

IN THE COURT OF APPEAL, FIJI  
[On Appeal from the High Court of Fiji]

CIVIL APPEAL NO: ABU 0127 OF 2016  
[ERCA No. 1 of 2012]

BETWEEN : MATAIASI LABAIBURE

Appellant

AND : LAND TRANSPORT AUTHORITY

Respondent

Coram : Calanchini P

Counsel : Appellant in person  
Ms T Colati for the Respondent

Date of Hearing : 13 September 2017

Date of Ruling : 20 October 2017

RULING

[1] This is an application for an enlargement of time to file a notice of appeal against the judgment of the Employment Relations Court delivered on 3 March 2014 in the exercise of its appellant jurisdiction. In that judgment the learned Judge concluded that the

dismissal of the Appellant (Labaibure) by the Respondent (Land Transport Authority) was just and fair. In doing so the Court allowed the appeal by the Land Transport Authority against the decision of the Employment Relations Tribunal that Labaibure's employment had been unjustifiably and unfairly terminated.

- [2] The application for an enlargement of time was made by motion dated 18 November 2016 and was served on 1 December 2016. The application was supported by an affidavit sworn on 18 November 2016 by Mataiasi Labaibure. The application was opposed by the Land Transport Authority and an answering affidavit sworn on 6 January 2017 by Mereseini Siliva was filed on its behalf. The Appellant filed a brief reply affidavit sworn on 23 March 2017 by Mataiasi Labaibure. The parties filed written submissions prior to the hearing.
- [3] Under section 245(1) of the Employment Relations Act 2007 (the Act) a right of appeal to the Court of Appeal is given to a party who is dissatisfied with a final judgment of the Employment Court. It is not disputed that the judgment delivered by the Employment Court on 3 March 2014 was a final judgment. Pursuant to section 245(2) for the purposes of an appeal to the Court of Appeal, the Court of Appeal Act applies with necessary modifications. It is also necessary to refer to section 219 of the Act which provides that the Employment Relations Court is established as a division of the High Court.
- [4] The Appellant had filed an earlier timely appeal that was deemed to have been abandoned on 10 April 2014 on account of non-compliance with Rule 17(1) of the Court of Appeal Rules. Consequently the application for an enlargement of time is made to this Court under Rule 17(3) of the Court of Appeal Rules. Section 20 of the Court of Appeal Act enables the power of the Court to extend the time within which a notice of appeal may be given to be exercised by a judge of the Court.
- [5] It is necessary to refer briefly to the background facts that led to proceedings being commenced in the Tribunal. Labaibure and 4 other workers commenced grievance proceedings in the Tribunal claiming that their termination by the Land Transport



Authority (the Authority) was unfair on the basis that the Authority had failed to follow the disciplinary provisions in the Memorandum of Agreement (MOA).

[6] Labaibure was employed as a Senior Road Safety Officer at the Authority's Nadi Office. Although all five grievous were subject to the same disciplinary proceedings, this Ruling will refer only to the Appellant Labaibure. As a result of allegations received by the Authority from the Ministry of Works (the Ministry) Labaibure was suspended to enable the matter to be properly investigated by the Authority. While Labaibure was on suspension the Ministry investigated the allegations and prepared a report that was forwarded to the Authority. After considering the report the Authority drafted a charge against Labaibure and forwarded it to him giving him 14 days to admit or deny the charges and to provide an explanation for further consideration by the Authority. Labaibure replied in writing to the charge and was subsequently informed by the Authority by memorandum that it was satisfied of the truth of the allegation and that he was required to appear before the Authority for mitigation. Labaibure did not appear before management to mitigate, although three of the grievous did so. Having considered the allegations, the explanations and any mitigation the Authority terminated the employment of Labaibure and the other 4 grievous. The Tribunal concluded that Labaibure's employment was unjustifiably and unfairly terminated since there had been a denial procedural fairness in the sense that Labaibure had been denied the right to be heard in person. The Tribunal ordered that Labaibure be immediately re-instated to his former position or to a position no less advantageous to him. The Tribunal ordered the Authority to pay to Labaibure 15 months lost wages together with 12 months wages as compensation for humiliation, loss of dignity and injury to the feelings of Labaibure as he was well known in his local Community. However the order for compensation was reduced by 6 months to take into account that Labaibure's conduct had contributed to the circumstances surrounding the employment grievance.

[7] The Employment Relations Court (the Court) concluded that the Tribunal's finding that Labaibure was not granted natural justice was incorrect. Labaibure was given the opportunity to explain the charge. This was a right that was given to him and which he

exercised. The Court disagreed with the Tribunal and concluded that there was no breach of the procedures that ought to have been afforded to Labaibure. As a result the Court allowed the appeal by the Authority and set aside the orders made by the Tribunal.

[8] It is against the judgment of the Court that Labaibure now seeks an enlargement of time to file and serve a notice of appeal.

[9] However, before the application is considered, there is a jurisdictional threshold issue that should first be determined. As noted earlier in this Ruling, the Employment Relations Court is a division of the High Court. Mr Labaibure had filed an appeal in the Employment Court against a decision of the Employment Tribunal. As a result the Employment Court as a division of the High Court was exercising the appellate jurisdiction of the High Court. For the purposes of an appeal to the Court of Appeal from a decision of the Employment Court, the Court of Appeal Act is to apply with any necessary modifications. Pursuant to section 3(4) of the Court of Appeal Act the jurisdiction of the Court of Appeal is limited to appeals that raise questions of law only from final judgments of the High Court given in the exercise of its appellate jurisdiction. A similar limitation also appeared as section 12(1)(c) of the Court of Appeal Act. For reasons that are not entirely clear, section 12(1)(c) has been omitted from the Revised Edition of the Laws published in 2016. In my judgment the combined effect of section 245(2) of the Employment Relations Act and section 3(4) of the Court of Appeal Act is that the Court of Appeal lacks jurisdiction to hear an appeal from the Employment Court (as a division of the High Court) in the exercise of its appellate jurisdiction unless the appeal involves a questions of law only.

[10] The 13 grounds of appeal upon which Labaibure proposed to rely in the event that an enlargement of time were to be granted are set out in annexure 1 to his affidavit in support of his application. They are:

- *“THAT the appellant was prejudiced when both counsels for the appellants and respondent agreed at the Employment Tribunal (ET) not to*



*proceed with the hearing but to merely argue on the procedures followed, leading to the termination.*

- ***THAT** the learned Judge erred when she did not properly and fairly exercise her judicial powers under **Section 220(1) and (3) of the Employment Relations Promulgation (ERP)** especially in affording the appellant his entitlement; the right to a fair hearing.*
- ***THAT** the learned Judge erred when she did not properly and judiciously exercise her powers, in that she did not take into account that the appellant was being disadvantaged by the fact that there was no Constitution at the time of his termination, where his rights under the bill of rights would therein be enshrined.*
- ***THAT** the learned Judge erred when she did not fairly and judiciously exercise her powers under **Section 220(1) and (3) of the Employment and Relation Promulgation (ERP)** when she decided only to deal with the procedure rather than the substantive matter which is the charge.*
- ***THAT** the appellant was prejudiced when the matter was dealt with collectively instead of individually when there were different complainants with different facts, and that the allegation against the appellant was manufactured, made to avenge the appellants' strict booking policy with respect to the enforcement of the **Land Transport Act and Regulation**.*
- ***THAT** the learned Judge erred when stating that natural justice was accorded to the appellant via the reply to the charges (**Paragraph 44 of Annexure 2**).*
- ***THAT** the learned Judge erred in stating that there was no breach of the procedures which should have been accorded to the appellant (**Paragraph 45 of Annexure 2**).*
- ***THAT** the learned Judge erred by stating that the independent inquiry under clause 8.2.4 of the Collective Agreement (CA) will ensure only if the respondent considers it necessary to find facts or establish the truth (**Paragraph 42 of Annexure 2**).*

- ***THAT** the learned Judge erred when she failed to consider the service of disclosures to the appellant was done so, for the purpose of preparing his defense in the independent enquiry.*
- ***THAT** the learned Judge erred when she failed to recognise that a clause 8.2.4, 8.2.5 and 8.2.6 of the Collective Agreement (CA) becomes relevant when an employee such as the appellant denies the charge.*
- ***THAT** the respondent's demand for the appellant to appear before the core management to mitigate, is applicable only to those that have admitted the charges as well as those that are found guilty upon the conclusion of the independent inquiry.*
- ***THAT** the learned Judge erred in stating that where employers are lacking, the court must be slow to award the remedy and reinstatement as this is a comment that is deemed as biased and unfair.*
- ***THAT** the honourable courts clarify **Natural Justice and Fair Hearing** and any other issue deemed fit to be clarified especially the disciplinary procedures under clauses 8.2.1 to 8.2.10 of the **Collective Agreement (CA)**."*

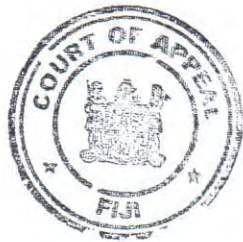
[11] In submissions filed on 3 February 2017 there are a number of additional grounds of appeal set out upon which Labaibure also relies in the event that an enlargement of time were to be granted. These additional grounds appear to be an afterthought which appear to be raised for the first time since Labaibure did not seek to raise these issues by way of cross-appeal in the Employment Court. It is not proposed to consider the additional grounds since it cannot be said that the Employment Court had erred in respect of the matters that are raised as additional grounds.

[12] Having carefully considered the 13 grounds of appeal that are in the document annexed to the supporting affidavit, I have concluded that all the grounds involve at the very least questions of mixed law and fact. As a result I conclude that this Court has no jurisdiction to hear the appeal and consequently the application for enlargement of time is dismissed.

The Appellant is to pay costs to the Respondent in the sum of \$1,800.00 within 28 days from the date of this Ruling.

**Orders:**

1. *Application for enlargement of time is dismissed.*
2. *Appellant is to pay costs to the Respondent fixed at \$1,800.00 within 28 days from the date of this Ruling.*



*W. Calanchini*

**Hon. Mr. Justice W. D. Calanchini**  
**PRESIDENT, COURT OF APPEAL**