

IN THE HIGH COURT OF FIJI
AT SUVA, FIJI
TAX COURT JURISDICTION

CIVIL ACTION NO. HBC 122 of 2013

BETWEEN : Manoj Khera & Others

APPELLANTS

AND : Fiji Revenue And Customs Authority

RESPONDENT

Before : The Hon. Mr Justice David Alfred

Counsel : Mr A Naco for the Appellants
Ms R Malani for the Respondent

Date of Hearing : 15 June 2015

Date of Judgment : 10 July 2015

JUDGMENT

- [1] This is an Application by the Appellants for leave to appeal out of time against the decision of the Resident Magistrate sitting as the Tax Tribunal made on 19 August 2014 (the Decision).
- [2] On the aforementioned date the Resident Magistrate had dismissed the Appellants' Application for Review of Reviewable Decision which had been fixed for hearing on that date.
- [3] The Decision was based on the Appellants' failure to properly prosecute their 3 Applications before the Tribunal, under Order XXX rule 2 of the Magistrates' Courts Rules 1978.

- [4] Also, the Appellants and their Counsel had failed to appear at the hearing on 19 August 2014.
- [5] The Application filed pursuant to Order 3 rule 4 of the Rules of the High Court and the inherent jurisdiction of the Court was supported by the Affidavit in Support of Manoj Khera, the First Appellant sworn on 17 March 2015 (the Affidavit) on behalf of himself and representing the other 2 Appellants.
- [6] The First Appellant, said, inter alia, the matter was struck out when his Counsel failed to appear before the Tribunal. He also says the merits of the case had not been determined but he concedes that the matter was struck out “on non-compliance with procedure” (see paragraph 9 of his Affidavit). He therefore asks that the matter be re-instated.
- [7] The Affidavit in Reply of the Respondent was sworn by Laisa Vanua on 17 April 2015. The gist of this Affidavit is as follows:
- (i) ***That the matter was dismissed in accordance with the rule of the Magistrates’ Courts Rules referred to in paragraph [3] above because the Tribunal was satisfied that the Appellants had not properly prosecuted the matter and because they had not provided their final submission, in order for the matter to be determined, as directed by the Tribunal.***
 - (ii) ***The hearing before the Tribunal was not conducted at the same time as the criminal trial of the First Appellant.***
 - (iii) ***This summons for leave was filed 7 months after the Decision. (It was filed on 18 March 2015 whereas the Decision was on 19 August 2014).***
 - (iv) ***No appeal to the Court was filed within 28 days as required by Section 107(2) of the Tax Administration Decree 2008 (the Decree).***

[8] The First Appellant in his Affidavit in Response (undated) filed on 6 May 2015, said in essence the following:

- (i) This tax matter had always been heard by the Tribunal together with those of his father and brother.**
- (ii) Relevant documents were not handed over to the Appellants.**
- (iii) While admitting that the Application for Review had been struck out due to their non-appearance, its merits had not been heard and determined by the Tribunal (see paragraph 6 of this Affidavit).**

[9] This Application came up for hearing before me on 15 June 2015 in the presence of Counsel as abovementioned when both Counsel made their oral submissions on behalf of their respective clients.

[10] Counsel for the Appellants submitted as follows:

- (i) He was representing all the Appellants.**
- (ii) The main ground was the First Appellant who was the main litigant, was involved in a criminal trial (at the material time) and had been remanded in custody.**

[11] Counsel for the Respondent submitted as follows:

- (i) There had been no criminal trial on the date of (the hearing before the Tribunal where Counsel for the Appellants was absent).**
- (ii) There was no reason why the other 2 Appellants did not file their appeals in time.**
- (iii) The Appellants failed to give any reason for the delay and failed to show that there were merits in their case.**

- [12] At the conclusion of the hearing, I reserved judgment to be delivered at 2:30pm on 10 July 2015.
- [13] In the course of reaching my decision I had perused the following authorities supplied by Counsel:
- (a) ***Suva Appeal Action No. 11 of 2013; Between: Abdul Hakik...Appellant And Fiji Revenue And Customs Authority.***
 - (b) ***Suva Appeal No. HBT 7 of 2013; Between: Logan Limited (Company)... Appellant And Fiji Revenue & Customs Authority...Respondent.***
 - (c) ***Suva Civil Action No. 205 of 2001; Between: Rajendra Prasad Brothers Limited...Plaintiff And Fai Insurances (Fiji) Limited...Defendant.***
- [14] I had also read the Decision of the Resident Magistrate where he has set out the facts, the issues and the conclusions lucidly and succinctly. There is therefore no necessity for me to repeat any of them in my judgment which I now proceed to deliver.
- [15] In my considered opinion the nub of the matter is the failure of the Appellants to file their appeals within the period specified by the relevant section of the relevant Act, referred to in paragraph 7 above.
- [16] This failure compounds the failure of the Appellants and their Counsel to appear before the Tribunal on the date fixed for hearing viz 19 August 2014, which in turn compounds the Appellants' failure to provide Final Submissions as directed by the Tribunal 4 weeks previously.
- [17] No cogent reason whatsoever has been provided by the Appellants whether in the Affidavits or the oral submission of their Counsel, for these failures or omissions on the part of all 3 Appellants.

[18] Further, these failures or omissions, in my view, seem to evince the Appellants' lack of faith in the merits, if any, of their Application for Review to the Tribunal.

[19] In these circumstances I will refer to and rely on the Privy Council decision in **Ratnam vs Cumarasamy** [1964] 3 All E.R. 933 at page 935:

“The 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 requires 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.”

[20] I am also fortified in the decision I am arriving at by the Judgment of my brother Kotigalage J in case (b) in paragraph 13 above, that a delay of 271 days did not warrant the exercise of the court's discretion in that matter.

[21] In Civil Appeal CBV0002.12 in the Supreme Court of Fiji at Suva, Gates, President in his Ruling stated, inter alia, that relief cannot be granted to enlarge time unless there exists “some very good, exceptional reason”, that every application turns on its own special facts and circumstances and though “The non-compliance is a mere 2 days”, grant of an extension of time would be declined.

[22] I will also refer to the decision of the Court of Appeal of Fiji in: **Latchmi and Another v. Moti And Others** [F.L.R] Vol. 10. page 138. The actual decision has to be read in the light of the subsequent amendments to the Court of Appeal Rules, but the opinions of the majority of the panel are relevant for our present purposes. They held that the application (for leave to appeal out of time) should be refused as no ground had been put forward upon which justice

required that leave to appeal out of time should be given. In that case the application was made 46 or 47 days after the expiry of the time for lodging notice of appeal.

[23] Before me, the Appellants have not provided any reason for a delay of 7 months in filing this Application for Extension of time. The period of appeal is prescribed by the Decree but I am of opinion that what I have said about adherence to the Rules of the High Court is equally applicable here to the provisions of the Decree.

[24] This is what I said in my Interlocutory Judgment delivered on 30 June 2015 in Suva Civil Action No. HBC 112 of 2014_Between:**One Hundred Sands Limited**...Plaintiff And **Te Arawa Limited**...Defendant:

Paragraph 18:

“I am of opinion that litigants and their legal representatives must not think that they can invoke the inherent jurisdiction of the court like a magic wand to waive away the consequences of their omission to comply with the Rules.”

Paragraph 19:

*“If the Privy Council considered the lame excuse of the lay appellant in **Ratnam vs. Cumarasamy** did not constitute material on which to exercise their discretion in favour of the appellant, how much more must I find here that the Defendant’s solicitors have failed to even provide any explanation to constitute material on which I can exercise my discretion in favour of the Defendant.”*

[25] In these circumstances, I reiterate that the 3 Appellants have failed to provide “any ground of merit justifying the appellate court’s consideration” or any plausible reason for me to consider in arriving at a decision whether to allow an extension of time.

[26] I therefore dismiss the Appellants' summons for leave to file an Appeal out of time and order the Appellants to pay the Respondent costs which I summarily assess at \$500.00.

Delivered at Suva this 10th day of July 2015



David Alfred

JUDGE

High Court of Fiji