

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

Civil Appeal No. HBC 67 OF 2015

(On appeal from the High Court of  
Fiji at Lautoka in the matter of  
Civil Action No. HBC 67 of 2015)

**BETWEEN** : **ANANTH AVIRAM REDDY** of Lautoka, Engineer/Law Graduate and  
Businessman.

**APPLICANT (ORIGINAL DEFENDANT)**

**AND** : **DEO CONSTRUCTION DEVELOPMENT COMPANY LIMITED** a  
duly registered limited liability company having its registered office at  
Lot 11, Industrial Sub Division, Denarau Island, Nadi.

**RESPONDENT (ORIGINAL PLAINTIFF)**

**Appearances** : Ms A.B. Swamy for the appellant  
Mr A.K. Narayan (Jr) for the respondent  
**Date of Hearing** : 30 January 2018  
**Date of Ruling** : 30 January 2018

## **R U L I N G**

- [01] The applicant has filed a second application for enlargement of time to appeal out of time a summary judgment delivered by the Master on 18 March 2016 where the applicant (original defendant) has been ordered to pay a sum of \$130, 434.00, the sum claimed for VAT to the respondent (original plaintiff).
- [02] The previous appeal filed by the applicant upon granting the leave to appeal was withdrawn by the applicant for a technical reason on 8 November 2017, in that the

applicant failed to serve, after filing of notice of appeal, summons returnable before a judge for directions and a date for the hearing of the appeal within the prescribed time (21 days) as required by O. 59, r.17 of the High Court Rules 1988, as amended (the HCR).

- [03] The applicant has now filed a second application for leave to appeal out of time after withdrawing the first appeal.
- [04] Ms Swamy, counsel for the appellant seeks an interim stay pending determination of this application on the basis that there are good grounds of appeal which has the prospect of success.
- [05] Mr Narayan, counsel for the respondent opposes the application for stay on the ground that the appellant has not pleaded any specified grounds for an interim stay and that his client is a multi-million company and there will not be any issue of recovery even if they succeed in the appeal and the judgment appealed against enforced in the meantime.
- [06] HCR O.59, r.16 deals with the stay of proceedings or execution on the filing of a notice of appeal or application for leave. Rule 16 provides:
- '16-(1) The filing of a notice of appeal or an application for leave shall not operate as a stay of execution or proceedings, or any step therein, unless the Court so directs.*
- (2) An application under paragraph (1) shall be made by way of an inter-partes summons supported by an affidavit.'*
- [07] The applicant does not deny the statement made by counsel for the respondent that the respondent is a multi-million company. There is no risk the applicant being able to recover what has been paid to the respondent if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime.

[08] Having carefully considered the submissions advanced by both parties, I find that the appellant has not shown how the appeal will be rendered nugatory if the stay is not granted. In other words, there are no specific grounds pleaded for the court to consider an interim stay pending the determination of this application. I would, therefore, refuse to grant an interim stay pending determination of the application.

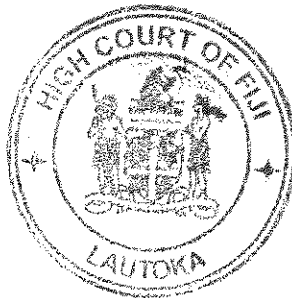
**The result**

- a) Interim stay refused.
- b) No order as to costs.

*M. H. Mohamed Ajmeer*  
30/1/18

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**M. H. Mohamed Ajmeer**

**JUDGE**



**At Lautoka**

**30 January 2018**

Solicitors:

For the applicant; M/s Patel & Sharma Lawyers, Barristers & Solicitors

For the respondent; M/s AK Lawyers, Barristers & Solicitors