

4. Subsequently, the Appellant and the Respondent were directed to file their respective written submissions, which they filed as per the directions. Having carefully taken into consideration the Notice of Motion, the respective affidavits and the written submissions of the parties, I now proceed to pronounce my ruling as follows.
5. The Respondent was charged with another with two counts of Money Laundering contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crimes Act. Subsequent to the hearing of the matter, the learned Magistrate delivered the judgment on the 22nd of February 2019, finding the Respondent and another not guilty of the two counts of Money Laundering as charged. The 28 days period to appeal pursuant to Section 248 (1) of the Criminal Procedure Act lapsed on the 22nd of March 2019. The Appellant filed this Notice of Motion on the 28th of March 2019, that was six days after the expiration of the 28 days period to appeal.
6. According to Section 248 (1) of the Criminal Procedure Act, an appeal has to be lodged within 28 days of the date of the decision appealed against. However, Section 248 (2) of the Criminal Procedure Act states that the High Court may at any time, for good cause, enlarge the period of limitation as stipulated under Section 248 of the Act. Moreover, the Section 248 (3) of the Criminal Procedure Act has provided certain factors that shall be considered as good cause under Section 248 (2) of the Act. They are that:

For the purposes of this section and without prejudice to its generality, "good cause" shall be deemed to include —

- a) *a case where the appellant's lawyer was not present at the hearing before the Magistrates Court, and for that reason requires further time for the preparation of the petition;*
- b) *any case in which a question of law of unusual difficulty is involved;*
- c) *a case in which the sanction of the Director of Public Prosecutions or of the commissioner of the Fiji Independent*

Commission Against Corruption is required by any law;

- d) *the inability of the appellant or the appellant's lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within a reasonable time of applying to the court for these documents.*

7. The Supreme Court of Fiji in **Kumar v State; Sinu v State [2012] FJSC 17; CAV0001.2009 (21 August 2012)** has outlined some of the factors that the court could be taken into consideration when it determines an application of this nature. Gates CJ held that:

“Appellate courts examine five factors by way of a principled approach to such applications. Those factors are:

- i) *The reason for the failure to file within time.*
- ii) *The length of the delay.*
- iii) *Whether there is a ground of merit justifying the appellate court's consideration.*
- iv) *Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
- v) *If time is enlarged, will the Respondent be unfairly prejudiced?*

8. According to the Judgment of the learned Magistrate, it appears that the Director of Public Prosecution had represented the State during the proceedings in the Magistrate's Court. However, the judgment was released to the Police Prosecution on the 22nd of February 2019. The Office of Director of Public Prosecution had received the copy of the judgment on the 1st of March 2019. It appears that the reason for this delay was the lack of proper communication between the Office of Director of Public Prosecution and the Police Prosecution office. The delay in obtaining the copy of the judgment has eventually caused the delay of six days.

9. I am mindful of the fact that this matter is involved with certain legal issues that need to be properly and carefully take into consideration before making a decision of filing an appeal. Accordingly, I do not find the delay of six days as an unreasonable delay which could cause prejudice to the Respondent. Moreover, the reasons for delay in making the decision to appeal is not fully unreasonable, though it would have been avoided if the Office of Director of Public Prosecution had employed a proper and effective communication channel with the Police Prosecution Office.
10. The two proposed grounds of appeal are founded on the issues of the definition of Joint Enterprise and also on the definition of the fault element of the offence of Money Laundering, which I find demands a greater judicial scrutiny. Therefore, I find the merits of the proposed grounds of appeal justify the enlargement of time.
11. Having taken into consideration the above reasons, I grant the leave to the Appellant to file the petition of appeal within seven days of this order.




R.D.R.I. Rajasinghe
Judge

At Suva

19th September 2019

Solicitors

Office of the Director of Public Prosecutions for the Applicant.

Neel Shivam Lawyers for the Respondent.