

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

CIVIL APPEAL NO. ABU 105 of 2024
[In the Labasa High Court Action No. HBC 01 of 2023]

BETWEEN : **APAITIA KOROIDIBALE** trading as Koroidibale Fish Sales Limited of Tukavesi, Cakaudrove.

Appellant

AND : **THE COMMISSIONER OF POLICE**

1st Respondent

ATTORNEY GENERAL OF FIJI

2nd Respondent

CORPORAL 3726 KIBAU KAIEIKIEKI

3rd Respondent

Coram : Prematilaka, RJA

Counsel : Mr. V. M. Bukayaro for the Appellant
Ms. M. Faktaufor for the Respondents

Date of Hearing : 23 September 2025

Date of Ruling : 25 September 2025

RULING

[1] This matter concerns the appellant's (original plaintiff) summons for leave to appeal out of time a ruling by the High Court on 28 May 2024¹. By that ruling the High Court granted

¹ **Apaitia Koroidabale v Commissioner of Police and two others** High Court Civil Action No. 1 of 2023 (28 May 2024) (unreported)

the summons filed by the respondents (original defendants) to strike out the appellant's appeal pursuant to Order 18 Rule 18(d) of the High Court Rules and accordingly struck out the appellant's appeal. The appellant had lodged the now struck out appeal against the Magistrate's court ruling on 06 March 2023 refusing the appellant's application for reinstatement. In the Magistrates court, the respondents had sought to have the appeal struck out on the basis that the notice of intention to appeal and the appeal had been filed and served out of time on 27 April 2023.

[2] Order 37 Rule 1 of the Magistrates Court Rules requires notice of intention to appeal (in civil appeals) to be given to the respondent and to the Magistrates court *within 07 days* after the day the decision appealed against was given. It is also possible that such notice may be given verbally to the Magistrates court in the presence of the opposite party immediately after the judgment is pronounced. Order 37 Rule 3(1) stipulates that the appellant shall *within one month* from the date of the decision (including the day of the decision) file in the Magistrates court the grounds of appeal and cause a copy of it to be served on the respondent failing which the appellant shall be deemed to have abandoned the appeal, unless the Magistrates court or the appellate court (in this instance the High Court) sees it fit to extend the time for filing grounds of appeal. Thus, it is very clear that for an appeal to be before the High Court properly, both requirements relating to the notice of intention and the grounds of appeal must be fulfilled. If, even one of the steps fails, there cannot be a valid appeal.

[3] In this instance both the appellant's notice of intention and the grounds of appeal had been filed out of time. No extension of time appears to have been sought or granted for filing the grounds of appeal out of time. In any event, no such extension could have been granted as the appellant had failed to file the notice of intention to appeal within 07 days in the first place. Therefore, even without a striking out order by the High Court, the appellant's appeal should be deemed to have been abandoned.

[4] The appellant's summons before this court for enlargement of time to seek leave to appeal is out of time by several months. The respondent raises a preliminary issue opposing the

appellant's application on the premise that he had not sought enlargement of time to appeal the High Court ruling in the High Court in the first instance and therefore this court cannot and should not consider his application.

Extension of time – Rule 27

[5] Whenever under the Court of Appeal Rules, an application may be made either to the Court below or to the Court of Appeal it shall be made in the first instance to the court below.² The period for filing and serving a notice of appeal or an application for leave to appeal or an application for leave to appeal under Rule 16 may be extended by the court below or by the Court of Appeal.³ The qualifying words in Rule 26(3) are '*whenever under these Rules*'. So, Rule 26(3) only applies where the Court of Appeal Rules themselves provide that an application may be made to either court; examples are Rule 27 relating to applications for extending the period for filing and serving a notice of appeal/an application for leave to appeal under Rule 16 and Rule 34(1) on applications for stay of execution or of proceedings of the decision of the court below. In the case of an application under Rule 27, Rule 26(3) would require the application to be made first to the High Court. Thus, it is clear that when the jurisdiction for an extension of time to appeal is concurrently vested in the High Court, an application for leave to appeal out of time must be made in the first instance to the High Court⁴. The appellant has not done so. Therefore, the appellant has not invoked the jurisdiction of the High Court seeking leave to appeal the High Court judgment out of time *i.e.* extension of time to seek leave to appeal.

[6] Referring to Rule 34(1) read with 26(3), it has been held⁵ (approved later⁶ by the President, CA) that:

'[6] An application for a stay of execution must be made to the Court below first. If the application is refused by the Court below then a further application may be

² Rule 26(3) the Court of Appeal Rules

³ Rule 27 of the Court of Appeal Rules

⁴ **Datt v Fiji Sugar Corporation** [2025] FJCA 34; ABU47.2024 (13 March 2025)

⁵ **Chaudhry v Chief Registrar** [2012] FJLawRp 118; (2012) 2 FLR 398 (5 November 2012); See also **Samshood v Vunimoli Sawmill Ltd** [2013] FJCA 35; ABU7.2012 (3 May 2013); **Registrar of Titles v Sharda Prasad f/n Ram Asre** ABU 0009/2001S (08 June 2001) (unreported)

⁶ **Veitala v Home Finance Co (trading as HFC Bank)** [2023] FJCA 272; ABU012.2023 (7 December 2023)

made to the Court of Appeal. Under s 20 of the Court of Appeal Act Cap 12 a single judge of the Court of Appeal has jurisdiction to hear and determine such an application.'

[7] As the Appellant has not yet made an application for stay of execution to the Court below, this Court has no jurisdiction to hear the application at this stage. As a result the Appellant's application for stay of execution is dismissed.'

[7] The same rationale is applicable to extension of time applications. Thus, this court has no jurisdiction to entertain the appellant's summons for extension of time seeking leave to appeal unless he makes an application for extension of time and that is refused by the High Court in the first place and thereafter he invokes the jurisdiction of this court by way of a renewed application.

[8] On the other hand, the appellant has not submitted any proposed grounds of appeal along with his summons for enlargement of time, which cannot be identified from his affidavit either. This court has already highlighted the need to comply with this fundamental requirement⁷ failing which this court cannot and will not consider an application for leave to appeal or enlargement of time to seek leave to appeal or enlargement of time to appeal.

[9] Thirdly, in a second-tier appeal such as this, the need to raise precise question/s of law is not only a matter of convenience or common law but a statutory requirement in terms of section 12(1)(c) of the Court of Appeal Act. Rule 29(3) of the Court of Appeal Rules specifically highlights the duty to state precise grounds of appeal. The Court of Appeal said of section 12(1)(c) in **Punja and Sons Ltd v New India Assurance Co Ltd**⁸:

'[10] As stated earlier, the High Court judgment that is being challenged in this court was in respect of an appeal filed by the Appellants against the Decision of the Master. That appeal was governed by Order 55 Rule 3 of the High Court Rules and was by way of rehearing. The appeal to this court is against the judgment of the High Court and has been made in terms of Section 12 (1)(c) of the Court of Appeal Act. This therefore is a second tier appeal and Section 12 (1)(c) of the Court of Appeal Act provides that an appeal shall lie

⁷ **Malani v Director of Public Prosecutions** [2025] FJCA 82; ABU019.2022 (6 June 2025) & **Devi v Kumar** [2025] FJCA 91; ABU067.2020 (12 June 2025)

⁸ [2019] FJCA 250; ABU115.2017 (29 November 2019)

“on any ground of appeal involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal”.

[11] *Before venturing to consider this appeal, this court therefore has to be first satisfied that the grounds of appeal urged by the Appellants contain questions of law. In order to do so, it is necessary to understand as to what a “question of law” is.⁹*

[10] The Court in ***Punja and Sons Ltd*** helpfully elaborated as to what would constitute a ‘question of law’: Needless to say, that this list is not *exhaustive*:

- ‘(a) inferences from the primary facts found are matters of law;*
- (b) The question whether the tribunal has misdirected itself on the law or the facts or misunderstood them or has taken into account irrelevant considerations or has failed to take in to account relevant considerations or has reached a conclusion which no reasonable tribunal directing itself properly on law could have reached or that it has gone fundamentally wrong in certain other respects is a question of law;*
- (c) Given the primary facts, the question whether the tribunal rightly exercised its discretion is a question of law;*
- (d) Whether the evidence is in the legal sense sufficient to support a determination of fact is a question of law;*
- (e) Whether there is or is not evidence to support a finding, is a question of law”.¹⁰*

[11] Having examined the impugned ruling of the High Court, I cannot see any such question of law either. The High Court had no alternative but to strike out the appellant’s belated appeal for non-compliance with Order 37 Rule 1 and Order 37 Rule 3(1) of the Magistrates Court Rules. The appellant should and could have filed an application for enlargement of time to comply with one or both of the above Rules in the High Court rather than directly

⁹ See ***Chand v Fiji Times Ltd***, (2011) FJSC 2 (8 April 2011), ***Bulu v Housing Authority*** (2005) FJSC 1 (8 April 2005) and ***Lakshman v Estate Management Services Ltd*** [2015] FJCA 26 (27 February 2015)

¹⁰ As per ***Colettes Ltd v Bank of Ceylon***, (1982) 2 Sri Lanka Law Reports 514.

appealing (ABU 56 of 2024 which was deemed abandoned) and then seeking extension of time for leave to appeal (ABU 105 of 2024).


[12] As I have stated earlier, the appellant's appeal to the High Court stood deemed to have been abandoned in terms of Order 37 Rule 4 of the Magistrates Court Rules.

[13] In view of my decision on jurisdiction and other preliminary matters, I am not required to consider the traditional grounds¹¹ upon which extension of time seeking leave to appeal is allowed.

Orders of the Court:

1. *Summons for leave to appeal out of time filed on 19 December 2024 is struck out.*
2. *Appellant is ordered to pay \$2000 to the respondent within 21 days hereof.*




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

Solicitors:

Bukayaro Esquire for the Appellant
Attorney-General's Chambers for the Respondents

¹¹ See **Rotomould (Fiji) Ltd v Deo Construction Co Ltd** [2025] FJCA 140; ABU023.2022 (5 September 2025)