

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
APPELLATE JURISDICTION

CIVIL APPEAL NO. HBA 6 OF 2019

(On appeal of the Ruling dated 13
February 2019 at the Nadi Magistrates
Court Civil Action No. 239 of 2017.)

BETWEEN : **MANOA KAGI & JONE NALIVA** of Yavusania, Nadi.

APPELLANT/DEFENDANT

A N D : **THE TRUSTEES FOR TOKATOKA NAVAILEA TRUST** of
Yavusania Village, Nadi, a duly registered entity of Yavusania, Nadi.

RESPONDENT/PLAINTIFF

Appearances : Mr M. Waqavanua for the appellant
 Mr E. Maopa for the respondent

Date of Hearing : 26 March 2019

Date of Ruling : 26 March 2019

R U L I N G

[01] This is an appeal from an interlocutory order of the Magistrates Court sitting at Nadi. By his order dated 13 February 2019, the Learned Magistrate (*the Magistrate*) made an interim injunction against the defendant/appellant (*the appellant*).

[02] At the hearing, Mr Waqavanua of counsel appearing for the appellant informs the court that the appellant did not file the grounds of appeal.

[03] The Magistrates Court Registry has prepared the copy record and transmitted the file to this court upon expiry of one month from the date of the decision appealed from. It is to be noted that the Registry at Magistrates Court, Nadi has

sent the copy record to this court for determination of appeal without the grounds of appeal.

[04] The appellant filed its notice of intention to appeal within 7 days after 13 February 2019, the day on which the decision appealed against was given, as required by the Magistrates Court Rules ('MCR'), Order 37, R 1. Thereafter, the appellant must file the grounds of appeal and serve a copy of such grounds of appeal on the respondent within one month from the date of the decision appealed from.

[05] The MCR, O 37, R 3 provides that:

"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 or her appeal, and shall cause a copy of such grounds of appeal to be served on the respondent." (Emphasis provided)

[06] What happens if the ground appeal is not filed within the prescribed time? If the grounds of appeal were not filed within the time allowed, the MCR, O 37, R 4 comes into play. That rule provides:

"Effect of failure to file grounds of appeal

4. On the appellant failing to file the grounds of appeal within the prescribed time, he or she shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit to extend the time."

[07] No grounds of appeal were filed within the prescribed time. In the circumstances the Registry was not obliged to prepare the copy record and transmit the file to the High Court. It should instead have brought the matter before the Magistrate for him or her to enter "*appeal deemed abandoned*" as a result of failure to file the grounds of appeal within the prescribed time, which the Registry has failed to do so.

[08] The deeming provision in Rule 4 operates on its own. If the grounds of appeal are not filed within the prescribed time, the appeal is to be deemed abandoned by operation of law. There need not be an application by the respondent to deal with the appeal under Rule 4.

[09] The file (duplicate) has been forwarded to this court without the grounds of appeal being filed within the prescribed time. Under the MCR, O 37, R 18, the appellate court has general jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, which includes amendments of defect or error in the record of appeal. I, acting under Rule 4 read with Rule 18, enter the appeal to have been deemed abandoned as a result of non-filing of the grounds of appeal within the prescribed time. I would make no order as to costs.

The result

1. Appeal deemed abandoned.
2. No order as to costs.

M.H. Mohamed Ajmeer
26/3/19

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M.H. Mohamed Ajmeer
JUDGE

At Lautoka
26 March 2019

Solicitors:

For the appellant; M/s Nawaikula Esquire
For the respondent; M/s Babu Singh & Associates, Barristers & Solicitors

