

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**APPELLATE JURISDICTION**

**CASE NUMBER:**

ERCA 28 of 2019

**BETWEEN:**

**THE LABOUR OFFICER** on behalf of the dependents of the deceased **KENI ROKOTUNIDAU**

**APPLICANT**

**AND:**

**FIJI ELECTRICITY AUTHORITY**

**RESPONDENT**

Appearances:

*Ms. P. Chandra for the Appellant.*

*Ms. P. Suguturaga for the Respondent.*

Date/Place of Judgment:

*Wednesday 03 May 2023 at Suva.*

Coram:

*Hon. Madam Justice Anjala Wati.*

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**RULING**

*(Leave to Appeal Out of Time)*

A. Catchwords:

*Employment Law – Leave to Appeal out of time the orders of the Tribunal – the Tribunal had refused to reinstate the matter after striking it out for want of prosecution - the proper application ought to be an application for extension of time to seek leave to appeal the interlocutory decision of the Tribunal -*

Legislation:

1. *Employment Relations Act 2009 (“ERA”): s. 243.*
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1. The applicant has filed an application for leave to appeal the decision of the Tribunal out of time when it refused to reinstate the applicant's case after it was struck out for want of prosecution. The judgment refusing reinstatement of the cause was delivered on 3 July 2018.
2. In dismissing the application to reinstate the matter, the tribunal found that the matter was struck out when the counsel for the applicant did not appear on two consecutive dates being 27 April 2017 and 25 May 2017. The tribunal stated that there was no explanation for the failure to appear on the two occasions. It further found that the application for reinstatement was made after 84 days which was considered as substantial delay without any satisfactory explanation.
3. S. 243 of the ERA states that "***a party who is dissatisfied with an interlocutory order of the Tribunal may, within 14 days, apply to the Court for leave to appeal***". Under this rule the applicant was expected to seek leave to appeal the decision of the tribunal because the order refusing reinstatement of the matter was an interlocutory one. The applicant has instead sought leave to appeal the decision out of time which is different from seeking leave to appeal the decision.
4. Even if I were to consider this application as leave to appeal then once again the application for leave to appeal ought to have been made within 14 days of the order. The application for leave to appeal was filed on 25 October 2019. This is not within 14 days but after 1 year and 3 months. If an application is not brought within 14 days for leave to appeal, I cannot consider the application. It is out of time to consider the application.
5. What is the recourse available to the applicant then? The applicant ought to first seek an extension of time to make an application for leave to appeal. I do not consider the current application to be seeking an extension of time to seek leave to appeal. The notice of motion in its prayers states "*that leave be granted... to appeal the decision ...out of time*".
6. The affidavit supporting the application also indicates that the applicant is seeking leave to appeal the decision out of time and not an extension of time to seek leave to appeal the decision. The affidavit in support gives various reasons why there was delay in filing the application. Those reasons are not satisfactory enough to justify the delay of 1 year and 3 months.
7. If one looks at the conduct of the Labour Office in prosecuting the claim, it is nothing short of disrespect and disregard for court. First, the office fails to appear in the tribunal twice to prosecute the matter. Then it takes 84 days to make an application to reinstate the same in the tribunal. After the tribunal

condemns the delay, it takes further 1 year 3 months to file an application to appeal out of time. Even then it does not get the right application before the court.

8. It is not fair that the proceedings in the tribunal be allowed to be dragged any further. There has to be finality to old cases and legal representatives appearing for their clients have to have regard for that. This includes the Ministry of Employment, Productivity and Industrial Relations. If it takes on a responsibility on behalf of the citizens then it ought to fulfil that with due diligence. It cannot blame anyone for the delay and treat the cases and court processes with a careless attitude. The reasons in the affidavit only demonstrates carelessness on the part of the Ministry.
9. The matter in the tribunal is a 2017 Workmen's Compensation Claim. It is now 6 years. If the claim was prosecuted with due diligence the same would have been finalized. There was lack of regard to move the matter with diligence and expedition. I cannot excuse the delay.
10. The employer had been paying insurance for the worker and upon his death the family was paid out \$100,000. Out of that, 80 % of the monies went to the wife and 20% went to the daughter. The Employer had a scheme for its workers called the EFL Marine Open Policy. In that way, I do not find that the family has been totally abandoned by the employer to say that there is prejudice suffered by the worker's family.
11. For the above reasons, I dismiss the application for leave to appeal out of time.



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*Hon. Madam Justice Anjala Wati*

*Judge*

*03. 05.2023*

To:

1. *Legal Officer - Ministry of Employment, Productivity and Employment Relations for the Applicant.*
2. *Haniff Tuitoga Lawyers for the Respondent.*
3. *File: ERCC 28 of 2019.*