

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**APPELLATE JURISDICTION**

**CASE NUMBER:** ERCA 7 of 2015

**BETWEEN:** **NATIVE LAND TRUST BOARD**  
**APPELLANT**

**AND:** **MATAIASI BOLATAGANE**  
**RESPONDENT**

*Appearances:* Ms. Raitamata for the Appellant.

Mr. Nand for the Respondent.

*Date/Place of Oral Judgment:* Friday 25 September 2015 at Suva.

*Date/Place of written Judgment:* Monday 21 December 2015 at Suva.

*Coram:* Hon. Madam Justice A. Wati.

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**RULING**

**Catchwords:**

*Employment Law – Appeal filed out of time – no leave sought – appellant given opportunity to raise an affidavit and explain the difficulties – no affidavit filed – appeal struck out for being filed out of time without leave being sought.*

**Legislation:**

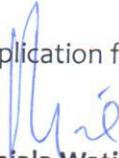
1. The Employment Relations Promulgation 2007 (“ERP”): ss. 234 (1) (a); 242(2).

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1. The appellant filed an appeal against the decision of the Employment Relations Tribunal (“ERT”) of 10 February 2015. The appeal was filed on 13 March 2015 which was in contravention of s.

242(2) of the ERP which requires that the appeal be filed within 28 days from the date of the decision of the Tribunal.

2. When the matter was called in Court on 6 May 2015 for the first time, counsel for the respondent took objections that the appeal was filed out of time without leave being first sought and obtained and there it is in contravention of the limitation period and ought to be struck out.
3. Ms. Raitamata then informed the Court that they had lodged the appeal on 4 March 2015 and there needed to be some amendment to the title of the appeal. The Registry then returned the documents. They had requested that the amendment be made in ink but the Registry did not allow it.
4. I asked the Registry to provide a written note to that effect and if what Ms. Raitamata said was correct, the appeal ought to be accepted as it was filed on time but refused by the registry for correction and not issued until 13 March.
5. Mr. Nand agreed that if Ms. Raitamata provided an affidavit to that effect, he will withdraw his objection and allow the appeal to proceed.
6. Ms. Raitamata did not provide any affidavit despite being given more than a month to do so.
7. In the interim, the Registry wrote and confirmed that the appeal was only lodged on 13 March 2015 and not earlier than that.
8. Since Ms. Raitamata did not provide any affidavit, the matter was fixed for preliminary argument.
9. Mr. Nand argued that despite being given an opportunity to file an affidavit on which he would have withdrawn the appeal, Ms. Raitamata chooses to proceed with the appeal in the form it is. If that is the position that she maintains then the filing of the appeal is in contravention of s. 242(2) of the ERP and ought to be struck out.
10. Ms. Raitamata said that she had lodged the appeal on time but because they had to do the correction, they did so and when the document was filed, they were already out of time.

11. I have heard the parties and find that even if Ms. Raitamata was asked by the Registry to correct the documents, she could have done so within a few hours and re-lodged the documents the following day which would be 5 March. If she did that she would still be on time as prescribed by s. 242(2) of the ERP.
12. The appeal is definitely out of time and when she was given an opportunity to explain by an affidavit why she was late, she did not take advantage of that opportunity. This makes me conclude that what she told the Court is not correct and she does not wish to put an affidavit to that effect.
13. In absence of any affidavit and any cogent explanation, I see no reason why the appeal should not be struck out. If there was an affidavit, Mr. Nand would have withdrawn his objections or the Court allowed leave pursuant to s. 234 (1) (a) of the ERP.
14. I find that the appeal has been filed out of time without leave being sought. I therefore strike out the same. The appellant is to pay the respondent costs of this proceeding in the sum of \$550 which is summarily assessed. The above sum shall be paid within 21 days from the date of the oral ruling.
15. Finally, the appellant is at liberty to file an application for appeal out of time.

  
Anjala Wati

Judge

21.12.2015



To:

1. Ms. Raitamata for the Appellant.
2. Mr. Nand for the Respondent.
3. File: Suva ERCA 7 of 2015.