

IN THE HIGH COURT OF FIJI
CIVIL/APPELLATE JURISDICTION

Civil Action No. HBA 09 of 2020

BETWEEN: **JAI NAND KUMAR** of Lot 2 Nailuva Road, Suva, Businessman.

APPELLANT/PLAINTIFF

AND: **ANNA WONG** of Lot 2 Flat 3, Nailuva Road, Suva, Occupation
unknown to the Plaintiff.

RESPONDENT/ DEFENDANT

Counsel : **Applicant: Mr A. Chand**
 : **Defendant: Ms I. Sauduadua**
Date of Hearing : **24.8.2020**
Date of Judgment : **28.8.2020**

JUDGMENT

INTRODUCTION

1. This is Plaintiff- Applicant's (erroneously stated as Appellant) (hereinafter referred only as Plaintiff), application seeking extension of time to file Notice of Intention to Appeal and Grounds of appeal against the decision of court below delivered on 26.5.2020. Plaintiff's claim against the Defendant relate to unpaid rentals on a premises Plaintiff owned jointly with his ex-wife. Defendant. According to judgment of the court below, Plaintiff's claim for arrears of rent was dismissed, on the basis of failure to prove the claim and stated, that there was no written contract of tenancy. There was no law relating joint tenancy discussed and or applied. Defendant's position was that she was invited by ex-wife of Plaintiff to the premises. If so what is paramount is the burden shifts to Defendant to prove that fact of permission to stay in the property. Whether a person who jointly owns can grant permission to another person to stay without the consent of the other joint tenant was not discussed. Plaintiff's claim was not clearly stated. This was not discussed but claim of Plaintiff was dismissed. Defendant cannot claim any right to stay in the premises free of any rental, once ex-wife's joint tenancy had expired, and Plaintiff became sole proprietor of property. When this happened was not mentioned but from the judgment it was clear that Plaintiff had sought eviction to remove Defendant. There are merits on the proposed appeal. Plaintiff had stated pandemic situation around the country

for their delay. There was no inordinate delay as the delay for Notice of Intention to Appeal was seven weeks delayed. Since Grounds of Appeal required to be filed from one month from such Notice the delay, when this application was filed delay was only two weeks. Applicant is granted extension of seven days from today to file Notice of Intention to Appeal together with Grounds of Appeal.

ANALYSIS

2. First issue is whether High Court has jurisdiction to enlarge time. Magistrates' Court Rules allows such an extension. It was held in affirmative in *Jan's Rental Cars (Fiji) Ltd v Nand* [2016] FJHC 73; HBM147.2014 (27 January 2016)
3. Order 3 Rule 9 of the Magistrates' Court Rules 1945 states:

"A **court or a judge** shall have power to enlarge or abridge the time appointed by **these Rules**, or fixed by any order enlarging time, for doing any act or taking any proceedings, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that when the time for delivering any pleading or document or filing any affidavit, answer or document, or doing any act is or has been fixed or limited by any of these Rules or by any direction or order of the court or a judge the costs of any application to extend such time and of any order made thereon shall be borne by the party making such application unless the court or a judge shall otherwise order."
(emphasis added)
4. Accordingly both court below as well as this court has concurrent jurisdiction to extend time for any time period stated in the said Magistrates' Court Rules 1945. Plaintiff had sought the extension of time from High Court, which has concurrent jurisdiction to extend time.
5. The above quoted provision of the Magistrate's' Court Rules 1945 further stated that cost for such an application seeking extension should be borne by the party making the extension unless specifically stated otherwise.
6. In the grant of extension to time for Notice of Intention and or Grounds of Appeal following grounds are considered;
 - a. Length of Delay
 - b. Reason for Delay
 - c. Merits of the Appeal

Length of Delay

7. Judgment of court below was delivered on 26.5.2020 and this application was filed 21.7.2020. So the delay was about seven weeks for the Notice of Intention to file in terms of Order 37 rule 1 of Magistrates' Court Rules 1945. The delay for Grounds of Appeal, if the Notice of Appeal was filed in time was only about two weeks.
8. This cannot be considered a considerable delay that would cause any prejudice to Defendant considering the circumstances of the case. Plaintiff had claimed for unpaid rentals for more than four years without any payment of permission from a joint tenant.
9. Defendant had resided in the property, previously jointly owned by the Plaintiff and his ex-wife and currently its sole proprietor.

Reason for Delay

10. Plaintiff had indicated pandemic situation around the world as the reason for not travelling. Though this cannot be considered as a reason for delay in instructions to lawyers, pandemic situation would have slowed down economy hence income of most people affected which the court can take judicial notice. This is a reason for delay in appeals.

Merits of Appeal

11. The judgment of the court below had not indicated on what basis Defendant stayed in the property after Plaintiff became sole proprietor.
12. It was clear if the Defendant was alleging permission, it was her burden to prove so. Court below had not considered this in the analysis.
13. First point in this case was the Plaintiff's claim. In Magistrate's Court pleadings are not a strict requirement in terms of Order 16 rule 1 of Magistrates' Court Rules 1945. So Plaintiff's evidence needs analysis and determination of his claim.
14. There was no discussion about the joint tenancy and permission for stranger to occupy the premises without consensus of joint tenants. Defendant had occupied the property and possess it and had even excluded Plaintiff. He had to taken steps to evict her from premises.
15. When the Defendant had stayed in the property for more than four years without any payment to the Plaintiff, she was awarded with a cost of the court, is another ground of appeal.

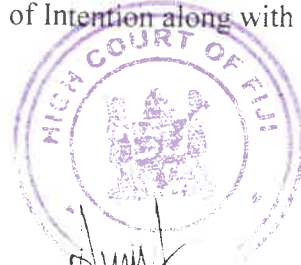
CONCLUSION

16. Judgment of court below contains legal as well as factual grounds for appeal. Seven weeks delay for Notice of Intention to Appeal, was not an inordinate delay considering the circumstances. Cost of this application needs to borne by Plaintiff and Defendant in terms of Order 3 rule 9 of Magistrate's Court Rules 1945.

FINAL ORDERS

- a. Plaintiff is granted extension of time to file Notice of Intention along with Grounds of Appeal within seven days from today.
- b. There is no order as to cost.

Dated at Suva this 28th day of August, 2020.



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Justice Deepthi Amaratunga
High Court, Suva