

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

**CIVIL APPEAL NO. ABU 097 of 2025**  
**[In the High Court at Lautoka Case No. HBC 018 of 2014]**

**BETWEEN** : **LAND TRANSPORT AUTHORITY** a body corporate established  
under the LAND TRANSPORT ACT No. 35 of 1998

**Appellant**

**AND** : **PARVEEN KRISHNA NAICKER** of Navoli, Ba, unemployed.

**1<sup>st</sup> Respondent**

**LEONI KACISAU** of Lot 63 Nasevou Street, Lami, LTA Officer.

**2<sup>nd</sup> Respondent**

**Coram** : **Prematilaka, RJA**

**Counsel** : **Ms. N.K. Prasad and Ms. F.E. Bull for the Appellant**  
**Mr. S. Singh for the 1<sup>st</sup> Respondent**  
**2<sup>nd</sup> Respondent absent and unrepresented**

**Date of Mention** : **13 March 2026**

**Date of Ruling** : **16 March 2026**

**RULING**

[1] The appellant’s summons for enlargement of time is to appeal the judgment of the High Court at Lautoka<sup>1</sup> delivered on 29 July 2025. The judgment is concerned with the assessment of damages following the Court of Appeal judgment<sup>2</sup> which upheld the High Court decision that appellant (‘LTA’) is vicariously liable to pay damages to the 01<sup>st</sup> respondent.

*Law on enlargement of time*

[2] It is well settled now that this Court has an unfettered discretion in deciding whether or not to grant the leave out of time<sup>3</sup>. However, the appellate courts always consider five non-exhaustive factors to ensure a principled approach to the exercise of the judicial discretion in an application for enlargement of time namely (i) the reason for the failure to file within time (ii) the length of the delay (iii) whether there is a ground of merit justifying the appellate court’s consideration (iv) where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? and (v) if time is enlarged, will the respondent be unfairly prejudiced?<sup>4</sup> Nevertheless, 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<sup>5</sup>. In order to determine the justice of any particular case the court should have regard to the whole history of the matter, including the conduct of the parties<sup>6</sup>. In deciding whether justice demands that leave should be given, care must also be taken to ensure that the rights and interests of the respondent are considered equally with those of the applicant<sup>7</sup>.

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<sup>1</sup> **Naicker v Land Transport Authority** [2025] FJHC 467; HBC18.2014 (29 July 2025)

<sup>2</sup> **Land Transport Authority v Naicker** [2024] FJCA 137; ABU053.2023 (26 July 2024)

<sup>3</sup> **State v Minister for Tourism and Transport** [2001] FJCA 39; ABU0032D.2001 (12 November 2001); **Latchmi v Moti** [1964] FijiLawRp. 8; [1964] 10 FLR 138 (7 August 1964)

<sup>4</sup> **Native Land Trust Board v Khan** [2013] FJSC 1; CBV0002.2013 (15 March 2013); **Fiji Revenue and Customs Services v New India Assurance Co. Ltd.** [2019] FJSC 34; CBV0020.2018 (15 November 2019); **Norwich and Peterborough Building Society v Steed** (1991) 2 ALL ER 880 C.A.; **CM Van Stilleveldt v B V v. E L Carriene Inc.** [1983] 1 ALL ER 699 of 704.

<sup>5</sup> **Habib Bank Ltd v Ali's Civil Engineering Ltd** [2015] FJCA 47; ABU7.2014 (20 March 2015)

<sup>6</sup> **Avery v Public Service Appeal Board** (No 2) (1973) 2 NZLR 86

<sup>7</sup> Per Marsack, J.A. in **Latchmi v Moti** (supra)

- [3] Since the reason for the delay is an important factor to be taken into account, it is essential that the reason is properly explained - preferably on affidavit - so that the court is not having to speculate about why the time limit was not complied with. And when the court is considering the reason for the delay, the court should take into account whether the failure to observe the time limit was deliberate or not. It will be more difficult to justify the former, and the court may be readier to extend time if it was always intended to comply with the time limit but the non-compliance arose as a result of a mistake of some kind.<sup>8</sup>
- [4] The length of the delay is determined by calculating the length of time between the last day on which the appellant was required to have filed and served its application for leave to appeal and the date on which it filed and served the application for the enlargement of time.<sup>9</sup> The length of the delay in the case of the appellant is a little over 02 weeks. 40 days have been considered ‘a significant period of delay’<sup>10</sup>. Delay of 11 days<sup>11</sup> and 47 days<sup>12</sup> also have defeated applications for enlargement of time. Even 04 days delay requires a satisfactory explanation<sup>13</sup>. However, in some other instances, delay of 05 months and 02 years respectively had not prevented the enlargement of time although delay was long and reasons were unsatisfactory but there were merits in the appeal.<sup>14</sup>
- [5] Rules of court must, *prima facie*, be obeyed and in order to justify a court in extending the time during which some step in procedure is required to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.<sup>15</sup>

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<sup>8</sup> **Fiji Industries Ltd v National Union of Factory and Commercial Workers** [2017] FJSC 30; CBV0008.2016 (27 October 2017)

<sup>9</sup> **Habib Bank Ltd v Ali's Civil Engineering Ltd** (supra)

<sup>10</sup> **Sharma v Singh** [2004] FJCA 52; ABU0027.2003S (11 November 2004)

<sup>11</sup> **Avery v Public Service Appeal Board** (supra)

<sup>12</sup> **Latchmi v Moti** (supra)

<sup>13</sup> **Tavita Fa v Tradewinds Marine Ltd and another** ABU 0040 of 1994 (18 November 1994) unreported

<sup>14</sup> **Formscaff (Fiji) Ltd v Naidu** [2019] FJCA 137; ABU0017.2017 (27 June 2019) & **Reddy v. Devi** [2016] FJCA 17; ABU0026.2013 (26 February 2016)

<sup>15</sup> **Ratnam v Cumarasamy** [1964] 3 All E.R. 933

- [6] The proposed appeal concerns a matter of law *i.e.* whether the High Court has the jurisdiction to award pre-judgment and post-judgment interests against a State entity in the face of an express statutory prohibition in that the appellant contends that the High Court Judge erred in law by awarding interests totaling approximately \$32,384.43 against the appellant, contrary to section 4(3) of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 (as amended by Decree No. 46 of 2011) ('Act').
- [7] However, in the High Court the appellant opposed the payment of interests on the basis that the 01<sup>st</sup> respondent has failed to specifically plead interests in the statement of claim rather than the statutory bar under section 4(3) of the Act. The High Court judge correctly rejected this argument and proceeded to award costs against the appellant. To buttress its legal argument the appellant also relies on **Attorney General of Fiji v Tamanibici**<sup>16</sup>.
- [8] What is clear from the judgment is that \$32,384.43 ordered against the appellant is pre-judgment interest. Post-judgment interests on the principal sums awarded at 4% (as per order 4 of the judgment) is yet to be calculated but would admittedly be a small sum compared to the pre-judgment interests.
- [9] The appellant challenges both pre-judgment interests already calculated and post-judgment interests yet to be calculated. It relies on section 4(3) of the Act and ***Tamanibici***.
- [10] As far as the pre-judgment interests of \$32,384.43 is concerned, section 4(3) of the Act is not a bar. There is no statutory prohibition in terms of section 3 of the Act against granting pre-judgment interest as the court thinks fit against the State or the Attorney-General.
- [11] Section 4 of the Act generally deals with post-judgment interests. The absolute prohibition on payment of interests from the time of entering up the judgment until the same shall be satisfied on any judgment debt entered against the State or the A.G. in terms of section 4(3) of the Act applies notwithstanding 4% interests prescribed under section 4(1) of the Act for unsatisfied judgment debts after judgment.

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<sup>16</sup> **Attorney General of Fiji v Tamanibici** [2017] FJCA 142; ABU0079.2015 (30 November 2017)

- [12] The appellant is *prima facie* neither the State nor the A.G. Land Transport Authority (LTA) created by the Land Transport Act 1998 (LTA Act) is a body corporate with perpetual succession and a common seal and may enter into contracts and sue and be sued in its corporate name. it also has the power to acquire, hold and dispose of property both real and personal and generally do all such acts and things that are necessary for or incidental to the performance of its functions under LTA Act or any other written law. Interpretation Act does not define the State. As per section 163 of the Constitution of the Republic of Fiji, State means the Republic of Fiji. Fiji is defined in the Interpretation Act in terms of its existence as a geographical entity. There is no separate definition of the ‘Republic of Fiji’. ‘Government’ means the Government of the State (section 163 of the Constitution). "Government" also means the Government of Fiji (section 2 of the Interpretation Act)
- [13] Can a judgment based on *tortious vicarious liability* entered against the Land Transport Authority in its capacity as an employer be considered as a judgment entered against the State? In **Land Transport Authority v Pasifika Enterprise**<sup>17</sup>, the LTA has been treated as synonymous with the State for *constitutional purposes*. I would leave it as a matter of law to the Full Court to decide. If not, section 4(3) of the Act has not application to the appellant.
- [14] Coming back to *Tamanibici*, the Court of Appeal reduced special damages from \$1226.10 to \$800.00 on the basis that that was all that had been pleaded. The court also set aside \$10,000.00 awarded by the High Court as future pain and suffering. It also set aside the 6% interests awarded on both and special damages. Those were the only changes done to the High Court judgment. The High Court had awarded 6% pre-judgment interests on all heads of special and general damages except \$10,000.00 for future pain and suffering. Any award for future pain and suffering has to be for post-judgment era and not pre-judgment period. Thus, the High Court judge added no post-judgment interests on future pain and suffering. The total damages of \$62,238.21 awarded makes it clearer. Thus, what the Court of Appeal set aside was actually the pre-judgment interests and there was no post-judgment interests awarded to be set aside. Unfortunately, the court in doing so claims to have acted under section 4(3) of the Act dealing with post-judgment interests. Therefore, I would not consider

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<sup>17</sup> [2023] FJCA 145; ABU57.2020 (28 July 2023)

to *Tamanibici* as an authority on post-judgment interests against the State or A.G. In my view, section 4(3) of the Act is clear enough. Secondly, in my view, the Court of Appeal has erred in setting aside pre-judgment interests relying on section 4(3) of the Act. Thus, *Tamanibici* is not an authority for section 3 of the Act either on pre-judgment interests.

[15] However, I agree with the appellant that *Attorney-General v Valentine*<sup>18</sup> was decided in 1998 and the statutory prohibition on State interests was introduced in 2011. Therefore, *Valentine* is no longer good law as considered by the High Court regarding the liability of the State for post-judgment interests, although its formulas for calculation remain valid.

[16] *Ministry of Works & Energy v Chase Corporation Ltd*<sup>19</sup> is an authority where the Court of Appeal held the State liable for pre-judgment interests under section 3 of the Act, distinguishing it from post-judgment interests under section 4 of the Act. I do not agree with the appellant that *Tamanibici* effectively overruled the distinction drawn in *Chase* because *Tamanibici* represents the more recent view. If *Chase* had been brought to the notice of the Court of Appeal, it would not have fallen into the error in *Tamanibici*, I described above.

[17] I also agree with the appellant that failure of the appellant's counsel in the High Court to cite section 4(3) of the Act in their submissions (relying instead on pleading defects) does not constitute a bar for this court to consider it in appeal as it is a matter of proper application of section 4(3) of the Act. However, the appellant's counsel was remiss in not doing so. It is the counsel for the 01<sup>st</sup> respondent who had brought to the notice of the High Court judge the decision in in *Tamanibici* and *Chase*.

[18] As to an appeal point being taken up for the first time, an appellate court may permit a new point of law to be raised for the first time on appeal where:

- *it is a pure question of law*<sup>20</sup>,

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<sup>18</sup> [1998] FJCA 34; ABU0019U.1998S (28 August 1998)

<sup>19</sup> 2014] FJCA 28; ABU64.2012 (5 March 2014)

<sup>20</sup> *North Staffordshire Railway Co v Edge* (1920) AC 254 (HL)

- *the facts are fully established on the record<sup>21</sup>, and*
- *no injustice will result to the opposing party.*
- *It is necessary to avoid a miscarriage of justice*

*But the court will generally refuse where:*

- *the point requires new evidence,*
- *the point was deliberately not raised at trial, or*
- *allowing it would change the nature of the case.*

[19] It is fundamental to the due administration of justice that the substantial issues between the parties are ordinarily settled at the trial. If it were not so the main arena for the settlement of disputes would move from the court of first instance to the appellate court, tending to reduce the proceedings in the former court to little more than a preliminary skirmish. It is fundamental to the due administration of justice that the substantial issues between the parties are ordinarily settled at the trial - **Coulton v Holcombe** (1986) 162 CLR 1 at 7-8.

[20] The High Court refused to allow a new point on appeal, emphasizing that parties should not be permitted to litigate their case in instalments and a party is generally bound by the way the case was conducted at trial - **University of Wollongong v Metwally** (No 2) (1985) 59 ALJR 481 at 483.

[21] In **Water Board v Moustakas** (1988) 180 CLR 491 at 497, Mason CJ, Wilson, Brennan and Dawson JJ opined that '*more than once it has been held by this court that a point cannot be raised for the first time upon appeal when it could possibly have been met by calling evidence below. Where all the facts have been established beyond controversy or where the point is one of construction or of law, then a court of appeal may find it expedient and in the interests of justice to entertain the point*'. But otherwise the rule is strictly applied (see **Suttor v Gundowda Pty Ltd** (1950) 81 CLR 418 at 438; **O'Brien v Komesaroff** (1982) 150 CLR 310 at 319.

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<sup>21</sup> **North Staffordshire Railway Co v Edge** (supra); **Connecticut Fire Insurance Co v Kavanagh** [1892] AC 473 (HL)

- [22] Thus, all in all, I hold that awarding post-judgment interests is an error of law that should be allowed to be taken up in appeal. In my view, it has a real prospect of success, provided the appellant is regarded as part of the ‘State’ in the context of this appeal.
- [23] As for the length of the delay, I do not think that the delay of 09/10 days is crucial. However, I am not prepared to accept that the appellant has explained that delay satisfactorily. Land Transport Authority or any other statutory body cannot have rules different to other litigants coming before this court. Being a statutory body is not an excuse at all for lack of urgency and inefficiency. Rules are rules for everyone. I have already held that I am inclined to allow leave to appeal on the legal issue surrounding the post-judgment interests ordered by the High Court.
- [24] The appellant claims to have already paid the principal sum awarded to the appellant but obtained a stay from the High Court on the pre-judgment and post-judgment interests. While I understand the stay as far as the post-judgment interests is concerned, the appellant did not deserve a similar favour on pre-judgment interests. In fact, the 01<sup>st</sup> respondent has conceded that post-judgment interests was not payable to him and is prepared to forgo that by only accepting pre-judgment interests. I inquired from the appellant’s counsel whether the LTA is prepared to settle the matter on that basis but did not get a favorable answer. Although, I do not see a great deal of prejudice to the 01<sup>st</sup> respondent by allowing enlargement of time to appeal, I do see that he will be put to additional costs having to participate in the appeal proceedings in this court. He should be mitigated against that. An order for costs against the appellant is warranted in this situation both at this stage and may be considered after the conclusion of the appeal hearing as the Full Court pleases.

**Orders of the Court:**

1. *Enlargement of time to appeal the judgment dated 29 July 2025 is allowed.*
2. *Appellant is directed to pay \$3000.00 as costs of this application to the 01<sup>st</sup> respondent within 21 days hereof.*
3. *Appellant is directed to file notice & grounds of appeal within 21 days hereof and comply with Court of Appeal Act and Rules therein.*
4. *Enlargement of time to appeal is conditional upon the payment of costs to the 01<sup>st</sup> respondent as per Order 2. Failure to comply with costs order will result in the automatic dismissal of summons filed on 19 September 2025.*



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

**Solicitors:**

Land Transport Authority Lawyers for the Appellant  
Shelvin Singh Lawyers for the 1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent absent and unrepresented