

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 240 of 2007

BETWEEN: **RONALD RAKESH NAND** of Tomuka, Lautoka, Wholesaler.

PLAINTIFF

A N D: **SUNITA MANI** as sole Administratrix and Executor in the Estate of Chellamma
aka Pushpa of Lomolomo, Lautoka, Domestic Duties.

DEFENDANT

Appearances: Mr. D. Gordon with Ms. Sharma S. for the Plaintiff

Ms. Kumar M. for the Defendants

Date of Hearing: 01 August 2023

Date of Ruling: 04 August 2023

R U L I N G

1. Before me is a Summons filed by the Defendant for enlargement of time to appeal the decision of Mr. Justice Ajmeer which was pronounced on 20 June 2019.
2. The application is filed pursuant to “Rule 26” of the Court of Appeal Rules.
3. It is supported by an Affidavit of Sunita Mani sworn on 11 May 2023.
4. Mani deposes that the reason for the delay was:

“...post judgment, my Principal Solicitor was unable to travel to Fiji because of COVID protocols and I could not proceed further with my intention to Appeal”.
5. In **NLTB v Khan [2013] FJSC 1; CBV0002.2013 (15 March 2013)** Gates Judge (as he then was) said;

[22]. Having allowed the appeal period to lapse, the would be petitioner has to seek the indulgence of the Court to exercise a discretionary relief to permit a late appeal: *Gatti v Shoosmith [1939] 3 All ER 916*.

[23]. The cause of the lateness in lodging the petition has not been adequately or fully explained. One is left with the conclusion as I have already stated that it was though the appeal could be held off whilst settlement talks took place. However, the ball had already been dropped by the non-lodgment of the petition prior to 9th November 2012. Settlement talks came up subsequently.

[24]. It is necessary in order to enliven the Court's discretion in the Applicant's favour that the would-be petitioner condescend to particulars in the supporting affidavit so as to explain the true reason for the lapse.

[25]. In **Minister of Tourism and Transport v Tower Insurance (Fiji) Ltd and 3 Others** (unreported) Civil Appeal ABU0032.01 12th November 2001 Byrne J. gave some guidance on what condescending to particulars might entail [pages 5 – 6]:

“Has there been a satisfactory explanation for this delay? In my judgment there has not, I consider the affidavit of Ajay Singh deficient in many relevant respects of which I consider some to be the following:

- 1) The affidavit does not say who put the file away in the filing cabinet.
- 2) Nothing is said of what became of the Memorandum and the Ruling.
- 3) Nothing is said about whether the Solicitor-General's office has a system of maintaining diary notes.
- 4) Nothing is said about who is responsible for maintaining records. If there is any such person no explanation is given as to how and why the practice was overlooked in this case.
- 5) Nothing is said as to how the oversight or misunderstanding was brought to the attention of Ajay Singh.
- 6) What prompted him to make enquiries with the Registry only on the 8th of June 2001? Why had he not previously made such an enquiry?”

[26]. It is respectfully submitted that the Defendant has not surmounted the first hurdle in explaining the reason for the failure to file within time.

6. I endorse the following submissions of Gordon & Company:

- 4) At paragraph 4 of the affidavit of the Defendant she submits in entirety only one solitary paragraph attempting to explain the reason for the failure to file within time.
- 5) The purported reason for the failure to file within time is:

“... my Principal Solicitor was unable to travel to Fiji because of COVID protocols and I could not proceed further with my intention to Appeal”
- 6) The “Principal Solicitor” is not named or identified.
- 7) No explanation is given as to why the “Principal Solicitor” was not in Fiji.
- 8) The Legal Practitioners Act requires the “Principal Solicitor” to be in Fiji if practicing in Fiji and if abroad to make arrangements for another solicitor to manage the law practice.
- 9) No explanation is given as to which country the “Principal Solicitor” was abroad in and why?
- 10) No explanation is given as to when the “Principal Solicitor” went abroad and when the “Principal Solicitor” returned to Fiji.
- 11) The “Principal Solicitor” has not given a corroboratory statement of affidavit.

- 12) What does “Principal Solicitor” mean? Does it mean that there were other solicitors?
 - 13) No evidence is given of the alleged and purported COVID protocols that allegedly prevented travel.
 - 14) No time frame is given when the alleged and purported COVID protocols were in place that allegedly prevented travel.
 - 15) No explanation is given as to why audio and/or visual equipment such as computers, mobile telephones etc using software and programs and platforms like Facebook, Messenger, Skype, WhatsApp, Viber, Zoom, Teams, Webex, FaceTime etc were not used to enable the “Principal Solicitor” and the Defendant to communicate.
 - 16) No explanation is given why the “Principal Solicitor” needed to travel to Fiji to enable the Defendant to proceed further with the intention to appeal.
 - 17) In any event the “Principal Solicitor” ought to have been aware of the crucial and tight time frame within which to appeal and ought to have advised the Defendant to seek legal services elsewhere to appeal in order to comply with the crucial and tight time frame within which to appeal.
7. In my view, the application fails to adequately explain the reason for the delay.
8. Application dismissed. Costs to the Plaintiff/Respondent which I summarily assess at \$1,000 – 00 (one thousand dollars only).



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Anare Tuilevuka
JUDGE
Lautoka



04 August 2023