

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Civil Appeal No. ABU0052 of 2006
(High Court Civil Action HBC 38 of 1999S)

BETWEEN:

THOMAS (FIJI) LIMITED
(In Receivership)

AND

FREDERICK WIMBLEDON THOMAS
and
SIMEAMATIVA KRUSE THOMAS

Appellants

AND

BANK OF HAWAII

Respondent

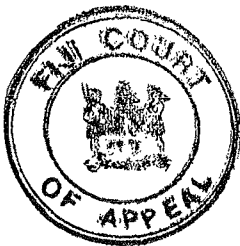
Counsel:


Mr. D. Sharma for the Appellants
Mr. I. D. Roche for the Respondent

DECISION

- [1] On 13 May 2006 the High Court (Coventry J), on the ground of inordinate delay, struck out the writ of summons filed by the Appellants on 27 January 1999.
- [2] On 6 June 2006 the Appellants filed Notice of Appeal against the Order of the High Court.

- [3] This is an application by the Respondent to strike out the appeal on the ground that the Order striking out the action was interlocutory and that no leave to appeal has been obtained.
- [4] Two important procedural issues are raised by this matter: (a) whether the High Court has the power to strike out an action on the grounds of delay alone and without detriment to the Defendant being established; and (b) whether the Court of Appeal will in future follow what is known as the "order" or the "application" approach when considering whether a ruling in the High Court is interlocutory.
- [5] Both these important procedural matters should be considered by the full court and not by a single judge.
- [6] Accordingly, whether or not leave is required to appeal against the High Court ruling, I grant leave under the provisions of Section 21 (1) (c) of the Act and rule 64 of the Court of Appeal Rules.
- [7] The papers filed are not extensive. The appeal could easily be considered in the November session. Application dismissed. No order as to costs.




M.D. Scott
Resident Justice of Appeal

26/6/06