

**IN THE HIGH COURT OF FIJI AT SUVA**

**CIVIL JURISDICTION**

**Action No. HBC 73 of 2009**

**BETWEEN**

JOHN LOKENGA father's name Joji Lokenga of lot 21 Makosoi Place,  
Kalabu Stage 2, Nasinu, Businessman.

**PLAINTIFF**

**AND**

MANOHAN ALUMINIUM AND GLASS (FIJI) LTD a limited liability company  
having its registered office at Crn. of Wainivula, and  
King's Road, Suva.

**DEFENDANT**

**Counsel** : Ms. T. Rigsby for the Plaintiff  
Mr. V. Maharaj for the Defendant

**Date of Hearing** : 06<sup>th</sup> September, 2016

**Date of Order** : 09<sup>th</sup> February, 2017

# ORDER

*(On the application for extension of time to appeal)*

- [1] The plaintiff filed this action to recover \$82,000.00 for the defendant for damaging the interior of the shop premises and the value of the goods removed from the shop and later sold by the defendant.
- [2] When this matter came up before the learned Master on 11<sup>th</sup> March, 2015 there was no appearance for the plaintiff and the learned Master struck out the action. On behalf of the plaintiff the solicitors filed Notice of Motion dated 27<sup>th</sup> March, 2015, supported by an affidavit seeking the have the matter reinstated on the ground that they instructed Mr. Aseri Vakaloloma to appear on their behalf but by the time he appeared in court the matter had already been called and struck out.
- [3] On 30<sup>th</sup> September, 2015 the plaintiff was absent and unrepresented and the learned Master struck out the Notice of Motion for reinstatement. On 08<sup>th</sup> October, 2016 the solicitors of the plaintiff filed another Notice of Motion to have the matter reinstated which was withdrawn on 03<sup>rd</sup> December, 2015. The learned Master struck out the Notice of Motion upon withdrawal.
- [4] The solicitors of the plaintiff filed summons for enlargement of time to file notice and grounds of appeal on 06<sup>th</sup> April, 2016.
- [5] It is averred in the affidavit of Teresia Rigsby, the solicitor of the plaintiff, filed in support of the motion that the learned Master entertained and accepted the second application for reinstatement and an affidavit deposed by her and that if the matter is struck out for the second time it would be prejudicial to the plaintiff as he would not be able to file a fresh action due to being statute-barred.
- [6] The second application for reinstatement was struck out by the learned Master upon withdrawal by the plaintiff's solicitor. Before withdrawing the application the solicitor should have considered the outcome of it. It appears that the withdrawal of the application for reinstatement is a voluntary action on the part of the solicitor. Once a matter before a court of law is withdrawn the court has no other alternative but to strike it out. Any person who brings a matter before the court is entitled to withdraw it. In this case the plaintiff does not dispute the fact that he withdrew the application.

[7] In the circumstances there is no necessity to consider the other matters which the court is required to consider in allowing or refusing an application for extension of time to appeal.

[8] For these reasons I make the following orders;

1. Summons for enlargement of time to file notice and grounds of appeal, is struck out.
2. The plaintiff shall pay the defendant \$500.00 as costs of this application within fourteen (14) days from today.



A handwritten signature in blue ink, which appears to read "Lyone Seneviratne", is written over a horizontal line.

Lyone Seneviratne

JUDGE

09<sup>th</sup> February, 2017