

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

CIVIL APPEAL NO. ABU 079 of 2024
[In the Suva High Court Action No. HBC 368 of 2020]

BETWEEN : **AUTOWORLD TRADING (FIJI) PTE LIMITED** a limited liability company having its registered office at Suva.

Appellant

AND : **FIJIAN COMPETITION AND CONSUMER COMMISSION**
an institution duly established under the Fiji Commission Act 2010.

1st Respondent

JOEL ABRAHAM, IRFAN HUSSAIN, SHIGUFAH SHAINAAZ and DARLEEN CHANDRA

2nd Respondent

Coram : **Prematilaka, RJA**

Counsel : **Ms. K. Saumaki for the Appellant**
Ms. N. Choo for the Respondents

Date of Hearing : **25 August 2025**

Date of Ruling : **09 September 2025**

RULING

- [1] The appellant has filed a notice of appeal on 09 September 2024 against the High Court ruling of 29 July 2024, where the judge struck out the appellant's extension of time and leave to appeal application. The appellant thereafter filed a summons for security for costs on 13 September 2024. The matter was to be called on before the Chief Registrar on 01 October but in fact called on 15 October, 18 October and 21 October. On 15 October the respondent had raised an issue whether the impugned ruling of 29 July 2024 was an interlocutory ruling and submitted that therefore the appellant should have filed an application for leave to appeal rather than an appeal against the said ruling under the Court of Appeal Rule 16(a). On 21 October 2024, there was no appearance for the appellant's solicitors and they had been advised later in that week that the summons for security for costs had been struck out by then Chief Registrar for their non-appearance¹.
- [2] The appellant had sought to file a fresh notice of appeal on 30 October 2024 but on 15 November 2024 the office of the appellant's solicitors had been advised by the Court of Appeal Registry to file a notice of motion (and supported by affidavit) under the Rule 10 of the Court of Appeal Rules in order to appeal the striking out order of the Chief Registrar.
- [3] Thereafter, the appellant has filed a notice of motion and supporting affidavit on 15 November 2024 seeking *inter alia* the following orders:
- a. *That the appellant be granted an enlargement of time for filing the current application.*
 - b. *That the orders of the Chief Registrar striking out the appellant's summons for security for costs be dismissed and the said security for costs struck out by the Chief Registrar on 21 October 2024 be reinstated.*
 - c. *That an early date be assigned for the appellant's application for fixing of the security of costs for the prosecution of the appeal.*
- [4] The counsel for the respondents on 27 January 2025 submitted to this court that notwithstanding the current notice of motion, the court should first consider whether the

¹ See **BDO Spicers Auckland Trustee Company Ltd v Jamandas** [2006] FJCA 90; ABU0080.2004S (16 January 2006) where this court considered an application against the reinstatement of the summons for security for costs by the Chief Registrar arising from his earlier striking out the application to fix security for costs.

impugned ruling is interlocutory or final before ruling on the appellant's application by the notice of motion, in as much as if the court were to hold that the HC ruling was indeed an interlocutory decision, the notice of motion need not be considered. In its written submissions the respondents have specifically taken up this position but the appellant has not addressed it in its written submissions. However, the counsel for the appellant orally replied to the respondent's objection at the hearing and both counsel made submissions before me for and against the preliminary objection and agreed that this court could consider the preliminary objection before dealing with the notice of motion.

- [5] In terms of section 12(2)(f) of the Court of Appeal Act, no appeal shall lie from any interlocutory order or interlocutory judgment without leave of the judge or the Court of Appeal. Section 20(1)(a) empowers a judge of the Court of Appeal to give leave to appeal. The respondents' objection to the notice of appeal is based on the 'application approach' adopted in Fiji to determine whether an order, decision or ruling is interlocutory or final². The Supreme Court³ finally settled the issue beyond doubt by authoritatively stating that:

'[41] In the absence of any statutory assistance to aid the courts in Fiji, this Court is of the view that the "application approach" should be adopted unless there are strong reasons in any particular case for not doing so. As a general guide and rule of thumb, when and where there is doubt if the Order is final or interlocutory, leave should be sought.'

- [6] However, it could be seen that the Supreme Court has left the door slightly open for the adoption of 'order approach' if there are strong reasons in any particular case for departing from the application approach⁴.

- [7] The impugned HC Ruling arose from the appellant's summons in the High Court for enlargement of time to appeal (and leave to appeal) the ruling by the Acting Master dated 16 August 2023. The appellant filed a writ of summons and statement of claim and the

² See **Devi v Nausori Town Council** [2025] FJCA 92; ABU008.2024 (20 June 2025) for a complete discussion on this topic.

³ **Jivaratnam v Prasad** [2023] FJSC 11; CBV0005.2020 (28 April 2023)

⁴ See for example **Fiji Islands Maritime Safety Administration v Khan** [2025] FJCA 122; ABU095.2024 (7 August 2025)

respondents filed summons for striking out the claim on the premise that the appellant had not disclosed a reasonable cause of action. By his ruling on 16 August 2023, the Acting Master struck out the appellant's statement of claim and writ of summons pursuant to Order 18 Rule 18(1) of the High Court Rules. The appellant filed a notice of appeal against the said ruling by the Acting Master, which too was struck out by the High Court as it was incompetent for want of leave to appeal. Then, the appellant sought extension of time and leave to appeal against the said ruling resulting in the impugned ruling by the High Court on 29 July 2024 where the High Court dismissed the summons seeking extension of time and leave to appeal subject to costs. It is against this ruling by the High Court that the appellant has filed the notice of appeal on 09 September 2024 in the Court of Appeal.

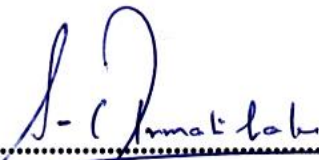
- [8] In terms of the 'application approach', an order is treated as final only if the entire cause or matter is finally determined *whichever way* the Court decides the application. Thus, on 'application approach' it becomes clear that if the High Court judge had granted extension of time and leave to appeal, the matter would have continued as an appeal proper. It is because, the judge refused extension of time and leave to appeal that the matter came to an end. Thus, on 'application approach' the impugned order is clearly an interlocutory order and not a final order.
- [9] The "order approach" requires the classification of an order as interlocutory or final by reference to its effect. If it brings the proceedings to an end, it is a final order, if it does not, it is an interlocutory order. It may be argued that since the impugned order by the High Court brought the proceedings commenced by summons for extension of time to appeal and leave to appeal to an end, on the 'order approach' it should be treated as final as far as those proceedings are concerned.
- [10] The question then is whether the application of the application approach recommended by the Supreme Court in *Jivaratnam v Prasad* for Fiji is appropriate in this instance or whether there should be a departure from that to an order approach and whether there are strong reasons for doing so as stated by the Supreme Court.

[11] Unlike for example in *Fiji Islands Maritime Safety Administration v Khan*, where this court adopted ‘order approach’ I do not see strong reasons for departing from application approach’ in this instance. Therefore, I hold that the appellant’s notice of appeal is null and void ab initio. It should be pro forma struck out.

Orders of the Court:

1. *Respondent’s preliminary objection is upheld.*
2. *Appellant’s notice of appeal is struck out.*
3. *Appellant is directed to pay the respondents costs of \$2500 within 21 days hereof.*
4. *Order 3 should precede any application by the appellant for enlargement of time to appeal the High Court Ruling dated 29 July 2024.*




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Shelvin Singh Lawyers for the Appellant
R. Patel Lawyers for the Respondent