

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

CIVIL APPEAL NO. ABU 0001 of 2025
[Probate Action No. 073 of 2024]

BETWEEN : **JONE TABAIWALU** as Trustees of the Estate of Ernest Vuki Pickering of Navuni, Vanualevu, Fiji, Retired.

Appellant

AND : **JUNE PICKERING AND SOLOMON TABAIWALU PICKERING** as Trustees of the Estate of Henry Harry Pickering and Trustee of the Estate of Henry Vernon Pickering both of Navuni, Vanualevu, Fiji, Retired and Consultant respectively.

1st Respondent/1st Defendant

THE PUBLIC TRUSTEE OF FIJI a Trustee of the Estate of **Mary Pickering** a duly incorporated company having its registered office at 83 to 85 Amy Street, Toorak.

2nd Respondent/2nd Defendant

SOLOMON TABAIWALU PICKERING as Trustee of the Estate of **Eric Hillman Pickering** of Navuni, Vanualevu, Fiji, Consultant.

3rd Respondent/2nd Defendant

Coram : **Prematilaka, RJA**

Counsel : **Ms. K. Saumaki for the Appellant**
Ms. S. Nayacalevu for the 01st Respondent (Ms. June Pickering)

Date of Mention : **06 June 2025**

Date of Ruling : **12 June 2025**

RULING

[1] The appellant has filed a notice of appeal on 02 January 2025 against the judgment of the High Court delivered on 20 November 2024 (unreported). The caption in the High Court judgment read as follows:

*‘IN THE HIGH COURT OF FIJI
AT SUVA
PROBATE JURISDICTION*

Probate Action No. 73 of 2024

BETWEEN :
*JUNE PICKERING AND SOLOMON TABAIWALU
PICKERING
First Plaintiff*

BETWEEN :
*SOLOMON TABAIWALU PICKERING as Trustee of the
Estate of Eric Hillman Pickering
Second Plaintiff*

AND :
*FIJI PUBLIC TRUSTEE CORPORATION PTE LTD
First Defendant*

AND :
*JOHN TABAIWALU as Trustee of the Estate of Ernest Vuki
Pickering
Second Defendant*

[2] The notice of appeal has Jone Tabaiwalu named as the appellant and June Pickering and Solomon Tabaiwalu Pickering named as one respondent whereas John Tabaiwalu was the 02nd defendant and June Pickering and Solomon Tabaiwalu Pickering were jointly the 01st plaintiff and Solomon Tabaiwalu Pickering alone was the 02nd plaintiff in the High Court. Fiji Public Trustee Corporation Pte. Ltd, the 01st defendant in the High Court matter had not been made a party at all in the notice of appeal. The caption in the summons for security for costs (SFC) was the same as the notice of appeal.

- [3] At the hearing into SFC, the counsel for the said respondent (June Pickering and Solomon Tabaiwalu Pickering jointly) had pointed out that the appeal was out of time, notice of appeal was served late on the respondent and the name of the appellant was incorrect. The counsel for the appellant had sought time to make necessary amendments. The Chief Registrar (CR) had allowed time for the appellant's counsel to make required amendments to the notice of appeal and if the need be to seek extension of time to appeal.
- [4] The appellant filed summons for extension of time to appeal on 10 March 2025 (and affidavit) naming Jone Tabaiwalu as the appellant and June Pickering and Solomon Tabaiwalu Pickering as 01st respondent/01st defendant when it was Fiji Public Trustee Corporation Pte. Ltd that was the 01st defendant in the High Court. The supporting affidavit has been sworn by Jone Tabaiwalu and not John Tabaiwalu.
- [5] The orders sought in the summons were to allow the appellant to file and serve notice of appeal and summons for security for cost out of time. The appellant, strangely though, also sought an order for reinstatement of the notice of appeal 'now deemed abandoned'. I do not see any order by CR marking the notice of appeal as 'deemed abandoned'.
- [6] On the summons returnable date (13 March 2025) the counsel for the respondent pointed out that the caption in the summons and accompanying documents was wrong; two names *i.e.* June Pickering and Solomon Tabaiwalu Pickering have been put together as 01st respondent/01st defendant whereas they were jointly named as 01st plaintiff and Solomon Tabaiwalu Pickering was separately named as the 02nd plaintiff, in the High Court. The appellant's counsel admitted that the original appeal was out of time and so was the SFC.
- [7] This court advised the appellant's counsel to file amended summons with a correct caption seeking extension of time to appeal out of time. The matter was adjourned to 07 April 2025. There was no appearance for the appellant but he was present in person in court on 07 April 2025. The counsel for the respondents pointed out that even the summons filed on 31 March 2025 does not reflect the parties correctly in the caption and the supporting affidavit of Jone Tabaiwalu. The appellant was given a final date till 28 April 2025 by this court to file proper amended summons and affidavit or face dismissal of summonses subject to cost.

The matter was adjourned to 06 June 2025. The appellant's solicitors were informed of the directives by the Registry.

- [8] The appellant's solicitors filed amended summons and supporting affidavit on 28 April 2025. When the matter was mentioned on 06 June 2025, the counsel for the respondent (June Pickering) again brought it to the notice of this court that the caption in the amended summons and supporting affidavit is defective in as much as (i) name of the appellant is different from the High Court proceedings in that it is still read as Jone Tabaiwalu (ii) the caption identifies Jone Tabaiwalu as the appellant/plaintiff whereas Jone Tabaiwalu or even John Tabaiwalu was never the plaintiff but he was the 02nd defendant in the High Court. The counsel for the respondent also submitted that Raramasi Law cannot sign as solicitors for the plaintiff/appellant as it was and is still Shekinah Law that has been acting as solicitors for the plaintiffs namely June Pickering and Solomon Tabaiwalu Pickering – 01st plaintiff and Solomon Tabaiwalu Pickering – 02nd plaintiff.
- [9] Further, I find that in the first summons (and the supporting affidavit plus other documents) filed on 10 March 2025 June Pickering and Solomon Tabaiwalu Pickering had been collectively identified as 01st respondent/01st defendant, in the first amended summons filed on 31 March 2025, June Pickering and Solomon Tabaiwalu Pickering have been separately named as 01st respondent/01st defendant and 02nd respondent/02nd defendant. Then, in second amended summons (and supporting documents) filed on 28 April 2025 June Pickering and Solomon Tabaiwalu Pickering had been identified collectively as 01st respondent/01st defendant and Solomon Tabaiwalu Pickering separately as 03rd respondent/02nd defendant and for the first time, Fiji Public Trustee Corporation Pte. Ltd as the 02nd respondent/02nd defendant. The uncontroversial fact is that June Pickering and Solomon Tabaiwalu Pickering were never defendants in the High Court. Their respective positions were; June Pickering and Solomon Tabaiwalu Pickering – 01st plaintiff and Solomon Tabaiwalu Pickering – 02nd plaintiff. On the other hand it was the Fiji Public Trustee Corporation Pte. Ltd that was the 02nd defendant in the High Court. To make matters worse, in all three summonses, Raramasi Law had signed summonses (and motions) as solicitors for the plaintiff when in fact it is Shekinah Law that has represented the plaintiffs in the High Court and now in the Court of

Appeal. Moreover, in all the supporting affidavits accompanying the three summonses, the appellant who was the 02nd defendant in the High Court as John Tabaiwalu had identified himself as Jone Tabaiwalu. Whether John Tabaiwalu and Jone Tabaiwalu is one and the same person or two persons is anybody's guess. The captions in summonses and other documents including affidavits at least do not say 'John Tabaiwalu alias/A.K.A Jone Tabaiwalu'.

[10] Some of these errors including filing an appeal and serving it out of time have been pointed out to the appellant's solicitors from the time the matter was called before CR on 18 February 2025 to determine SFC. Thereafter, the matter came up before me on 13 March 2025, 07 April 2025 and 06 June 2025. Still, the appellant's solicitors have not shown due diligence to rectify these errors. On 07 April 2025, this court warned the appellant that if proper papers are not filed by 28 April 2025 the summonses would be dismissed subject to costs.

[11] When confronted with the said errors, once again on 06 June 2025 the counsel for the appellant moved for time again to file another amended summons. However, the counsel for the respondent (June Pickering) insisted on cost of \$1000.00 (which I found to be reasonable and made my view known to the appellant's counsel too) if she were to agree to a further adjournment and if not she would move to have the summonses struck out. The appellant's counsel was agreeable to pay only \$500.00 and then the counsel for the respondent applied to this court to strike out the summonses altogether.

[12] In Commonwealth jurisdictions, courts often possess inherent powers to control their proceedings, which include dismissing applications for want of prosecution to prevent abuse of process and ensure the efficient administration of justice. Therefore, it is reasonable to conclude that under the Court of Appeal Act in Fiji, the power to dismiss an appeal for want of prosecution extends to dismissing applications for leave to appeal or applications for extensions of time to appeal on similar grounds. This interpretation aligns with the Court's ancillary powers to manage proceedings effectively and is consistent with practices observed in other Commonwealth jurisdictions.

[13] The judicial system has extended the appellant and his solicitors more opportunities than they deserved without any costs being ordered and they have simply wasted those opportunities, the court's valuable judicial time and burdened administrative mechanism of the Court of Appeal Registry with defective summonses with affidavits over and again. The appellant and his solicitors have not prosecuted their application for enlargement of time with due diligence. I would refuse to grant any more adjournments for another amended summons for extension of time and I would strike out and/or dismiss all three summonses for extension of time for want of prosecution with due diligence in terms of section 20(1)(k) read with section 20(1)(g) of the Court of Appeal Act. In the circumstances, the appellant should be made to pay costs of \$1000.00 requested by the counsel for respondent (June Pickering) but he must also pay wasted court costs. The solicitors for the appellant have demonstrated an awful lack of professionalism & disrespect and scant regard for this court by persisting with fundamental errors despite the accommodation to file amended summons generously accorded from time to time by this court.

Orders of the Court:

1. *Appellant's summons and two amended summonses for extension of time to appeal the Judgment of the High Court dated 20 November 2024 are struck out/dismissed.*
2. *Appellant is directed to pay the respondents represented in court costs of \$1000.00 within 21 days hereof.*
3. *Appellant is also directed to pay the Court of Appeal Registry \$2000.00 as wasted costs within 21 days hereof.*
4. *No future and fresh summons or any application for extension of time to appeal the Judgment of the High Court dated 20 November 2024 shall be allowed to be filed unless the appellant has complied with Orders (2) and (3) above as a precondition.*




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

Solicitors:

**Raramasi for the Appellant
Shekinah Law for the Respondents**