

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Action No. HBC 347 of 2014

ON APPEAL FROM THE RULING OF MASTER VISHWA DUTT SHARMA

DELIVERED ON 14TH SEPTEMBER, 2016

BETWEEN

STAR AMUSEMENT LIMITED a limited liability company

having its registered office at Suva.

PLAINTIFF-APPELLANT

AND

THE REGISTRAR OF TITLES

FIRST DEFENDANT-RESPONDENT

AND

THE ATTORNEY GENERAL

SECOND DEFENDANT-RESPONDENT

Counsel : Mr. V. Maharaj for the Plaintiff-Appellant
Ms. S. Taukei for the Defendants-Respondents

Date of Hearing : 19th September, 2017

Date of Ruling : 24th October, 2017

RULING

(On the application for reinstatement of the appeal)

- [1] The plaintiff-appellant commenced these proceedings by originating summons seeking certain orders. The defendants-respondents made an application under order 18 rule 18(1) of the High Court Rules 1988 to have the matter struck out on the ground that it was an abuse of the process of the court.
- [2] The learned Master after hearing the parties made the following orders:
- (i) That the defendant's summons seeking the striking out of the plaintiff's originating summons and the statement of claim succeeds.
 - (ii) The originating summons is struck out accordingly.
 - (iii) The plaintiff is at liberty to file and serve a writ of summons and a statement of claim.
 - (iv) That the plaintiff to pay the defendant a sum of \$500 as costs of this application within 14 days.
- [3] The plaintiff-appellant sought leave to appeal from the above orders and this court on 11th May, 2017 granted leave to appeal and the matter was fixed for hearing on 25th July, 2017. At the hearing an objection was taken to the maintainability of the appeal on the ground that the plaintiff-appellant had failed to file and serve the

notice and grounds of appeal. The court after hearing the parties decided that the plaintiff-appellant had abandoned the appeal.

- [4] On 01st August, 2017 the plaintiff-appellant filed summons seeking to have the matter reinstated which was objected to by the defendants-respondents.
- [5] In paragraph 10 of the affidavit in support of Mr. Suresh Chandra it is stated that he has been advised by his partner Mr. Maharaj that due to an oversight on his part he overlooked to file the notice and grounds of appeal. The question then arises for determination is whether an oversight of the solicitor is a sufficient ground to reinstate the appeal. In this regard the learned counsel for the plaintiff-appellant relied on the decision in case of **Sarojini & Others v NLTB, Apisa & Bansi** HBC 230 of 2000/L. In that case the court allowed the application for reinstatement of the appeal but the grounds for allowing the application are different to that of the matter before this court.
- [6] The grounds considered by the High Court in allowing the application for reinstatement of the appeal are set out in paragraph 22 of the judgment which reads as follows:

The affidavit in support of this application contains evidence which explains the failure to file and serve a summons for direction as is required by rule 17. The applicant states in its affidavit that Mr. Inoke Lutumailagi, the legal officer who had conducted of the matter and appearing for the applicant went on medical leave and that the other legal officer stationed in Nadi Office was only attending to High Court cases called in the Lautoka High Court that were under the carriage of the Legal Officer who was on medical leave. There were no instructions to file any summons for directions.

- [7] In that matter there had been some reasonable grounds for the court to consider in granting the application for in reinstatement of the appeal. In this matter the only ground averred in the affidavit in support is that due to an oversight of the solicitor the plaintiff could not file the notice and grounds of appeal. Oversight is an

unintentional failure to do something. This alone in my view cannot be considered as a ground to reinstate the appeal.


[8] It is also pertinent to note that no prejudice will be caused to the plaintiff-appellant even if the appeal is not reinstated for the reason that the order of the learned Master does not have the effect of preventing the plaintiff-appellant from asserting its rights in court. The learned Master has stated in his ruling that the plaintiff-appellant is at liberty to file and serve a writ of summons. Therefore, whether the order of the learned Master striking out the originating summons is correct or wrong, hearing the appeal will only be of academic interest.

[9] For the reasons aforementioned I make the following orders:

- (1) The application of the plaintiff-appellant to reinstate the appeal is refused.
- (2) The parties will bear their own costs of this application.



24th October, 2017


Lyone Seneviratne

JUDGE