

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 08 of 2016

BETWEEN: **VATUKOULA GOLD MINES LIMITED**
APPELLANT

AND: **JALE ULUAFE RAMASIMA**
RESPONDENT

Appearances: Mr. V. Sharma for the Appellant.

Ms. Ali for the Respondent.

Date/Place of Judgment: Wednesday 03 May 2023 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Leave to Appeal)

A. Catchwords:

Employment Law – whether leave to appeal is required from a final decision of the Employment Court exercising appellate jurisdiction – whether the time to appeal should be extended – appeals to Court of Appeal from the Employment Court exercising an appellate jurisdiction lies on questions of law only – the proposed appeal to Court of Appeal is only challenging the compensation granted by the Tribunal for wages lost as a result of the grievance and upheld by the Employment Court – there was no question of law involved in fixing compensation for unlawful dismissal.

B. Cases:

1. *Labaibure v. Land Transport Authority [2017] FJCA 131; ABU0127, 2016 (20 October 2017).*

C. Legislation:

1. *Court of Appeal Act 1949: s. 3(4).*

2. *Employment Relations Act 2009 (“ERA”): ss. 219 and 244.*

1. The employer has filed a summons seeking leave to appeal my decision of 31 July 2020 and an order for extension of time to appeal my decision. I had heard an appeal from the Tribunal and allowed the appeal partly and made the following orders:

(a) “The appeal is allowed in part only to the extent that I set aside the finding of the ERT that the termination of the employment was unfair. Consequently, the remedy awarded for unfair dismissal being wages for 6 months as compensation for humiliation and loss of dignity is also set aside.

(b) The findings of the ERT that the dismissal was unlawful and that the employer must pay to the employee lost wages for the period of 1 year and 5 months is upheld. The payment shall be made within 14 days.

(c) Each party to bear their own costs of the appeal proceedings”.

2. I do not understand why the appellant is asking for leave to appeal my decision. Leave to appeal my decision is only necessary from my interlocutory orders as required by s. 244 of the ERA which states that *“a party who is dissatisfied with an interlocutory order of the Employment Court may, within 14 days, apply to that Court for leave to appeal to the Court of Appeal or if leave is refuse by the Employment Court apply to the Court of Appeal for leave to appeal”.*
3. In this case, I heard the appeal from the Tribunal’s decision and my orders on appeal are final orders. I did not grant any interlocutory orders. The appeal before me was a substantive proceeding in which I gave final orders. The application for leave to appeal my decision on the appeal is misconceived. There is no need to file an application for leave to appeal.

4. Since I exercised my appellate jurisdiction and gave a decision on the substantive appeal, the Court of Appeal 1949 Act will apply. I cannot find any requirement for leave in the Court of Appeal Act 1949.
5. S. 3(4) of the Court of Appeal Act 1949 states that *“subject to section 99(4) of the Constitution of the Republic of Fiji, appeals lie to the court on a question of law only from final judgments of the High Court given in the exercise of the appellate jurisdiction of the High Court”*.
6. The Employment Relations Court is a division of the High Court under s. 219 of the ERA. Any appeals from the Employment Relations Court from its appellate jurisdiction lies as of right to the Court of Appeal on questions of law. There is no requirement for leave to appeal.
7. In *Labaibure v. Land Transport Authority [2017] FJCA 131; ABU0127, 2016 (20 October 2017) Lord President Justice Calanchini* clearly indicated that appeals from Employment Relations Court exercising appellate jurisdiction is under s. 3(4) of the Court of Appeal Act and will be confined to questions of law. Neither 3 (4) of the Court of Appeal Act nor His Lordship indicated that there was a need for leave to appeal the final decision of the Employment Court exercising appellate jurisdiction.
8. On the issue of extension of time to file the appeal, I find that there is no reason for the delay in filing the appeal. It was not difficult to discern that I had exercised my appellate jurisdiction and any decision on the substantive appeal is not an interlocutory decision. It is a final decision and that there is no requirement for leave. The delay in filing the appeal has been caused by the appellant by seeking an application for leave to appeal the decision. It is now almost 3 years since I gave the decision on the substantive appeal. The delay is exorbitant and the same I repeat is caused by the appellant.
9. I have also seen the grounds of appeal which seeks to challenge the compensation awarded to the employee for lost wages in the sum of 1 year 5 months. The employer does not challenge my finding that the Tribunal was correct in arriving at a decision that the termination of the worker was unlawful. I do not find that challenging the compensation that was to be paid to the worker is an appeal on a question of law. If the appeal from my decision where I exercise

my appellate jurisdiction is not on a question of law, the court of appeal does not have jurisdiction to hear the appeal. The compensation was fixed with based in the fact of the employee being out of employment. The period was worked out basis on the evidence before the lower court which I accepted as correct. There was contrary evidence by the employer to consider. In any event that is a factual finding and any appeal from the said finding does not involve questions of law. There is no legal sense in granting extension of time to appeal the decision.

10. In the final analysis, I find that I do not have jurisdiction to consider the question of leave to appeal my decision on appeal from the Tribunal. I therefore strike out the summons seeking leave to appeal.
11. I further dismiss the application for extension of time to appeal.
12. I also order costs against the employer in the sum of \$1,500 to be paid within 14 days.



Anjala Wati

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Hon. Madam Justice Anjala Wati

Judge

03. 05.2023

To:

1. *AK Lawyers for the Appellant.*
2. *Attorney – General’s Chambers for the Respondent.*
3. *File: ERCC 08 of 2016.*