IN THE COURT OF APPEAL

SUVA, FIJI ISLANDS

AN APPEAL FROM THE HIGH COURT OF FIJI

MISC. ACTION NO. 9/2007
[Civil Action No. HBC 22/1995]

BETWEEN : **IOSAIA RADRODRO**

APPELLANT/APPLICANT

AND : **FIJI FOREST INDUSTRIES AND WAIQELE SAWMILLERS LIMITED**

RESPONDENTS

BEFORE THE

HON. JUSTICE OF APPEAL: **HON. JUSTICE JOHN E. BYRNE**

COUNSEL : T. RAIKADROKA (FOR THE APPELLANT)

: M. RAZA on instructions from MAQBOOL & Co.

(FOR THE RESPONDENTS)

DATES OF HEARINGS AND SUBMISSIONS : 13th AUGUST, 24th OCTOBER, 20th DECEMBER 2007

DATE OF RULING : 27th JULY 2009

RULING ON APPLICATION FOR LEAVE TO APPEAL OUT OF TIME

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1. The courts will not allow themselves to be made the play-thing of tardy litigants, that is those litigants who, by their actions show no interest in proceeding expeditiously with their claims.

2. The present application is such a case.

3. It has an almost unbelievable, and certainly intolerable history of delays by the applicant in pursuing an action in the High Court against the respondents claiming trespass on the applicant's land.

4. The Chronology which the applicant annexes to an Affidavit in support of his present application to appeal out of time against a judgment delivered on the 26th of June 2006 by

   Mr Justice Coventry in the High Court is proof of what I have just said.

5. According to this the applicant issued a Writ of Summons in the High Court and an Ex-Parte Motion on the 1st of September 1994. On the 9th of September 1994 Acknowledgements of Service were filed and on the 15th of September 1994 a Statement of Defence of the 1st Respondent was filed.

6. Various interlocutory applications and orders then followed in the High Court until the 24th of August 2000 when the case was adjourned ***sine die*** by the Honorable Mr Justice Madraiwiwi (as he then was). The Judge reserved liberty to the parties to restore the case on at least seven days notice.

7. Nothing then happened for nearly four years. On the 30th of June 2004 a Notice of Change of the Solicitors was filed and on the 15th of February 2005 a Notice of Intention to Proceed was filed.

8. On the 28th of October 2005 Mr Justice Coventry struck out the case and on the 13th of February 2006 the Applicant filed a Notice of Motion to re-instate his case.

9. On the 26th of June 2006 Mr Justice Coventry refused to re-instate the case and in his ruling he remarked that there had been gross and inordinate delay by the applicant who had shown no real interest in pursuing the proceedings and that the applicant had abused the process of the court. He said that all the delays could be laid at the feet of the Applicant.

10. The above recitation of the sorry history of this case might be considered enough in itself to refuse the present application but in fairness to the applicant I must state the reasons which he claims were the cause of his dilatoriness. He deposes in an Affidavit sworn on the 14th of December 2006 that although he was guilty of delay of four years in proceeding with his case he believes that some of the delays were due to the actions of the respondents.

11. I must inform the applicant that it is not the responsibility of the parties he is suing to get on with the case. He, and he only has that duty.

12. He says in paragraph 9 of his affidavit that he resides in his village and is a simple farmer and did not know his legal rights in applying to have the action re-instated.

13. Farmers, or any other litigants, whether they may be simple or not are expected to obey the rules of the court and the law on proceeding with cases. The well-known maxim is that ignorance of the law is no excuse.

14. I cannot understand, despite making every attempt to do so, how and why the applicant could be so neglectful of rights of which he now claims he was ignorant. I am satisfied that his attitude has been that the law and the courts will wait on his pleasure. They will not.

15. He states that in his view the respondents would not be prejudiced if the case against them were re-instated in the High Court as the matter could be decided on documentary evidence alone as to whether the respondents had lawful authority to construct the road through his land.

16. The respondents deny this. An affidavit sworn by Adriu Nabora the Deputy General Manager of the 1st Respondent deposes in paragraph 3 as follows:

(a) the order for striking out was made twelve years after the action was initiated.

(b) the history of the proceedings shows great indulgence to the applicant in not striking the action out on the 20th of January 1995 and the 17th of March 1995 for disobedience of the Court's directions.

(c) all further movements stopped in January 2000 and it was not until five (5) years later that the applicant filed a Notice of Intention to Proceed.

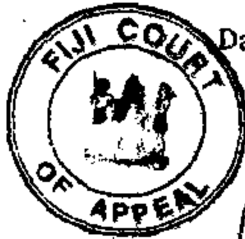
(d) the applicant again did not take any steps when the Court on its own motion and under the provisions of Order 25 Rule 9 (1) of the High Court Rules struck out the action.

17. Over all these delays, Mr Nabora deposes that in the meantime those persons employed by the 1st Respondent who had knowledge of the facts are no longer employed by the respondent which is thereby prejudiced in the conduct of its defence. Furthermore the summons, for extension of time was filed 13 months after Mr Justice Coventry made his order.

18. On the 16th of August 2007 AZIZ BEGG, the Managing Director of the 2nd Respondent swore an affidavit generally supporting the statements made by Adriu Nabora. He deposes that the employees of the 2nd respondent who were involved in the operation in 1995 are no longer in employment and the company does not have any records of extractions of any logs from the area as claimed by the Applicant.

19. It is no answer in my opinion for the applicant to say as he does in his counsel's submission of the 23rd of October 2007 that the respondents have not given the names of the employees concerned. As I have said above, the onus is on any plaintiff to proceed with an action as expeditiously as possible. I am more than satisfied that the applicant has failed to do this.

His application is therefore dismissed and for what it is worth I order that he pay the sum of $500.00 costs to each of the respondents through their solicitors within fourteen (14) days of the delivery of this ruling.



Dated this 27th day of July 2009.

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JOHN E. BYRNE

JUDGE OF APPEAL