

**IN THE EMPLOYMENT RELATIONS COURT AT SUVA**

**APPELLATE JURISDICTION**

**CASE NUMBER:** ERCC 07 of 2018

**BETWEEN:** **BEACHCOMBER ISLAND RESORT**

**APPLICANT**

**AND:** **RENUKA DEVI PRASAD**

**RESPONDENT**

*Appearances:* Mr. J. Lanyon for the Applicant.

Mr. D. Nair and Mr. M. Lomaloma for the Respondent.

*Date/Place of Judgment:* Thursday 18 July 2024 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

---

**JUDGMENT**

**Catchwords:**

*Employment Law – leave to appeal out of time – inordinate delay – explanation for the delay unsatisfactory – no grounds of appeal outlined to prima facie determine its merits- application refused with costs.*

---

***Cause and Background***

1. This is the employer's application seeking leave to appeal out of time the decision of the Tribunal of 19 January 2018.
2. The Tribunal had found that the worker Ms. Renuka Devi Prasad had been unjustifiably dismissed from her employment. The employer was ordered to pay to the worker a sum of \$11,660 in compensation within 21 days from the date of the judgment.

3. The employer did not comply with the orders within time. The worker's lawyers wrote to the employer's lawyers on 28 February 2018 seeking compliance. By then, even the time limited for the appeal had lapsed. The employer also received a copy of that letter on 5 March 2018.
4. On 21 March 2018 the worker made an application to this court for compliance of the orders of the Tribunal. The application was before this court and dealt with.
5. The employer then filed an application for leave to appeal out of time on 20 June 2018.

#### ***Grounds in Support of Application***

6. The grounds of appeal out of time is outlined in the affidavit of Mr. Atish Dip, an Accountant employed by Beachcomber Island Resort.
7. Mr. Atish Dip states that there is an administrative oversight on the part of the employer's solicitors in filing the appeal on time.
8. He says that when the decision of the Tribunal was served on the employer in late January 2018, the employer had duly passed the same to its solicitors to attend to filing of the appeal. This was not done.
9. The employer says that it should not be penalized for oversight on the part of its solicitors. It contends that it has meritorious grounds of appeal.

#### ***Analysis***

10. Let me deal with the issue on 3 basis: *whether I find the delay in filing the appeal inordinate, whether there is reasonable explanation as to the delay and whether the appeal, prima-facie, has merits.*
11. The employer says that when the judgment was delivered, it gave instructions to its lawyers to file the appeal which was not done and that the employer should not be punished for the inactions of its counsel.

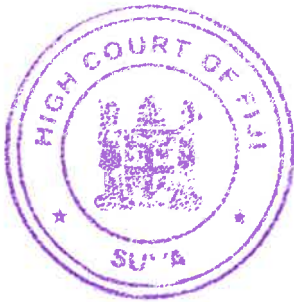
12. If the employer had given instructions to its lawyers to file an appeal, it should have had the interest and diligence to follow up on the process. If the lawyer was delaying, the employer could have found another counsel.
13. It is clear that the employer had no interest in following up on whether the appeal was filed or not. If it showed any interest, it would have noticed that there was a delay.
14. Mr. Atish Dip was also served with a letter requesting compliance on 5 March 2018. By that time, the time for filing of the appeal had expired.
15. At least by then, the employer should have woken up to the delay by its solicitors. It again did not take any action.
16. The worker then filed an application for compliance on 21 March 2018. The employer still did not file its leave to appeal out of time application within 28 days from 21 March 2018. When I had dealt with the compliance application then only an application for leave to appeal out of time was filed on 20 June 2018.
17. The employer has not shown to me that it had at all required its lawyers to file an appeal on time or out of time. I find that it did not press for its rights to be implemented.
18. I find that there was ample time from the time of receipt of letter of request for compliance to file a quick application to file an appeal out of time. The employer did not choose to act early.
19. There is therefore inordinate delay and insufficient explanation for it. The employer cannot be granted any indulgence for sleeping on its rights to appeal the decision on time.
20. There is no grounds of appeal urged in the affidavit. I cannot find that the appeal, prima-facie, has some merits.
21. In an application for leave to appeal out of time, the applicant should always outline the proposed grounds of appeal. These proposed grounds can be examined against the findings

and if the grounds prima facie disclose an appealable error, leave to appeal out of time will be considered favorably.

***Final Orders***

22. The application for leave to appeal out of time is dismissed.

23. The employer is to pay costs of \$1,500 to the worker within 21 days.



A handwritten signature in blue ink, appearing to read "Anjala Wati", is written above a horizontal dotted line.

***Hon. Madam Justice Anjala Wati***

**Judge**

**18. 07.2024**

---

**To:**

1. ***Law Solutions, for the Applicant.***
2. ***Oceania IP, for the Respondent.***
3. ***File: Suva ERCC 07 of 2018.***