IN THE COURT OF APPEAL, FIJI
On Appeal from the Employment Relations Court at Suva

CIVIL APPEAL ABU 115/2023
[Employment Relations Court at Suva No. ERCC 5/2020]

BETWEEN : **MOVINA PRAVEEN**

Appellant

AND : **MINDPEARL LIMITED**

Respondent

Coram : **Mataitoga, P**
Morgan, JA
Andrews, JA

Counsel : **Ms S Kant, for the Appellant**
Mr J Apted, for the Respondent

Date of Hearing : **14 November 2025**
Date of Judgment : **28 November 2025**

JUDGMENT

Introduction

[1] The appellant was employed by the respondent as from 31 August 2009. Her employment was terminated on 21 January 2020. On 14 July 2020 she filed a statement of claim ("the claim") in the Employment Relations Court ("the ERC") seeking a declaration that the termination was unfair and unlawful. She also sought orders to set aside the termination and to grant other remedies under s 230 of the Employment Relations Act 2007 ("the ERA").

[2] The respondent applied to the ERC to strike out the appellant's claim, on the grounds that the ERC had no jurisdiction to adjudicate on it, and that the appellant's claim was scandalous, frivolous and vexatious, or otherwise an abuse of the process of the court. The appellant has appealed to this Court against the decision of Justice Javed Mansoor delivered on 27 October 2023, to strike out her claim ("the ERC decision").[1]

[3] The appeal raises two issues:

[a] whether the appellant was required to seek leave to appeal against the ERC decision; and

[b] whether the Judge erred in finding that the ERC did not have jurisdiction.

The appellant's claim in the Employment Relations Court

[4] The appellant pleaded in her claim that the respondent stated that the termination of her employment was on the grounds of redundancy, but:[2]

> *... [the appellant's] employment was terminated for other reasons which was premised on an alleged hybrid of performance related issues and a predetermined mindset to terminate [the appellant's] employment.*
>
> *[The appellant's] employment was in the circumstances unfairly and unlawfully terminated by the [respondent].*

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1 *Praveen v Mindpearl Ltd* [2023] FJHC 775; ERCC22.2020 (27 October 2023).

2 Appellant's Statement of Claim, paragraphs 9 and 10.

[5] Paragraphs 11 to 71 of the claim are headed "Factual background leading to Termination of Employment" and are a narration of events under the subheadings "Performance Review", "Company dinner", "Meeting on 21st November 2019", "16th January 2020", "17th January 2020", "19th January 2020", "20th January 2020", "25th January 2020", and "28th January 2020".

[6] In paragraph 72 of the claim, the appellant pleaded that "The [appellant] was unlawfully and unfairly dismissed from her employment", and set out particulars, which may be summarised as follows:

[a] the appellant was subjected to false allegations about her employment and threatened she would be fired;

[b] the respondent effected immediate suspension of the appellant in January 2020 and dismissed her, and tried to disguise it as redundancy;

[c] the respondent failed to adhere to "the basic requirements of redundancy", by not making full and frank disclosure about "economic reasons", made representations containing contradictions and allegations as to performance, failed to properly counsel the appellant as to the reasons for the alleged redundancy, failed to consult the appellant but forced unilateral options on her, created false timelines and failed to take and genuine steps to avoid the alleged redundancy, failed to negotiate in good faith a redundancy package, subjected the appellant to unnecessary duress, failed to treat the appellant with dignity and respect, and humiliated the appellant by forcing her to take "garden leave", which was in effect a suspension.

[7] In paragraph 73 of the claim the appellant pleaded that she claimed damages for her "unlawful and unfair dismissal" as well as damages for the "suffering, depression, loss of dignity, humiliation and embarrassment she suffered as a result of the respondent's conduct". The appellant further pleaded, in paragraphs 74 to 76 of the claim, that she had "[exhausted] her internal grievance procedure by writing to the respondent and the respondent's solicitors seeking reconsideration", that the respondent had "made it

absolutely clear" that they would not change their position, and that she brought her claim to the ERC "by virtue of the claim being in excess of $40,000".

[8] In paragraph 77 of the claim, the appellant pleaded, in the alternative to the claim for unfair and unlawful dismissal, a claim for a "fair and just redundancy package that is properly assessed by the Court". The appellant's prayer for relief then sought, as recorded earlier, a declaration that the respondent's termination of employment was unfair and unlawful, and various remedial orders and orders for damages, and costs.

The Employment Relations Court decision

[9] Having summarised the parties' submissions as to the ERC's original jurisdiction, and referred to the definition of "employment grievance" in s 4 of the ERA, the Judge summarised the particulars of the appellant's claim (which this Court has summarised at paragraph [6], above). The Judge concluded that:[3]

These are matters that can be raised as an employment grievance.

[10] The Judge then referred to ss110(3), 194(5) and 211(1)(a) of the ERA, as to the process for dealing with employment grievances. The Judge said:[4]

> *... The statutory scheme is such that an employment grievance must be referred for mediation and adjudicated in the [Employment Relations Tribunal ("ERT")] in the first instance. When a worker files an employment grievance directly in [the ERC], the mandatory mediation process prescribed by Parliament is avoided. This could not have been the intention of the statutory scheme*

[11] The Judge went on to say that:[5]

> *The [ERC's] original jurisdiction is set out in sections 220(1)(h), (k), (l), and (m) of the [ERA]. The [ERA] does not confer on [the ERC] the original jurisdiction to hear an employment grievance except in the way allowed by law. Proceedings can be transferred from the [ERT] to the [ERC] under*

3 ERC decision, paragraph 11.
4 Paragraph 12.
5 Paragraph 13.

section 218. … Under section 230(1) of the [ERA] the [ERC] can grant remedies where an employment grievance is brought before it by way of transfer or in appeal. There is nothing in the [ERA] to say that the [ERT's] monetary limitation will confer jurisdiction on [the ERC] to hear an employment grievance.

[12] The Judge then held that the ERC did not have original jurisdiction to hear the appellant's claims, and struck out her action.[6]

Appellant's appeal

[13] The appellant appealed on the grounds that the Judge erred in fact and in law in:

[a] holding that the appellant's case could not be filed directly in the ERC; and

[b] not recognising that that the appellant's case also dealt with a question of law about redundancy payments.

[14] Before dealing with the appeal grounds, it is appropriate to turn to the respondent's submission that the appellant was required, and failed, to seek leave to appeal to this Court.

Does the appellant require leave to appeal to this Court?

[15] Section 12 of the Court of Appeal Act 1949 sets out the jurisdiction of this Court in civil cases. Section 12(2) provides, as relevant to the present case:

(2) No appeal shall lie—

…

(f) without the leave of the Judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a Judge of the High Court,….

[16] Rule 26(3) of the Court of Appeal Rules 1949 provides:

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6 Paragraph 14.

(3) Where under these 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.

[17] The appellant did not apply for leave, either to the ERC or this Court. Ms Kant foreshadowed an application for extension of time to apply for leave to appeal and for leave to appeal in her written submissions in reply to the respondent's submissions on the appeal. These applications were made orally at the hearing before us.

[18] The application for leave to appeal raises the issue as to whether the order striking out the appellant's claim was an "interlocutory order or interlocutory judgment" or a "final order" (against which there is a right of appeal pursuant to s 12(1)).

[19] Different approaches have in the past been taken by the Courts in Fiji as to the test for determining whether an order or judgment of the High Court (which includes the ERC) is interlocutory or final. In *Suresh Charan v S M Shah & Ors*, the Court of Appeal set out the two approaches (known as the "order" approach and the "application" approach), as follows:[7]

> *The "order" approach required the classification of an order as interlocutory or final by reference to its effect. If it brought the proceedings to an end, it was a final order, if it did not, it was an interlocutory order. The "application" approach looked to the application rather than the order actually made as giving identity to the order. The order was treated as final only if the entire cause or matter would be finally determined whichever way the court decided the application.*

[20] Any debate as to which approach is to be followed was put to rest by the judgment of the Supreme Court in *Jivaratnam v Prasad*.[8] Having reviewed authorities going either way (which included this Court's judgment in *Goundar v The Minister of Health*,[9] which favoured the "application" approach), the Supreme Court concluded:[10]

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7 *Suresh Charan v S M Shah & Ors* (1995) 41 FLR 65, at 67.
8 *Jivaratnam v Prasad* [2023] FJSC 11; CBV0005.2020 (28 April 2023).
9 *Goundar v The Minister of Health* [2008] FJCA 40; ABU0075.2006S (9 July 2008).
10 Jivaratnam, at [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.*
>
> (Emphasis as in original)

[21] This Court recently followed the "application" approach in its judgments in *Esava Cakaunitavuki v BSP Life (Fiji) Limited and BSP Health Care (Fiji) Limited*,[11] and in *The Labour Office for and on behalf of Andrew Redfern v Wyndham Resorts (Fiji) Pte Ltd*.[12]

[22] In the present case, the respondent filed the strike out application under Order 18, rule 18(1) of the High Court Rules. It was an interlocutory application. For the respondent, Mr Apted submitted that the appellant was required to obtain leave to appeal against the striking out order, and failed to do so. He invited this Court to dismiss the appeal as incompetent, for want of leave.

[23] While acknowledging that "currently, the 'application' approach is in force", Ms Kant submitted that if the "order" approach were in force, the appellant would not require leave to appeal, as the ERC decision led to the end of her action. As foreshadowed, Ms Kant made oral applications for an extension of time to apply for leave to appeal, and for leave to appeal.

[24] As to the application for extension of time, Ms Kant submitted that, notwithstanding the delay of some two years (after delivery of the ERC decision) in applying for leave, the appellant's grounds of appeal are meritorious and justify this Court's consideration, and that the respondent has not been prejudiced by the delay, as it filed submissions on the grounds of appeal. She urged this Court to adopt the practice of the Supreme Court of hearing both the application for leave to appeal and the substantive appeal in the same hearing.

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[11] *Esava Cakaunitavuki v BSP Life (Fiji) Limited and BSP Health Care (Fiji) Limited* [2024] FJCA 183 (27 September 2024).

[12] *The Labour Office for and on behalf of Andrew Redfern v Wyndham Resorts (Fiji) Pte Ltd* [2025] FJCA 107 (29 May 2025).

[25] We agree that the appellant required leave to appeal to this Court. We consider, first, the appellant's grounds of appeal, before returning to consider whether an extension of time and leave to appeal should be granted. We bear in mind that in the matter before us, the appellant bears the onus of establishing that the required leave should be granted and (in relation to the substantive appeal) that the Judge erred as alleged in the Notice of Appeal.

Original jurisdiction of the Employment Relations Court

Introduction

[26] The principal focus of the appeal hearing was on the first ground of appeal: that is, whether the Judge erred in holding that the appellant's claim could not be filed in the ERC; in particular, whether the ERC had jurisdiction pursuant to s 220(1)(h) of the ERA, which provides (as relevant):

> ***220 Jurisdiction of the Employment Relations Court***
> *(1) The Employment Relations Court has jurisdiction—*
> ...
> *(h) to hear and determine an action founded on an employment contract;*

[27] The original jurisdiction of the ERC, in particular its jurisdiction to hear cases arising out of termination of employment, has been considered in two recent judgments of this Court.

[28] The judgment in *ANZ Banking Group Pte Limited v Ajendra Sharma*[13] concerned an action brought in the ERC by an employee in an "essential service and industry" who had been summarily dismissed. The Bank applied to the ERC to strike out the action, on the grounds that the ERC did not have original jurisdiction over it. Wati J refused the application, and held that the ERC had jurisdiction. Her Honour's reasoning may be summarised as being that Mr Sharma's dismissal arose from his employment, that

[13] *ANZ Banking Group Pte Limited v Ajendra Sharma* [2024] FJCA 29; ABU30.2022 (29 February 2024).

employment was pursuant to some arrangement which amounted to a contract between the parties, hence he fell within s 220(1)(h).[14] The Bank appealed.

[29] The Court answered two questions: first, whether a worker in an essential service and industry could bring an action or employment grievance in the ERC and, secondly, whether a worker (whether or not employed in an essential service or industry) could bring a claim of unjustified dismissal in the ERC (which has unlimited jurisdiction) or could those claims only be made in an employment grievance that can only be reported to Mediation Services and the ERT (which has jurisdiction not exceeding $40,000). The Court's answer to the first question (as to workers in an essential service or industry) is not relevant in the present case. The Court's answer to the second question is relevant:[15]

> *The ERC has no jurisdiction to hear employment grievances, but if a claim for unjustified dismissal is "founded on a contract of employment", and properly pleaded as such, the ERC has jurisdiction under s 220(1)(h) to hear and determine such a claim.*

[30] Earlier in its judgment, the Court said:[16]

> *… The ERC has no jurisdiction to entertain an employment grievance claim as such (unless transferred from the [ERT] or on appeal). The ERA does have jurisdiction to hear claims founded in contract where, as a matter of pleading and evidence, the contract will necessarily be central. Crucially, Mr Sharma's statement of claim before the ERC made no mention of a contract.*

[31] The Court's judgment in *Mohammed Raiyaz Khan v Coca Cola Amatil Ltd*[17] also concerned a worker who was summarily dismissed. The Mediation Service did not resolve the dispute, and it was referred to the ERT. However, both parties agreed to the proceeding before the ERT being discontinued, and Mr Khan filed proceedings in the ERC. The case proceeded to trial before Mansoor J, who requested submissions on the question of jurisdiction. In his judgment, Mansoor J dismissed Mr Khan's claim on the

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14 See *Ajendra Sharma v ANZ Banking Group Ltd* [2020] FJHC 650; 2020; ERCC02.2017 (14 August 2020), at [22].
15 *ANZ Banking Group Pte Limited v Ajendra Sharma*, fn 13, at [64].
16 At [45].
17 *Mohammed Raiyaz Khan v Coca Cola Amatil Ltd* [2025] FJCA 112; ABU0127.2023 (25 July 2025).

basis that it was not brought under s 220(1)(h) of the Act.[18] This Court found that Mr Khan's action was distinguishable from *ANZ Banking Group v Sharma*, noting that:[19]

> *Mr Sharma's claim did not make reference at all to an employment contract whereas [Mr Khan's] claim was primarily founded (first cause of action) on breach of his employment contract in that he had referred to and pleaded the particulars of the breaches of his employment contract in his statement of claim.*
>
> *…*
>
> *[Mr Khan] has specifically prayed for damages for breach of contract and unfair and unlawful dismissal and separately pleaded damages for humiliation, loss of dignity and injury to his feelings.*

[32] The Court found that Mr Khan's claim was "founded on a contract of employment", in that he had pleaded that Coca Cola had acted in breach of contract in dismissing him.[20]

Submissions

[33] Ms Kant submitted for the appellant that she was employed under a contract of employment. She referred to a copy of the contract, annexed to her written submissions to this Court. She submitted that the ERC had "full and exclusive jurisdiction" to determine matters consistent with employment contracts or written law.

[34] In reply to the respondent's submissions, Ms Kant submitted that there are references to the appellant's contract in paragraphs 29 and 71 of the claim. She submitted that the appellant had pleaded her contract of employment in these two paragraphs. She also submitted that the respondent's breaches of the employment contract were pleaded in paragraphs 72 and 73 of the claim. Ms Kant further submitted that "it is logical", from the fact that the appellant was employed under an employment contract, that her termination would be pursuant to the contract, and that her cause of action against the respondent would be based on express and implied terms of the contract. She submitted that the appellant had given sufficient information in her claim to enable the respondent to know what breaches of the employment contract were complained of.

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18 *Khan v Coca Cola Amatil (Fiji) Ltd* [2023] FJHC 880; ERCC01.2019 (1 December 2023), at [10]-[14].
19 *Mohammed Raiyaz Khan v Coca Cola Amatil Ltd*, fn 16, at [23] (ii) and (iv).
20 *Mohammed Raiyaz Khan v Coca Cola Amatil Ltd*, fn 16, at [25]-[26].

[35] Ms Kant submitted that, like Mr Khan's claim, the appellant's claim was "primarily founded on breach of her employment contract", and that, again like Mr Khan, she had pleaded unlawful and unfair dismissal that had caused her duress, suffering, depression, loss of dignity, humiliation, and embarrassment.

[36] Ms Kant also referred to and relied on her written submissions to the ERC, where she submitted that the appellant's claim was "clearly founded on [an] employment contract" (paragraph 8), that "the references to the provisions of the [ERA] in the claim show the various breaches that the [respondent] committed" (paragraph 9), that "all employers and employees are subject to the provisions of the [ERA]" (paragraph 9), and that "quite clearly the [ERA] … has the original jurisdiction to hear actions founded on an employment contract" (paragraph 10).

[37] At paragraph 11 of her submissions to the ERC, Ms Kant submitted for the appellant that:

> *Nowhere in the [appellant's] claim does it state specifically that it is* ***an employment grievance filed under the ERA****. At all places the reference is to an unfair and unlawful dismissal. These are both actions that can also be founded under common law.*
>
> (Emphasis as in original)

[38] Mr Apted submitted for the respondent that the appellant's claim did not plead any term of the contract, nor any breach, and did not seek damages for breach of contract. He further submitted that the employment contract was not "central" to the claim. Accordingly, he submitted, the claim was not brought under section 220(1)(h) of the ERA.

Discussion

[39] Ms Kant's submission that the appellant's claim was "clearly founded on an employment contract" must be rejected. There is no specific pleading in the claim as to the appellant's employment contract. Ms Kant referred to two paragraphs in the claim. At paragraph 29, the appellant pleaded:

> *Burri gave the [appellant] a letter and advised that he would not terminate her contract on the same day hence advised that he would make this decision upon his return in January 2020.*

At paragraph 71, the appellant pleaded:

> *There was no fixed term under the [appellant's] contract and she had an open indefinite contract so the [appellant] is not able to quantify a claim in special damages*

[40] In its judgment in *Ajendra Sharma v ANZ Banking Group Ltd*, this Court referred to the principles as to pleading an action brought on a contract, citing *Odgers Principles of Pleading and Practice in the High Court of Justice*.[21] To paraphrase, when a contract is founded on a contract, it is necessary to plead the contract, its terms, and the alleged breach.

[41] Paragraphs 29 and 71 fall far short of complying with those principles. The appellant's claim does not include a pleading that the appellant and the respondent entered into a contract of employment, what the terms of that contract were (and whether express or implied), nor what terms were alleged to have been breached. While paragraphs 29 and 71 include the word "contract", the most that could be said is that there was some form of contract between the appellant and the respondent, and that it was "open" and "indefinite". Nor do they establish that the contract is "central" to the claim. The two paragraphs are insufficient to satisfy the requirement for jurisdiction under s 220(1)(h): that the claim is *founded on an employment contract*. To the contrary, the references to the appellant having been "unlawfully and unfairly dismissed" appear to place the appellant's claim under the definition of "employment grievance" under s 4 of the ERA.

[42] Ms Kant also submitted that paragraphs 72 and 73 of the claim pleaded breaches of contract. Paragraph 72 of the claim sets out 12 particulars of the alleged unlawful and unfair dismissal, but does not identify which provisions in any employment contract (whether express or implied) are alleged to have been breached. Similarly, paragraph 73

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[21] D.B Casson and I.H. Dennis *Odgers Principles of Pleading and Practice in Civil Actions in the High Court of Justice* (22 ed, London, Stevens & Sons 1981) at p168-169.

expresses the appellant's claim for "general damages for her unlawful and unfair dismissal as well as damages for the suffering, depression, loss of dignity, humiliation, and embarrassment she suffered as a result of the [respondent's] conduct", but does not allege such conduct to have been in breach of any identified provision (express or implied) in any employment contract.

[43] Further, although Ms Kant submitted that the appellant's claim is "akin to a common law claim for damages", the appellant's proceeding was brought in the ERC. It was not a claim brought in the High Court for common law damages. That submission does not assist the appellant.

[44] The Court has concluded that it cannot be said that the appellant's claim is "an action founded on an employment contract". Therefore, the claim cannot come within the original jurisdiction of the ERC under s 110(1)(h) of the ERA.

Did the Judge err in not recognising that the appellant's case also dealt with a question of law about redundancy payments?

Submissions

[45] With respect to the second ground of appeal, Ms Kant submitted that the appellant's claim also raised substantial questions of law, which she identified as:

[a] whether the respondent's redundancy was genuine;

[b] whether statutory consultation and redeployment duties were observed;

[c] whether the respondent negotiated in good faith; and

[d] whether the dismissal was carried out with dignity, consistent with statutory obligations.

[46] She submitted that the Judge erred by failing to recognise those questions.

[47] Ms Kant submitted that redundancy requires compliance with the provisions of the ERA as to duties of consultation, notice, and fair process, and that redundancy must be tested against the standard of whether a "fair and reasonable employer" could have done the same, emphasising both justification and process.

[48] Mr Apted acknowledged that the appellant's claim pleaded, in the alternative, a claim for a "fair and just redundancy package that is properly assessed by the Court having regard to" a number of factors (including that the respondent had "failed to comply with requirements and procedures set down for dealing with redundancy under the [ERA]"), and that the appellant included a prayer for relief for the alternative cause of action, being that the respondent "be ordered to pay the appellant a proper redundancy package assessed by the Court".

[49] However, he submitted, the appellant had not pleaded any legal basis for this cause of action. He submitted that the appellant had not pleaded any breach of any contract, nor any specific breach of any law in relation to redundancy pay. He further submitted that the appellant had not identified in her claim any particular "requirements and procedures for dealing with redundancy under the ERA", nor the basis of the Court's jurisdiction to award a higher redundancy package. He further submitted that the claim does not expressly seek compliance with any specific provision of the ERA, so could not fall within the jurisdiction of the ERA under s 220(1)(k) (under which the ERC has jurisdiction to "order compliance with [the ERA]".

Discussion

[50] The "questions of law" identified by the appellant appear to relate to paragraph 72 (ii) to (xii) of her claim, which were summarised at paragraph [6](c], above. For convenience, that summary is repeated:

> [c] The respondent failed to adhere to "the basic requirements of redundancy", by not making full and frank disclosure about "economic reasons", made representations containing contradictions and allegations as to performance,

failed to properly counsel the appellant as to the reasons for the alleged redundancy, failed to consult the appellant but forced unilateral options on her, created false timelines and failed to take and genuine steps to avoid the alleged redundancy, failed to negotiate in good faith a redundancy package, subjected the appellant to unnecessary duress, failed to treat the appellant with dignity and respect, and humiliated the appellant by forcing her to take "garden leave", which was in effect a suspension.

[51] As Mr Apted submitted, the appellant did not plead any specific breach of any law as to redundancy. Nor has the appellant pleaded any particular "requirements and procedures" as to redundancy. The matters set out in paragraph 72(ii) to (xii) are matters of fact, not law. The Court also accepts Mr Apted's submission that the appellant's claim does not seek compliance with any specific provision of the ERA.

[52] Having considered the appellant's submissions on the two grounds of appeal, we return to the questions whether an extension of time to apply for leave to appeal, and leave to appeal, should be granted.

Should the appellant be given an extension of time to apply for leave to appeal?

[53] An application for extension of time to appeal will require consideration of the reason for the failure to file within time, the length of the delay (and where there has been substantial delay, whether there is nonetheless a ground of appeal that will probably succeed), whether there is a ground of merit justifying the appellate court's consideration, and whether, if time is enlarged, the respondent will be unfairly prejudiced. These matters should be considered in the context of whether it would be just in all the circumstances to grant or refuse the application and the onus is on the appellant to show that in all the circumstances it would be just to grant the application.[22]

[22] See *Kumar v Prasad* [2025] FJCA 159; ABU067.2024 (23 October 2025).

[54] By way of explanation for the failure to seek leave to appeal in time, the appellant submitted that "in the Fiji courts there has been a history of whether the 'application' approach or the 'order' approach should be adopted in relation filing leave to appeal" and that "currently the 'application' approach is in force … if the 'order' approach was in force the appellant would not require leave to appeal". We note that the Supreme Court's judgment in *Jivaratnam*, (that the "application" approach was to be followed) was delivered on 28 April 2023. The ERC decision in the present case was issued on 27 October 2023. The "application" approach had therefore been "in force" for six months when the question of appeal against the ERC decision arose.

[55] Nevertheless, Mr Apted opposed the grant of leave to appeal, not the extension of time to apply for leave. He did not submit that the respondent was prejudiced by the delay, and filed written submissions opposing the grant of leave to appeal, and opposing the substantive appeal. We consider next the application for leave to appeal.

Should the appellant be given leave to appeal?

[56] As Calanchini AP said in his ruling in *Denarau Corporation Ltd v Slatter and Gutherine Company Ltd*, generally the courts are reluctant to interfere with interlocutory decisions. However, leave will be more readily granted when legal rights, as distinct from matters of practice and procedure are involved, and some injustice may be caused.[23]

[23] *Denarau Corporation Ltd v Slatter and Gutherine Company Ltd* [2013] FJCA 94; Miscellaneous 10.2012 (9 August 2013), at [13].

[57] A party applying for leave to appeal must establish that there is a real prospect of the appeal succeeding. In *Sea Pilots (Fiji) Ltd v Peckham*, Prematilaka RJA held (in a case involving an appeal against the granting of an injunction) that:[24]

> *The applicant must demonstrate that the intended appeal has a realistic prospect of success. A 'real' prospect of success means that prospect of success must be realistic rather than fanciful and the court considering a request for permission is not required to analyse whether the proposed grounds of appeal will succeed, but merely there is a real prospect of success.*

[58] In this case, the appellant had the onus of establishing that the Judge erred in the manner stated in her notice of appeal.

[59] We note that as well opposing the grant of leave to appeal, Mr Apted made submissions on the two grounds of appeal. Ms Kant filed submissions (including submissions in reply to Mr Apted's submissions) both in respect of the application for leave to appeal, and the two grounds of appeal. Having considered the appellant's two grounds of appeal, we are not persuaded that either ground has a realistic prospect of success.

Outcome

[60] Having considered the parties' submissions, the Court has concluded that:

[a] an extension of time should be granted to the appellant to apply for leave to appeal;

[b] the appellant should be given leave to appeal against the ERC decision; and

[c] the appeal should be dismissed.

[61] Mr Apted sought costs in favour of the respondent. It is appropriate that costs should follow the event.

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[24] *Sea Pilots (Fiji) Ltd v Peckham* [2025] NZCA12; ABU055.2024 (17 February 2025), at [7](c). See also his Honour's ruling in *Fatiaki v Mobil Oil Australia Pty Ltd* [2025\ FJCA 52; ABU80.2024 (26 March 2025, at [11]-[16].

ORDERS:

(1) Time to apply for leave to appeal is extended and leave is granted to appeal.

(2) The appeal is dismissed.

(3) The appellant is ordered to pay costs to the respondent in the sum of $3,000, summarily assessed, to be paid within 21 days.

COURT OF APPEAL FIJI

Hon. Mr Justice Isikeli Mataitoga
PRESIDENT OF THE COURT OF APPEAL

Hon. Mr Justice Walton Morgan
JUSTICE OF APPEAL

Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL

SOLICITORS:

Crown Law for the Appellant
Munro Leys for the Respondent