

inordinate and inexcusable delay, (b) prejudice to Defendant and (c) no chance of a fair trial. The application was dismissed by Lyons J. on 24 November 1997. He consolidated the Actions and gave certain directions. No order was sealed. In 1998 the Applicant made an unsuccessful attempt before Townsley J. to have the application reheard.

On 10 August 1999 the Applicant again filed an application to strike out the Actions for want of prosecution. The Applicant says this was a second application because the decision of Lyons J. was an interlocutory one and no order had been sealed. The Applicant also sought leave to appeal and asked for a stay order.

On 13 October 1999 Townsley J. dismissed the applications and ordered the High Court Actions to proceed. On the same day Lyons J.'s dismissal Order of 24 November 1997 was sealed by the Applicant.

The application before me is supported by the Applicant's own affidavit. To his affidavit is annexed the proposed grounds of appeal (Annexure "D").

They state that Justice Lyons was wrong in not dismissing the consolidated Actions because -

- (a) the delay was inordinate,
- (b) inexcusable,
- (c) the delay will deny the Defendant fair trial and will cause substantial prejudice and/or injustice.

Both parties agreed that a decision be given on the basis of written submissions filed. The Applicant's Reply to Respondent's submissions was filed on 8 February 2000. I have now had time to consider the written submissions in the light of all affidavits filed.

I will first deal with leave to appeal application. I bear in mind that the decision sought to be appealed is an interlocutory one. Whilst I am satisfied that there has been long delay such delay cannot be wholly attributed to the Respondent Co. No doubt the Applicant will suffer some prejudice but it is not likely to be of such a nature as to result in an unfair trial. The Plaintiff has also suffered some prejudice because of its unsuccessful efforts in getting an early Court fixture. In the event the Applicant's defence fails in the High Court he can appeal to the Court of Appeal and in this way his recourse to any relief (if warranted) will not be made nugatory. He could still argue that his application

to dismiss the Actions should have been granted. The principle to be applied in applications of this nature are correctly set out in the judgment of Townsley J. delivered on 13 October 1999 and attached to Applicant's affidavit as annexure "C". I also adopt the reasons given by Townsley J. although I am not sitting on appeal from his decision. No fresh material of any significance has been brought to my notice to enable me to grant leave to appeal from an interlocutory order. To grant leave in this case will be to go against this Court's general policy of refusing leave to appeal against interlocutory decisions especially where no question of law of any significance is involved. Lyons J.'s decision has not determined any substantial rights of the parties. Prima facie the reasons given by Lyons J. for refusing to dismiss the Actions appear to be sound. There is therefore no realistic prospect of the Applicant succeeding on appeal if leave is granted. In my view the Order that the Actions should proceed in the High Court is also well founded and it is in the interest of both parties that this should happen without further delay. Consequently I dismissed the application for leave to appeal.

In the circumstances it follows that the stay application falls by the wayside. It also is formally dismissed. The Applicant must pay the costs of the proceedings before me. If not agreed they are to be taxed.

Orders

- (i) Leave to appeal and stay applications dismissed.
- (ii) Costs awarded to Respondent.



.....
Sir Moti Tikaram
President, Court of Appeal, Fiji