

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 119 of 2018

Roselyn Anjana Prasad
Plaintiff

v.

Penisoni Taupati
Defendant

Counsel: Mr S. Rattan for the plaintiff
The defendant absent and unrepresented
Date of hearing: 23rd February, 2021
Date of Judgment: 5th May, 2023

Ruling

1. The plaintiff, in her summons filed on 20th August, 2020, seeks enlargement of time to appeal the Order of the Master of 5 November, 2019. The Master made Order striking out the writ of summons filed by the plaintiff under Or 25, r 9.

2. The plaintiff, in her supporting affidavit states that her reasons for failure to file an appeal in time is as follows. Her claim relates to damages for personal injuries arising from an accident which happened on 29 April, 2015. She was hospitalized at CWM and Lautoka Hospitals. She was discharged on 12 June, 2015, and re admitted on 24 June, 2015. In 2016, she instructed Leena Goundar Lawyers to institute legal proceedings. In July 2018, she underwent hip replacement in India. In December, 2019, when she checked with the High Court registry, she was advised that her case was struck out. The lockdown was imposed on 20 March, 2020, and uplifted on 7 April 2020, contributed to the delay. The plaintiff states that the defendant is unlikely to suffer any serious prejudiced if my claim is reinstated.

3. The proposed grounds of appeal read:
 - a. *There was a breach of natural justice as the Learned Master did not hear the application and/or allow the Appellant to oppose the Court's Motion which the Learned Master was required to do under Order 25 Rule 9 of the High Court Rules, such that it led to the Master to striking out the action which resulted in a miscarriage of justice;*
 - b. *The Learned Master erred in law by not providing a reasonable opportunity for the Appellant to present its oral and written submissions in opposition to the Motion;*
 - c. *The Learned Master erred in law by failing to provide the appellant with a reasonable opportunity to be fully heard on the Motion contrary to Section 15 of the Constitution of Fiji such that it led to a miscarriage of justice;*
 - d. *The Learned Master erred in law by failing to consider or consider at all, the principles applicable to a motion under Order 25 Rule 9, including but not limited to, **Grovit and Others v Doctor and Others** (1997) 01 WLR 640, 1997 (2) ALL ER, 417 and **Birkett v James**" (1987), AC 297.*

4. Or 7, r 1 provides that a writ is valid for twelve months.

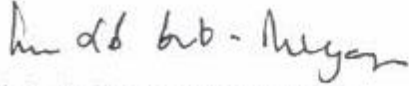
5. The plaintiff's writ was filed on 27th April, 2018.

6. The Master has noted that the writ was not served and no notice of intention to proceed was filed.

7. The contentions in the proposed grounds of appeal and the question of length of delay etc. do not arise for consideration, as the plaintiff's writ expired on 27th April, 2019.

8. **Orders**

- a. The plaintiff's summons is declined.
- b. I make no order as to costs.


A.L.B. Brito-Mutunayagam
JUDGE
5th May, 2023

