

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER:

ERCA 03 of 2020

BETWEEN:

LAND TRANSPORT AUTHORITY

APPELLANT

AND:

RAJESH NARAYAN

RESPONDENT

Appearances:

No Appearance for the Appellant.

Mr. D. Nair for the Respondent.

Date/Place of Judgment:

Wednesday 13 March 2024 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

RULING

A. Catchwords:

Employment Law – Appeal – compliance order application heard by the tribunal- employer aggrieved that the tribunal ought to have suspended the hearing pending determination of its application for leave to appeal the decision of the High Court in which it had refused to grant extension of time to appeal the decision out of which the compliance order application was issued- there being no stay, the tribunal could proceed to hear the compliance order application.

Legislation:

1. *Employment Relations Act 2007 (“ERA”): s. 242(5).*

Cause

1. On 17 January 2020, the tribunal had issued compliance orders of its decision in Employment Grievance Case No. 3 of 2010.

2. The substantive decision in Employment Grievance Case No. 3 of 2010 was for the employer to reinstate the employee preferably to a position similar to what he was holding prior to the termination. The employer was also ordered to reimburse the employee with 2 years of lost wages as a result of the grievance and further 6 months wages as compensation for humiliation, loss of dignity and injury to his feelings.
3. The employer seeks leave to appeal against the compliance orders of the tribunal.

Appeal

4. The appeal complains that the tribunal ought not to have heard the compliance order application when the findings and decision in Employment Grievance Case No. 3 of 2010 was subject to proceedings for leave to appeal in the Court.

Analysis

5. S. 242(5) of the ERA states that no appeal shall lie except with leave of the Tribunal or the Court from any compliance order of the Tribunal. It is for this provision that leave is sought from this court.
6. By the time the application for compliance was filed, I had already declined the application for leave to appeal out of time the decision in Employment Grievance Case No. 3 of 2010. The employer then filed the summons for leave to appeal my decision refusing extension of time to appeal.
7. The employer says that it had already brought to the attention of the tribunal that a summons to seek leave to appeal my decision was already filed and pending for determination before me. Despite that, the tribunal proceeded to hear and issue orders for compliance.
8. I find that since the tribunal had the benefit of the judgment refusing leave to extend time, it was able to decide on the prudence of proceeding with the application for compliance. A summons to seek leave to appeal my decision did not operate as a stay of the compliance order application.
9. Through the summons seeking leave to appeal my decision, the employer had also sought stay of the compliance order application. However, it did not require the application to be considered. If stay was not considered and granted, the tribunal was at liberty to proceed with the compliance application.

10. If a litigant is serious about an urgent application, he should press for the application to be heard. By including a prayer for stay in the compliance application and not pressing for it to be heard based on urgency, the application will normally be considered as just a routine inclusion. Any party wishing an early hearing should bring the urgency to the attention of the Court. Without requiring me to hear the stay application and determining it, a requirement for the tribunal not to hear the pending application was properly refused.
11. In any event, I have considered the application for leave to appeal my decision filed in ERCA 6 of 2019. The application is dismissed in that case. I do not find any basis to flaw the tribunal's decision to proceed to hear the compliance application.

Final Orders

12. In the final analysis, I dismiss the application for leave to appeal the compliance orders of the tribunal.
13. I order the employer to pay costs of \$1,000.00 to the worker within 21 days.



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Hon. Madam Justice Anjala Wati

Judge

13.03.2024

To:

1. *Land Transport Authority, Legal Department, Suva for the Appellant.*
2. *Mr. D. Nair for the Respondent.*
3. *File: Suva ERCA 03 of 2020.*

