

**IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
[APPELLATE JURISDICTION]**

**HBM 04 OF 2016**

**IN THE MATTER** of an  
appeal from the decision of  
the Magistrate Court of Fiji  
Civil Appeal No. 25 of 2015

**BETWEEN :** **LAURENCE ACHAL** of 19 Yasawa Street, Lautoka.

**RESPONDENT/APPELLANT**

**AND :** **RONIL CHAND** of Lautoka

**CLAIMANT/RESPONDENT**

**Appearance** : Applicant appears in person  
Respondent appears in person

**Date of Hearing** : 24 March 2016

**Date of Ruling** : 24 March 2016

**R U L I N G**

1. This is an application filed by the applicant seeking leave of court to file the notice of intention to appeal and the grounds of appeal out of time. The application is made pursuant to Order XXXVII, Rule 4 of the Magistrates' Court Rules ('MCR') which enacts that:

'4. On the appellant failing to file **the grounds of appeal within the prescribed time**, he shall be deemed to have abandoned the appeal, **unless the court below or the appellate court shall see fit to extend the time.**' (Emphasis provided)

2. The applicant seeks to appeal the decision of the Magistrate Court of Lautoka\* delivered in appeal against an award of the Small Claim Tribunal ('SCT'). The Magistrate Court delivered its ruling on 10 February 2016.
3. In the event that the applicant had intended to appeal the decision of the Magistrate's Court, he ought to have filed the notice of intention to appeal within 7 days pursuant to MCR O. 37, r.1 and the grounds of appeal within 30 days from the date of the decision appealed against pursuant to O.37, r.3 (1) which provides:

*'Grounds of appeal to be filed*

**3.-(1) The appellant shall *within one month from the date of the decision appealed from, including the day of such date, file in the court below the grounds of his appeal, and shall cause a copy of such grounds of appeal to be served on the respondent.*** (Emphasis provided)

4. The applicant filed neither the notice of intention to appeal nor the grounds of appeal within the prescribed time.
5. The applicant has filed his application for leave in this court on 24 March 2016. The decision to be appealed against was delivered on 10 February 2016. The thirty (30) day time limit for appeal expires on 10 March 2016. The delay is just 13 days.
6. The applicant explains the delay in his affidavit. He states that first he went to the Magistrate's Court to lodge his appeal. The Magistrate's Court Registry at Lautoka advised him that the appeal should be filed in the High Court. He then came to the Lautoka High Court. The High Court Registry at Lautoka advised him that the appeal should be filed in the Magistrate Court itself. He went back to the Magistrate's Court to file his grounds of appeal. The Magistrate's Court Registry refused to accept his grounds of appeal. When the

applicant went again on 8 March 2016 to the Magistrate's Court Registry to file his grounds of appeal he was still within time to file the same, but the Magistrate Court Registry refused to accept it on the ground that there was no notice of intention to appeal. Even if there was any delay, the delay has been caused by the Magistrate's Court Registry due to the fact that the Registry gave wrong advice to the applicant that his grounds of appeal should be filed in the High Court.

7. I have carefully considered the proposed grounds of appeal. His grounds of appeal has prospect of success if leave to appeal out of time is granted in that it appears to me that the SCT had given the award in favour of the respondent in the proceedings held in respect of the second complaint made by the respondent in regards to the same cause of action which had been previously adjudicated upon by the SCT. Moreover, one of the other grounds of appeal is that **the ruling was delivered without hearing**. The proposed appeal has prospect of success on this ground alone.

8. The governing principles for the granting of leave to appeal out of time include:

*(i) Length of delay;*

*(ii) Reason for the delay;*

*(iii) Chance of appeal succeeding if time for appeal is extended; and*

*(iv) Degree of Prejudice to the Respondent if application is granted*

*(See **Nair v Prakash** [2013] FJCA 147; Misc. Action 10.2011 (30 October 2013))*

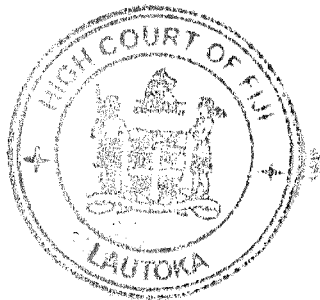
9. The delay in this case is just 13 days. The delay has been caused by the Magistrate's Court Registry at Lautoka by means of refusing to accept the grounds of appeal which the applicant attempted to file well within the prescribed time and wrongly advising that the grounds of appeal need to be filed in the High Court. The appeal would, in my

provisional view of the grounds of appeal, succeed if time for appeal is extended. The application was not seriously objected to by the respondent that no prejudice will be caused to the respondent in the event that the leave to appeal is granted. Therefore I am satisfied that I should grant leave to appeal out of time. I accordingly grant leave to the applicant to file out of time the notice of intention to appeal and the grounds of appeal together. The applicant will file his notice of intention to appeal and his grounds of appeal within 14 days of this ruling.

10. The execution of the award of Small Claim Tribunal is likely. If a stay is not granted the appeal will be rendered nugatory. I therefore grant a stay on enforcement of the award of the SCT and the decision of the Magistrate's Court of Lautoka delivered in Appeal No.25 of 2015 on 10 February 2015 until final determination of the proposed appeal.

**Orders**

- (i) Leave is granted to applicant to file out of time his notice of intention to appeal and his grounds of appeal within 14 days of the date of this ruling.
- (ii) A stay is granted on Execution of the award of the Small Claim Tribunal and the decision of the Magistrate's Court of Lautoka delivered in Appeal No.25 of 2015 on 10 February 2015 until final determination of the proposed appeal.
- (iii) Costs shall be in the cause.



*M H Mohamed Ajmeer*  
24/3/16

**M H Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**24 March 2016**