



**Mutunavagam JA:**

I agree with the findings of Justice Kamal Kumar JA.

**Kumar JA:**

**INTRODUCTION**

1. On 13 December 2016, Appellant filed Notice of Appeal to appeal the Order of Trial Judge in High Court Civil Action No. 8 of 2015 (Lautoka) pursuant to Judgment delivered on 7 October 2016.
2. On 14 December 2016, Appellant filed Application for Security for Cost which was returnable on 31 January 2017, before the Registrar.
3. On 31 January 2017, both parties were represented by their Counsel, when Security for Costs was fixed at \$2,500.00.
4. The Appeal was called on 4 June 2018, when parties were directed to file Submissions and the appeal was adjourned to 27 June 2018 at 2.30pm, for hearing.

**NOTICE OF APPEAL**

5. Rule 16 of Court of Appeal Rules 1949 provide as follows:-

*"16. Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph (4) of rule 15 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 is to say-*  
*(a) in the case of an appeal from an interlocutory order, 21 days;*  
*(b) in any other case, 6 weeks."*

6. When the Appeal was called for the hearing on 27 June 2018, the Court brought following to the attention of the Counsel appearing for the parties:-
  - (i) Order appealed against was pronounced on 7 October 2016;
  - (ii) Since it was final order, time for appeal would expire after 42 days of pronouncement of the Order;
  - (iii) In this instance, forty-two (42) days expired on 18 November 2016;
  - (iv) The Notice of Appeal was filed on 13 December 2016, which is some twenty-five days after the time for appealing had expired.

7. Counsel for the Appellant appeared somewhat surprised and conceded the fact that Notice of Appeal was filed well out of time.
8. Counsel for the Appellant enquired with Court as to whether Registry Staff should have brought it to Appellant's attention.
9. Legal Practitioners should take note of the fact the Registry staff of Court of Appeal or for that matter of any Court are not qualified or tasked to give advice to Legal Practitioners in respect to compliance with provision of legislation and/or rules.
10. Legal Practitioners should be conversant with the law and rules in respect to any Application and/or Appeals filed in Court.
11. This Appeal therefore needs to be struck out for non-compliance with Rule 16(b) of Court of Appeal Rules 1949.

#### COSTS

12. Counsel for the Respondent sought costs.
13. The Court takes into consideration of the fact that Appellant filed Notice of Appeal well out of time which was not raised by the Respondent when this matter was called on 31 January 2017 and 4 June 2018, or no Application was made by Respondent to strike out the Appeal for non-compliance with Rule 16(b) of Court of Appeal Rules 1949.
14. The non-compliance with Rule 16(b) of Court of Appeal Rules was only brought to the attention of the Counsel for parties at the time of the hearing of the Appeal, by the Court.
15. Accordingly it is just and fair that no cost be awarded to Respondent.

#### ORDERS

16. Appeal is struck out with no Order as to costs.

*W. Calanchini*

Hon. Justice W. Calanchini  
PRESIDENT, COURT OF APPEAL



*B. Mutunayagam*

Hon. Justice B. Mutunayagam  
JUSTICE OF APPEAL

*K. Kumar*

Hon. Justice K. Kumar  
JUSTICE OF APPEAL