

[3] The affidavits filed in the Court explain that, on Thursday 8 February, the last day for payment, an executive officer from the Attorney General's Chambers, Lui Vatubua, took a bank cheque to the Court of Appeal registry for the security. The procedure is that all such payments must be made in the High Court registry. The appeal registry issued an advice of payment to Vatubua which was to be taken to the High Court registry where a receipt would be issued. However, he deposes that, when he arrived at the High Court he spoke to the officer on duty, Pranesh, and was told that he should return the next day for his receipt. He states that he sent another officer to the High Court on the Friday but the cashier with whom he had spoken the previous day was not in the office and another officer said that Pranesh was the only officer authorised to receive the payment. The deponent then explained:

“Afterward, I personally followed up with the registry but to no avail as Pranesh was still unavailable. Finally I was provided with the receipt from Pranesh on 12 February 2007 which was dated the same day, even though I had paid the cheque on 8 February 2007.”

[4] The details in that passage are unsatisfactory. There is no explanation of what is meant by the statement that he “personally followed up” with the registry or what precisely is meant by the assertion that the cheque was paid on 8 February. Whilst there is no specific mention of the whereabouts of the cheque during this time, it is clear that he is suggesting it was left with the payments clerk on 8 February; something the officer denies.

[5] I ordered that affidavits be obtained from the registry officers. The affidavit of Pranesh Sharma firmly denies the assertions of Vatubua. He further produces records to show that the officer referred to on the Friday was off work sick that day and that Pranesh was at work that day. He also exhibited the revenue receipts issued from the last on 8 February to the first on 12 February.

- [6] Vatubua filed another affidavit in response to that of Pranesh in which he corrects his statement that he sent an officer to the registry on 9 February. He explains that was on 12 February. He does not explain how or whether the events previously attributed to 9th applied instead to 12th.
- [7] The actual advice of payment is dated 8 February 2007 but is stamped with the receipt stamp of the High Court registry and dated 12 February 2007. The original file also includes a covering letter from the Attorney General's Chambers enclosing the cheque for security. It is typed and clearly dated 12 February 2007 but it has been overwritten in ink with the date 8th. Similarly, a 'received' stamp for the Court of Appeal also has the stamped date overwritten in ink to show 8th. It is impossible to make out the original date except to say that it is clearly not 8th.
- [8] The applicant was first alerted to the deemed abandonment by a letter from the registry dated 16 April 2007 and, on 24 April 2007, a notice of motion was filed seeking orders:
1. that the appeal be reinstated on the grounds that security was paid in time;
 2. that, in the alternative, the time for payment be extended to 12 February 2007;
 3. that time is extended to file fresh grounds of appeal.
- [9] The burden is on the applicant to satisfy the Court that the money was paid on 8 February 2007. There is a clear dispute as to the events on the days in question. I cannot resolve those in this hearing. I do express the concern that the original affidavit of Vatubua was clearly not accurate. However, the documentary evidence about which there is no dispute supports the claim of the respondents that the security was not paid in time.
- [10] I am not satisfied that the applicant has shown it was paid on time. The first ground of the application fails.

[11] The second ground seeks an extension to 12 February. That relies on the same factual ground, namely that the applicant's account of what happened is correct. I have already stated that I am not satisfied this is the case and this application must also fail. The application on the second ground is refused.

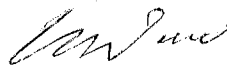
[12] The final ground is that the time to file fresh notice of appeal be extended. By rule 17(3), such an application requires the leave of the Court if made after the time allowed by rule 17(2) has expired as is the case here.

[13] Counsel for the third respondent, in well prepared submissions, opposes such an order on the ground that the tests to be applied by the court in determining such an application require information which has not been supplied. He is correct.

[14] In such a case the court must consider the length of the delay, and the reasons for it, the prospects of success in the appeal and any prejudice which may be caused to the parties. The papers filed by the applicants do not provide those details.

[15] Counsel for the third respondent suggests this means the application must be adjourned to allow application to be made in the proper form with the correct information. I do not agree. The applicant brought this application. It was necessary for him to provide the evidence to support it. He has not and makes no application for a further adjournment to provide it. I must proceed on the basis that he has provided the best information he can. The application on this ground also fails.

[16] The application is refused with costs of \$500 to each of the first and third respondents. Although the second respondent was represented, it took no active stance in these proceedings and so I do not make a separate costs order in respect of it.



Gordon Ward
PRESIDENT
FIJI COURT OF APPEAL

