but this action was wholly discontinued on the 24th July 1981.

On 10th September 1981 proceedings for Contempt of Court were served on the appellant and these proceedings came up for hearing before the Honourable Chief Justice on the 22nd September 1981. At that hearing it was argued on behalf of the appellant that the original order for injunction could not be sustained on legal grounds. The learned Chief Justice adjourned proceedings sine die to allow the appellant to take steps to have the order set aside.

On the 13th October 1981 the matter came before the Supreme Court in the form of an application seeking leave to appeal against the original order made on the 23rd July 1981. The learned judge there held that the legality of the original order could be decided at the hearing of the contempt proceedings. The learned judge also held that leave to appeal was in the circumstances not necessary.

On the present application I am not required to determine any other issue than this: has the appellant shown special reasons justifying the grant of an extension of time for lodging the appeal?

It seems to me abundantly clear that the appellant has been active in taking steps to set aside the original injunction for the purpose of ensuring that he is not found guilty on the contempt proceedings.

On the face of it appellant's fate on the contempt proceedings would appear to depend substantially on the validity or invalidity of the original injunction. The original motion for leave to appeal was filed on the 28th September 1981. As has been pointed out, the matter was argued before Mr Justice Kermode who gave a decision on 13th October 1981 rejecting the application.

As there has been no inexcusable delay on the part of the appellant, an order will be and is hereby made granting him leave to appeal to the Court of Appeal. If it is considered necessary to file an amended notice and/or full grounds of appeal, then it is ordered they be filed on or before 21st December 1981. There will be no order as to costs.

Judge of Appeal

Suva,  
4th December, 1981