

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 108 OF 2019
(HBC 458 of 1993)

BETWEEN : **A. MITCHELL GAY**
ALAN C. BEALL

Appellants

AND : **RESOLUTION TRUST CORPORATION**
THE CADLE COMPANY

Respondents

Coram : **Almeida Guneratne, JA**

Counsel : **Mr H Nagin for the Appellants**
Ms P Low for the Respondents

Date of Hearing : **30 March 2020**

Date of Ruling : **3 April, 2020**

RULING

- [1] When this matter was mentioned on 30th March 2020 this Court noted that the Respondents had failed to file and serve affidavit in Response to the Appellants Summons for enlargement of time dated 6 December, 2019 supported by affidavit of Sudeshni Prasad to file Notice and Grounds of Appeal against the judgment dated 9 December, 2015 of the High Court of Suva.
- [2] Upon Ms Low for the Respondents submitting that she will not be filing any affidavit in response, Mr Nagin for the Appellants moved that his said summons for enlargement of time be granted. Having reserved order I proceed to make the same as follows.

The applicable criteria in an application for enlargement of time to appeal

- [3] The said criteria are well established in the law viz:
- (i) the length of delay
 - (ii) the reasons for the delay
 - (iii) the relative prejudice to the competing parties and
 - (iv) whether there is an arguable issue in the appeal and/or there are meritorious grounds to be looked into
- [4] A perusal of the precedents reveals that, of the said criteria, the decisive or overriding criterion is (iv) above. See also in this connection **Engineer Procure Construct (Fiji) Ltd v. Sigatoka Electric Limited** Civil Appeal No. ABU 105 of 2016, Ruling dated 22 February 2017.
- [5] In any event given the fact that, on the factual matters the Appellant's averments contained in the affidavit of Sudeshni Prasad stand uncontroverted, the matter that needs to be determined is whether there are arguable issues and/or meritorious grounds in this appeal.

Grounds of Appeal

- [6] The impugned judgment dated 9 December, 2015 of the High Court against which leave is being sought notwithstanding the lapse of time basically upholds the Master's Ruling and Orders dated 22 May, 2015.
- [7] Although there are as many as 23 grounds urged in the notice of appeal dated 13 January 2016, the distilled essence of the grounds so urged is that, having regard to the conduct of parties on the facts and in the circumstances of this case the principles pertaining to the striking out of any action, claim or any proceeding had not been correctly applied by the Master which was upheld by the High Court in the context of property rights claimed by the parties.
- [8] The said matter raises an arguable matter in my view.
- [9] Accordingly, I allow the Appellants application for leave to appeal and enlargement of time to appeal.

Orders of Court

1. Application for leave to appeal and enlargement of time to appeal is allowed.
2. The Appellant to file and serve notice of appeal on the Respondents within three weeks from the date of this ruling.
3. There shall be no order for Costs.



A handwritten signature in blue ink, which appears to read "Almeida Guneratne".

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Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL