

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

**CIVIL APPEAL NO. 1 of 2014**

**BETWEEN** : **MOHAMMED HASSAN** of Rarawai, Ba. **APPELLANT**  
**AND** : **KANTA PRASAD** of Rarawai, Ba. **RESPONDENT**

Solicitors

Vasantika Patel Lawyers for the Appellant  
AK Lawyers for the Respondent

**R U L I N G**

**INTRODUCTION**

1. This is an application seeking leave to appeal out of time. The application is made pursuant to **Order 3 Rule 4** and **Order 55** of the High Court Rules 1988 and under the inherent jurisdiction of the Court.

**THE DECISION**

2. The decision against which the applicant is seeking leave to appeal was made by the Learned Resident Magistrate Sujeewa Nishanka in Magistrates Court Civil Action No. 26 of 2009.
3. The decision was read out in Court on 26 August 2014 in favour of the respondent/plaintiff and stated that the parties had 28 days to appeal against the ruling.

**WHAT HAPPENED AFTER DECISION?**

4. The applicant's solicitors argue that the applicant received a copy of the written ruling on 08 September 2014 well after the seven days had expired for the applicant to file his Notice of Intention to Appeal.
5. The applicant's Notice of Intention To Appeal and Notice of Ground of Appeal were filed on 23 September 2014 according to the applicant. However, the

respondent's counsel points out that the Grounds of Appeal were filed on 29 September 2014, although the Notice of Intention To Appeal was filed earlier on 23 September 2014. These should have been filed by

6. Notably, these were filed at the Lautoka High Court Registry. The applicant's solicitors submit this was before the expiry of the twenty eight day period stipulated.
7. Also, the records show that neither the applicant nor his solicitors were present in court on the day the ruling was pronounced in Court.
8. I will go by the records.
9. The factors that need to be taken into consideration when dealing with applications for extension of time are:
  - (i). Length of delay
  - (ii). Reason for delay
  - (iii). Chance of appeal succeeding
  - (iv). Degree of prejudice to respondent
10. At the outset, I must say that I agree with the respondent's counsel's submission that Order 3 Rule 4 and Order 55 of the High Court Rules 1988 do not apply in this application. Order 55 as counsel submits, and which I agree with, does not apply to any appeal under any enactment for which rules governing appeals are made. Rather, Order XXXVII of the Fiji Magistrates Court Rules are applicable. The said Order stipulates at Rule I that every appellant shall within seven days after the day on which the decision appealed against was given file a notice of intention to appeal (or give notice verbally in court if the other party/counsel is present) and must file his grounds of appeal within one month from the date of the decision (as per Rule 3(1))

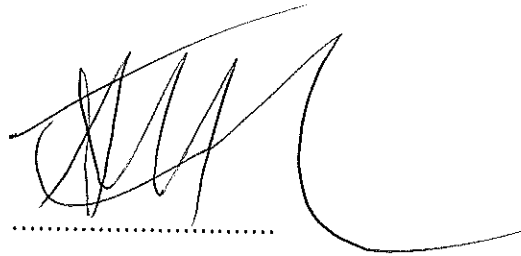
11. Under Rule 4, if the appellant fails to file his grounds of appeal within the relevant appeal period, he will be deemed to have abandoned his appeal.
12. The applicant submits that the reason for the delay in filing Notice of Intention To Appeal was the delay by the Lautoka Magistrate s Court in providing a written copy of the judgement to counsel. The respondent counsel however highlights that the copy records will show that there was no appearance by the applicant or his solicitors on the day of the ruling. As I have said, I go by the records.
13. As for the reasons for the delay, the applicant submits that his Notice of Intention To Appeal and Ground of Appeal were filed on 23 September 2014 before the expiry of the 28 days of the ruling of 26 August 2014.
14. The respondent's solicitor objects. He submits that the Magistrates Court Rules Order XXXVII Rule 1 clearly outlines the rules and procedures to be followed in respect of civil appeals from the Magistrates Court. As the respondent's counsel highlights, the applicant actually filed his Grounds of Appeal in the High Court registry. This is improper and procedurally incorrect and cannot be cured. Hence, the copy records from the Magistrates Court does not contain the grounds of appeal. Accordingly, the respondent's counsel submits that the grounds of appeal cannot be relied upon and the appeal must be deemed to have been abandoned. It is all the more easy for me to accept this argument, and which I do so, when I consider it against all the other irregularities highlighted by Mr. Patel.
15. As for whether or not the appeal would have a chance of success, in **Suresh Mani v Satish Prasad** [2015] FJHC 642; HBM22.2015 (27 August 2015), Mr. Justice Ajmeer held that because the grounds of appeal were not attached

to a supporting affidavit, the applicant has failed to show that he has any chance of success and leave to appeal out of time was, accordingly, refused.

16. Apart from the above, I have perused the Learned Magistrates' reasoning and also the court records and it would appear to me that not much of the facts are in dispute. The only margin of credibility issue that one might glean from the case is whether the defendant had agreed to pay the plaintiff \$15,000, in which case, he would not have anything left owing to the plaintiff since he had paid that sum, or whether he did agree to pay the plaintiff some \$22,218.66, in which case, he would still owe the plaintiff a balance of \$7,218.66 on account of the \$15,000 already paid.

### **CONCLUSION**

17. Application dismissed. Costs to the respondent/plaintiff which I summarily assess at \$850 (eight hundred and fifty dollars only).



Anare Tuilevuka  
**JUDGE**  
30 September 2016.

