IN THE COURT OF APPEAL FIJI ISLANDS
APPLICATION FOR LEAVE TO APPEAL
FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO - HBM 34 of 2004
(High Court Civil Action No. HBM 34 of 2004)

BETWEEN:

WILLIAM ROSAJNR

Applicant

AND:

CHIEF EXECUTIVE OFFICER FOR JUSTICE

First Respondent

COMMISSIONER OF PRISONS

Second Respondent

Coram: Hickie, JA

Date of Hearing: 24 April 2008

Counsel: **Applicant in person**
Mr A. Pratap with Ms V. Chang for the Respondents

Date of Decision: **1 May 2008**

D EC I S I O N

BACKGROUND TO THE LEAVE APPLICATION

[1] This is an application for leave to appeal out of time to file an appeal against the decision of justice Pathik in the High Court of Fiji at Suva in which he:

(a) dismissed for want of prosecution an application for Constitutional Redress; and

(b) ordered that the Applicant pay costs in the sum of $400.

[2] The decision of Justice Pathik was made on 30 March 2006. The Applicant wrote to the Officer-in-Charge of the Civil Registry of the High Court of Fiji at Suva on 9 November 2006 saying that he had submitted an appeal application to the **Fiji** Court of Appeal on 5 June 2006 to appeal the decision of Justice Pathik.

[3] The Chief Registrar of the Court replied in writing to the Applicant on 10 November 2006 that:

> *"appeals are not made by writing letters, you are out of time and proper documents need to be filed. You must first obtain the leave of the Court to file your appeal out of time".*

[4] Since then, much correspondence has taken place between the Court and the Applicant. The matter has been referred to me for decision which I will give.

THE PREVIOUS PROCEEDINGS

[5] Initially, the Applicant brought a Constitutional Redress application (Miscellaneous Action No. HAM 006 of 2003) concerning an appeal against sentence. That application was dealt with by Justice Gates. Judgment was delivered on 11 July 2003 wherein His Lordship quashed the Applicant's sentence of two years and in its place substituted a sentence of 6 months imprisonment to be served consecutively with the Applicant's other terms of imprisonment.

[6] The Applicant had originally been serving a total sentence of seven years and 5 months for various offences for which he had been incarcerated as from 5 April 2000. In light of

the reduction of his sentence for one of those offences (from two years io 6 months, as per the Constitutional Redress application heard by Justice Gates), this resulted in the Applicant's overall sentence being reduced to five years and 11 months. According to an affidavit sworn on 26 May 2005 by Afsea Taoka of the Prisons Department, when the Applicant's reduction in sentence by Justice Gates was recalculated together with credit for remissions, it meant that overall the Applicant had to serve three years, 11 months and 10 days and was eligible for release on 29 June 2003.

[7] Further, according to Aisea Taoka's affidavit, the decision of justice Gates on 11 July 2003, meant that the Applicant had by then served three years, 11 months and 22 days. That is, the Applicant had served an additional 12 days in prison once the decision of Justice Gates had been backdated from 11 July 2003 to 29 June 2003. The Applicant was, however, released on 11 July 2003 immediately after the decision that day of Justice Gates in the High Court. This is, however, the issue upon which the Applicant has sought further Constitutional Redress, that is, that he should be compensated for the additional time hg served in prison. In addition, he claims that he served not an additional 12 days but an additional eight months and 22 days.

[8] On 4 November 2004, the Applicant commenced new proceedings for Constitutional Redress in the High Court of Fiji in Suva, under Miscellaneous Action No. 34/2004. In relation to those proceedings he joined the following six Defendants:

(a) The DPP Office

(b) The Human Rights Commission

(c) The Fiji Legal Aid Commission

(d) The Commissioner of Prisons

(e) The Ombudsman's Office

(f) The Attorney General of Fiji

[9] At some stage between November 2004 and March 2005, the Applicant then instructed a Solicitor, Mr Naidu of Pillai, Naidu & Associates to act on his behalf.

[10] On 21 March 2005, an amended Writ of Summons was filed through Pillai, Naidu & Associates on behalf of the Applicant naming two Defendants (the Chief Executive Officer for Justice and the Commissioner of Prisons). The Applicant's claim was for damages on the basis that instead of serving a total sentence of 3 years and 3 months, he had served 3 years 11 months and 22 days, that is, an additional 8 months and 22 days in prison.

[10] By Summons dated the 11 April 2005, the Chief Executive Officer for Justice and the Commissioner of Prisons (the First and Second Defendants respectively), applied to the Court to have the Amended Writ of Summons filed on 21 March 2005 struck out pursuant to Order 18 rule 18 (1) of the High Court Rules 1988, on the ground that it should not be used as an abuse of the process of the court.

[11] The Summons to strike out was dealt with by Justice Pathik on 30 March 2006. In his judgment, his Lordship included a detailed "chronology of events" as (in his view) it was "important to note that the background to the case and the way the plaintiff presented his case" was "a complete waste of Court's time and lot of other people's time" (page 2). In addition, His Lordship provided details as to the long history of "events subsequent to filing of [the] Striking Out Summons". It was noted that by 13 October 2005 the plaintiffs

own Counsel had sought leave to withdraw. On that occasion, the Court requested that the Applicant appear personally on 7 November *2005* at 9.30 a.m.

[12] On the 7 November 2005., there was no appearance by the Applicant. There was, however, an appearance on behalf of the Human Rights Commission as well as for the First and Second Defendants. On that occasion, justice Pathik noted there was no indication as to why the Applicant was not present. He adjourned the case to 25 November 2005 at 9.15 a.m. and directed that notice was to be served on the Applicant.

[13] On 25 November 2005, the Applicant did not appear. There was an appearance by Counsel 6n behalf of the Human Rights Commission and for the Defendants. Both Counsel asked for the action to be struck out. His Lordship advised that he would give his decision on notice.

[14] A judgment on the application to strike out this action was delivered by Justice Pathik on 30 March 2006 with him concluding :

> *"It is abundantly clear that the applicant had shown disrespect to Court by not appearing to present his case despite being told by the Court Registry to be present as well as being spoken to personally by the Court Officer. In fact the Court has lent over backwards to accommodate the Plaintiff and given him the opportunity to pursue his claim. The Court should not be expected to chase after the Applicant. Here I find that the plaintiff/applicant's case turns out to be an abuse of the process of the Court. In the circumstances I do not see any justification to lean over backwards any further to allow the Applicant to proceed with his action as he has failed to appear and prosecute his action. It is therefore dismissed for want of prosecution with costs to the defendants' Solicitors the sum of $400.00 to be paid within 28 days."*

[15] It is from that decision that the Applicant seeks to appeal. Initially, he wrote to the Court by way *of* an undated letter sent by way of facsimile transmission to the Court on either 31 March or 1 April 2006 seeking to appeal Justice Pathik's decision. Copies of that

undated letter were stamped as received by the Court on 31 March and 1 April 2006. The original of that undated letter was stamped as received in the High Court Registry at Suva on 4 April 2006.

[16] In the meantime, the Applicant commenced writing to the Fiji Human Rights Commission (FJHC) who had assisted previously as *amicus curiae* in the second proceedings before Gates J for which judgment was delivered on 10 November 2003. Indeed, the FJHRC had been of the view that, based upon their calculations, the Applicant's date of release should have been September or October 2003 rather than July 2003.

[17] The Applicant then wrote to the High Court Registry in Suva on 9 November 2006 seeking to appeal the decision of Justice Pathik of 30 March 2006. Even though the Applicant was advised (as noted above) by letter dated 10 November 2006 from the Chief Registrar that "appeals are not made by writing letters, you are out of time and proper documents need to be filed" and further "you must first obtain the leave of the Court to file your appeal out of time", no formal document has ever been filed in the High Court Registry. Instead, voluminous correspondence has continued between the Applicant and the Court.

[18] The matter was placed before me on 15 April 2008. On that date, I directed that the matter be listed before me on 24 April 2008 with the Applicant being advised to appear. This has occurred.

[19] I explained to the Applicant when he appeared before me on 24 April 2008 that I have decided to deal with the matter as follows:

(a) by way of reading the Judgments of Gates j and Pathik j;

(b) by reading all documents and the submissions of all parties on the Court file;

(c) by having the Applicant appear before me on 24 April 2008 to allow him to make any final submissions; and

(d) by allowing the representative for the First and second Defendants who also appeared before me on 24 April 2008 to make final submissions.

[20] The above has occurred. I will now proceed to judgment on the matter.

LEAVE TO APPEAL

[21] According to Section 12 (2)(f) of the *Court of Appeal Act* (Cap.12), no appeal is allowed without leave of a judge of the Court of Appeal from any interlocutory order or interlocutory judgment except in a certain number of cases of which this matter is not one. Further, according to Section 20 (1)(a) of the *Court of Appeal Act,* a Judge or sworn judge of the Court of Appeal may exercise the powers of the Court to give leave to appeal.

[22] There is an argument that if an interlocutory order or interlocutory judgment, in effect, brings a matter to finality, then leave to appeal does not need to be granted from that interlocutory ruling: ***Jetpatcher Works (Fiji) Ltd v The Permanent Secretary for*** *Works & Energy &* ***Ors*** [2004] Vol 1 FCA 213. As recently discussed, however, in *Woodstock* ***Homes (Fiji) Limited v Sashi Kant Rajesh*** [2008] ABU0081 of 2006S, paragraph 62: "a *litigant dissatisfied with the ruling or order or declaration of the Court needs leave to appeal that ruling, order or declaration"* and that an example of an interlocutory ruling is

"an order striking out a *pleading:* ***Hall v Nominal Defendant"*** 0 966) 117 CLR 423 at 444.

[24] The initial problem for the Applicant, however, is that he has not complied with the Court of Appeal Rules in relation to time for filing an appeal. According to Rule 16 of the Court of Appeal Rules:

> **"76.** *Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph (4) of rule 1*5 *within the following period (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that it to say-*
> *la) in the case of an appeal from an interlocutory order, 21 days;*
> *(b) in any other case, 6 weeks.*

Thus, Mr Rosa must now first obtain leave of the Court of Appeal to file out of time his application to appeal as judgment was delivered by Justice Pathik on 30 March 2006, over two years ago.

[22] Indeed, in order to appeal the ruling of Justice Pathik, the Applicant must arguably satisfy a three-step process:

1. First, the Applicant must obtain leave of a judge of this Court to file an application for leave seeking leave to appeal out of time the ruling of judge Pathik;

2. Second, only if such leave is granted to file that application, can the Applicant then seek leave to appeal out of time the interlocutory order of Justice Pathik made on 30 March 2006 {and, if necessary, seek leave of the Court to proceed with that appeal);

3. **Third, if** leave to appeal is necessary, then only if such leave is granted by the Court to proceed with the appeal, can the Applicant then proceed with the substantive appeal before the Court of Appeal to appeal the interlocutory order of Justice Pathik

[23] This matter has involved three previous proceedings:

(1) *William Rosa Jnr* v. *The State* (Miscellaneous Action HAM 006/03);

(2) *William Rosa Jnr v. The State* (Miscellaneous Action No. 027/03);

(3) *William Rosa Jnr v. The Chief Executive Officer for Justice and Commissioner of Prisons* (Miscellaneous Action No. HBM 34/2004).

[24] In *William Rosa Jnr v. The State* (Miscellaneous Action HAM 006/03), Justice Gates considered a Constitutional Redress application in relation to Suva Criminal Case No. 740/99 and the term of two years imprisonment imposed. His Lordship was of the view that the sentence was too harsh and substituted a sentence of six months to be served consecutively with the Applicant's other term of imprisonment.

[25] In *William Rosa Jnr v. The State* (Miscellaneous Action No. 027/03), the Applicant made a Constitutional Redress Application alleging that prison authorities had confined him for an additional 10 months more than he should have served. The Human Rights Commission and the Director Public Prosecution made submissions to the Court on 10 November 2003. Justice Gates dismissed the Constitutional Redress application finding that it did not appear that the Applicant had been wrongfully confined.

[26] In *William Rosa Jnr v. The Chief Executive Officer for Justice and Commissioner of Prisons* (Miscellaneous Action No. HBM 34/2004), the Plaintiff initially included five Defendants: the DPP's Office, Fiji Human Rights Commission, Legal Aid Commission, The Ombudsman's Office and The Attorney General's Office. This was later amended to two Defendants: the Chief Executive Officer for justice and the Commissioner of Prisons.

justice Pathik dealt with this matter on 30 March 2006 as outlined earlier in this judgment.

[27] If the Applicant was granted the leave of this Court to file an appeal against Justice Pathik's ruling, it would be the third occasion upon which the substantive matter has been dealt with having already been considered by Justice Gates on 10 November 2003 in *William Rosa jnr v. The State* (Miscellaneous Action No. 027/03) and then again in a new action heard before Justice Pathik on 30 March 2006 in *William Rosa jnr v. The Chief Executive Officer for justice and Commissioner of Prisons* (Miscellaneous Action No. HBM 34/2004).

[28] Apart from the fact of the time issue (clearly in breach of the rules there has been over a two years delay since the orders made by Justice Pathik on 30 March 2006) which should be sufficient to refuse the application for leave to file out of time, there is also the question of the merits of any such an application.

[29] I provided the Applicant with the opportunity to appear before me on 24 April 2008 and provide reasons as to why the Court should grant his application for leave to be permitted to file out of time his application seeking leave of the Court to appeal the interlocutory order of justice Pathik made on 30 March 2006.

[30] The Applicant's argument was contained in a handwritten three page submission which he tendered. While that dealt with the substance of his claim, it did not address the first issue before me, that is, as to why he should be granted leave to file his application seeking leave to appeal out of time.

[31] When this was explained to Mr Rosa, i then allowed him the opportunity to address me on that issue which he did so, as well as to why he had not paid the $400 costs order made by Justice Pathik on 30 March 2006. His submissions can be summarised as follows:

(a) That he thought the costs order was against his lawyer, Mr Naidu;

(b) That he had no legal counsel to assist him over the past two years to draft the legal documents required to appeal the orders of justice Pathik;

fc) That if he was granted leave to file an appeal, he would hire a lawyer to take over the matter;

/-<d) That He would like to be granted a stay order against justice Pathink's costs order pending his appeal;

(e) That he didn't appear on 7 November 2005 before Justice Pathik as he "was in the west";

(f) That he didn't appear on 25 November 2005 before Justice Pathik as he felt that his lawyer had wrongly filed an amended summons without his instructions reducing from the original six defendants to just two defendants;

(g) That if granted leave to appeal and such appeal was successful, then he would like to file a Further Amended Writ of Summons joining the original six defendants as well as the Minister for Justice.

[32] I then allowed Mr Pratap appearing on behalf of the First and Second Defendants to address me. His argument was simple:

(a) That the Applicant is out of time be it 21 days for an interlocutory order or 42 days for a final judgment;

(b) That the First and Second Defendants have not been served with any documents;

(c) That they appeared on 24 April 2008 as a courtesy to the Court;

(d) That the matters were all dealt with before Justice Pathik;

(e) That Mr Rosa was given the opportunity to appear before Justice Pathik but he failed to appear twice in November 2006 and then he only reappeared on 30 March 2006 to hear judgment delivered;

(f) Costs of $400 have not been paid even though the order was served upon Mr Rosa personally;

(g) That this is clearly an abuse of process;

(h) That,this was an interlocutory matter and pursuant to Order 18 Rule 18 (1) of the High "Court Rules, the claim was struck out on 30 March 2006 and Mr Rosa is now clearly well out of time to appeal those orders.

[33] Having considered all the material as set out in paragraph 19 of this judgment, I am not satisfied that there are sufficient reasons to grant Mr Rosa his application for leave so as to be permitted to file his appeal out of time. In reaching that decision I have, in particular, noted the following:

(a) That the issues raised by Mr Rosa have previously been fully heard and considered by Mr justice Gates who gave judgment on 10 November 2003 in *William Rosa Jnr v. The State* (Miscellaneous Action No. 027/03);

(b) That the issues raised by Mr Rosa formed part of the application heard before Justice Pathik on 30 March 2006 in *William Rosa Jnr v. The Chief Executive Officer for Justice and Commissioner of Prisons* (Miscellaneous Action No. HBM 34/2004) wherein he decided to strike out the Applicant's claim;

(c) As discussed **In *Woodstock Homes v Rajesh*** (supra) at paragraph 65 citing ***Vimai Constructions & Prakash v Vinod Patel & Co Ltd*** *[2008] ABU0093 of 2006:*

> *"... litigants should assume that leave to bring or maintain appeals or other applications where those appeals or applications are out of time will not be given **unless there are clear or cogent reasons for the delay.** 'Merit' of an appeal or proceeding, without more, will rarely justify an extension of time except where the delay is minimal and no prejudice was occasioned by the delay."*

In the present case, the delay is not minimal, it is nearly two years. Further, the matters raised have already been considered in two separate proceedings, one a substantive hearing and the other an interlocutory hearing. It is clearly an abuse of process to seek leave to have the matters canvassed a third time by another judge. The courts are not some sort of gaming venue to try and be "third time lucky".

J

~~VEXATIOUS LITIGANT~~

[32] This, however, is not the end of the matter. Noting that this matter has been dealt with before the Court on two prior occasions to my hearing on 24 April 20C© and delivering judgment today, it is not only appropriate, but indeed necessary, for this Court to consider whether the Applicant should now be declared a vexatious litigant in relation to these proceedings and to make such orders as it thinks necessary to bring finality to the matter.

[33] I explained to the Applicant when he appeared before me on 24 April 2008 that if 1 found against him, I would be considering declaring him a vexatious litigant and making such orders I considered appropriate. I asked him to address me on this issue which he has done. I also invited the representative for the State to address me on this issue which he declined.

[34] The problem of litigants who abuse the process of the Courts was recently considered in detail by the Hong Kong Court of Final Appeal in *Ng Vat **Chi** v Max Share **Ltd** & Another* (2005) 8 HKCFAR 1. As Ribeiro Pj explained in that case (at page 24, paragraph 48 F):

> *"The vexatious litigant typically acts in person and characteristically refuses to accept the unfavourable result of the litigation, obstinately trying to re-open the matter without any viable legal basis. Such conduct can become obsessive with the litigant not shrinking from making wild allegations against the Court, or against the other side's legal representatives or targeting well-known public personalities thought to be in some way blameworthy. Numerous actions may be commenced and numerous applications issued within each action."*

[35] He also noted that the problem had been highlighted in the courts of England and Wales in recent years citing:

(a) (at page 24, paragraph 49 I) Lord Bingham of Cornhil! CJ in ***AC v. Barker*** [2000] 1 FLR 759 that the effect of the vexatious litigant was *"to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court";*

(b) (at page 25, paragraph 59 A-B) Lord justice Brooke's "description" in ***Bhamjee v Forsdick (No 1)*** [2003] EWCA Civ 799 of the "litigant who will not take no for an answer" as striking "a chord which is all too familiar";

(c) (at page 26, paragraph 53 C) Lord Justice Brooke's further comments in ***Bhamjee v Forsdick (No 1)*** as to the financial costs caused by vexatious litigants not oniy to respondents but to the court system itself (such as accommodation and the time of both judicial and administrative staff);

(d) and finally (at page 25, paragraph 51J), Lord Phillips of Worth Matravers in ***Bhamjee*** *v.* ***Forsdick and Others (No. 2)*** [2004] 1 WLR 88 that:

> *"vexatious litigants are often without the means to pay any costs orders against them, and the parties in whose favour such costs orders are made are disinclined to throw good money after bad by making them bankrupt, particularly as the vexatious conduct may spill over into bankruptcy proceedings themselves."*

[36] The problem for courts, according to Riberio PJ, has been in deciding what action to take as he explained (at page *27,* paragraphs 57 A and 59-60):

1. Striking out *"requires the party vexed to incur the expense and trouble of bringing* a *striking-out application and requires the Court to entertain an inter-parties hearing before such abuse can be brought to an end";* and

2. Use of the statutory power to make an order prohibiting a person from bringing any legal proceedings is easier said than done as such orders are not readily obtainable and further that there is a high threshold for making such orders.

[37] " Thus Ribeiro PJ turned (at page 28, paragraph 61 G) to the consideration of using a "Crepe v *Loam Order"* whereby the English Court of Appeal in ***Grepe v Loam*** [1888] LR 37 ChD 168 ordered that a group of vexatious litigants be required to obtain leave to issue any fresh application "and *if notice of such application be given without such leave being obtained",* then the proposed respondents *"shall not be required to appear... and it shall be dismissed without being heard".*

[38] As Ribeiro PJ noted (at page 29, paragraph 63 B): "The Legal foundation of the Crepe v *Loam* order is not in doubt. It is plainly a legitimate exercise of the courts inherent jurisdiction to prevent its process being abused" citing:

1. ***Lord Kinnaird v Field*** [1995] 2 Ch 306 where *"the English Court of Appeal upheld a* Grepe v Loam *Order, Vaughan Williams LJ stating (at* p.*309) that 'No question can possibly be raised as to the jurisdiction' to make such orders";*

2. (at page 29, paragraphs 64 D-E) that *Crepe v Loam* orders had been obtained in ***Ebert v Venvil & Another*** [2000] Ch 484 and ***Bhamjee (No. 2);*** and

3. *"Other common law jurisdictions have generally accepted the validity of Crepe v Loam orders"* including Australia, New Zealand, and Singapore while *"the courts in some Canadian provinces appear to be the exception".*

[41] He also believed, however, (at page 29, paragraph 66 I-J) that it was important to consider making what he termed an "an extended Crepe v *Loam order",* to cover not only existing proceedings but the issuing of fresh actions, that is, by:

> "... *invoking the inherent jurisdiction ... pioneered by Lord Woolf MR in* Ebert v. Venvil & Another *[2000] Ch 484 ... and elaborated upon by Lord Phillips MR in* Bhamjee (No.2) *where the order was named the 'extended civil restraint order'."*

[42] The decision of the Hong Kong Court of Final Appeal in *Ng Vat **Chi** v Max **Share Ltd** & Another* and, in particular, the excerpts from the judgment of Ribeiro PJ cited at paragraphs 34-41 above, are food for thought and, in particular, whether the measures suggested should be implemented in relation to the application 1 have just heard.

[44] In the" present case, Mr Rosa has had his application considered on two previous occasions by other judges of the High Court. He has come before me on 24 April 2008 in the Court of Appeal asking to be granted leave to file an application to appeal arguably some two years out of time. That application has been considered and refused.

[45] Mr Rosa assured me that if my decision was to refuse him leave then this would be the end of the matter and there was no need to proceed further and declare him a vexatious litigant in relation to these proceedings and/or the matters generally raised in these proceedings and impose various restrictions upon him in that regard. 1 have taken him at his word and do not propose to proceed with such a declaration.

[45] As a precaution, however, the Applicant is put on notice that should he attempt to bring any further application in relation to the matters previously considered by Gates J in HAM 027/03, Pathik J in HBM 34/04, and/or by me as a leave application on 24 Aprii 2008 and today in relation to file HBM 34/04, then the Court Registry will be directed to refer a copy of today's judgment to the court hearing such application brought by Mr Rosa so that such court can consider making an extended *Grepe v Loam Order* as follows:

> **1. That the Applicant is prohibited from commencing without leave of the court any further legal proceedings in respect to the same claim or subject matter (as considered now in three judgments, that is, by Gates J on 10 November 2003 in HAM 027/03, by Pathik I on 30 March 2006 in HBM 34/04 and by Hickie J as a leave application on 1 May 2008 in relation to file HBM 34/04).**
>
> **2. If notice of such proceedings was to be given to any of the defendants mentioned in this judgment without leave first being obtained, the proceedings would automatically stand dismissed.**

[46] In addition, in consideration of the fact that the administrative staff of the Court may have to deal with the Applicant in the future in relation to these matters, I am of the view that appropriate orders should be "flagged" to assist them. Accordingly, the Applicant is put on notice that should he attempt to correspond further with the Court in relation to the matters previously considered by Gates j in HAM 027/03, Pathik J in HBM 34/04, and/or by me as a leave application on 24 April 2008 and today in relation to file HBM 34/04, then the Court Registry is directed to refer such correspondence (together with a copy of today's judgment of this Court) to a judge of the High Court to consider making, as a

legitimate exercise of the court's inherent jurisdiction to prevent its process being abused, the following Orders:

3. That any future correspondence from the Applicant received by the High Court at Suva in respect to the same claim or subject matter (as considered now in three judgments, that is, by Gates J on 10 November 2003 in HAM 027/03, by Pathik J on 20 March 2006 in HBM 34/04 and by Hickie j as a leave application on 1 May 2008 in relation to file HBM 34/04) be simply forwarded to the High Court Registry for maintaining as they think fit.

4, That the staff of the Court Registry are relieved from responding to any such correspondence from the Applicant.

[47] The court hopes that the above proposed orders will not be necessary, that Mr Rosa can be taken at his word and that this will now be the end of the matter.

[31] Accordingly, the Orders of this Court are as follows:

1. **The Application for leave to file an application to appeal out of time the judgment of Justice Pathik of 30 March 2006 is refused.**
2. No order as to Costs.

Hon. Justice Thomas V. Hickie
Judge of Appeal