

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action No. HBC 368 of 2020

BETWEEN: **AUTO WORLD TRADING (FIJI) PTE LIMITED** a limited liability company having its registered office at Suva.

APPELLANT

AND: **FIJIAN COMPETITION AND CONSUMER COMMISSION** an institution duly established under the Fiji Commission Act 2010.

1st RESPONDENT

AND: **JOEL ABRAHAM, IRFAN HUSSAIN, SHIGUFAH SHAINAAZ and DARLEEN CHANDRA** all of Fijian Competition and Consumer Commission

2nd RESPONDENT

Appearance:

Appellant: Mr S. Singh & Ms Saumaki (Shelvin Singh Lawyers).
1st & 2nd Respondent: Ms N. Choo (R Patel Lawyers).

Date of Hearing: 2nd July 2024

RULING

A. Introduction

[1] The Appellant had filed inter-parte summons on 5th February 2024 for **leave and for extension of time to appeal** against the ruling by the acting Master delivered on 16th August 2023. An affidavit of Ravindra Lal, the Director of the Appellant Company accompanied the summons. An affidavit in opposition of Shigufah Shainaaz, Senior Competition Officer of the 1st Respondent and one of the 2nd Respondents was filed. Mr Lal filed an affidavit in reply.

B. Brief History

[2] The Appellant had filed a writ of summons on 3rd December 2020. On 3rd October 2022 the Respondents filed a summons to strike out seeking that the Appellant's claim be struck out on grounds that the Appellant did not disclose reasonable cause of action against the Respondents. A Ruling was delivered by the Acting Master on 16th August 2023 and he struck out the Respondent's statement of claim and writ of

summons and dismissed it pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988..

- [3] On 23rd August 2023 the Plaintiffs had filed a notice of appeal. On 16th January 2024 I delivered a Ruling finding that the notice of appeal filed on 23rd August 2023 was incompetent for want of leave to appeal and struck out the application.

C. The Relevant Laws

- [4] The relevant Rules relating to the application (**leave to appeal and extension of time**) are contained in **Order 59** of the High Court Rules 1988. The other relevant Rule is **Order 3 Rule 4** of the High Court Rules. It gives the court discretion and provides for extension of time.

- [5] Over a period of time our Courts have developed a number of case laws on extension of time and leave to appeal out of time. In *Herbert Construction Company (Fiji) Ltd v Fiji National Provident Fund [2010] FJCA 3; Miscellaneous Case 20 of 2009 (3 February 2010)* the Fiji Court of Appeal stated that:

"[12.] It is well settled law that once the rules are not followed it is the discretion of the court to grant leave to appeal out of time and that the onus rests upon the appellant to satisfy the court that in all circumstances the justice of the case requires that he be given an opportunity to appeal out of time against the judgment he wishes to appeal.

[13.] In Ist Deo Maharaj v. Burns Philip (South Sea) Company Ltd, Civil Appeal No. ABU0051 of 1994S citing the judgment of Norwich and Peterborough Building Society v. Steed (1991) 2 All ER 880 CA it was said:-

"The court has unfettered discretion in the grant or refusal of leave. The factors which are normally taken into account in deciding whether to grant an extension of time are:

- (a) the length of the delay;*
- (b) the reasons for the delay;*
- (c) the chances of succeeding if time for appealing is extended; and*
- (d) the degree of prejudice to the Respondent if the application is granted."*

[14.] In Avery v Public Services Appeal Board (No.2) (1973) 2 NZLR 86 it was said:

"Everything is left to the discretion of the court on wide basis that leave may be granted in such cases as justice of the case may require. In order to determine the justice of any particular case the court should I think have regard to the whole history of the matter, including the conduct of the parties."

D. Discussion

- [6] I would now go over each of the factors relating to the application (**leave to appeal and extension of time**). Firstly, I would look at the **reasons for failure to file within**

time and the length of time (delay). The reasons for the delay according to the Plaintiff *“is not due to an inaction on the Plaintiff’s part, nor it is intentional or inexcusable, the Plaintiffs were actively pursuing the appeal.”* The decision of the Learned Acting Master was delivered on 16th August 2023. The leave to appeal application should have been filed and served by 30th August 2023. The application was filed on 5th February 2024. The delay in filing the leave application is approximately 159 days.

[7] The other factor is the merits of the appeal. The Plaintiffs proposed grounds of appeal are annexed as “C” in the affidavit in support. There are 5 proposed grounds of appeal. The 1st and the 2nd proposed grounds of appeal deal with the pleadings filed and are respectively, that *“[t]he learned Acting Master ...erred in fact and in law when he held that all alleged acts relied upon the Plaintiff are in fact acts within purview of the Act and that there are no instances relied upon or facts pleaded by the Plaintiff in its Statement of Claim, which intended to support that these alleged acts are arbitrary or malicious, when the Statement of Claim pleaded the Plaintiff’s allegations that the actions of the Defendants on 02 December 2020 were arbitrary and malicious.”* and *“[t]he learned Acting Master ...erred in fact and in law in holding that it was obvious that the Statement of Claim discloses no facts in support of a reasonable cause of action and thus striking out the action, when the Plaintiff’s Statement of Claim sets out several causes of action stemming from the Plaintiff’s allegations that the actions of the Defendants on 02 December 2020 were arbitrary and malicious and in breach of their statutory duties, which includes whether the Defendant’s actions breached the Plaintiff’s constitutional rights which have not all been covered by the Acting Master in his Ruling.”*

[8] The first two proposed grounds of appeal deal with the pleadings filed by the Plaintiff. The Learned Acting Master in his comprehensive ruling reproduced the statement of claim for the sake of clarity. He then summarized the contents of the statement of claim. He noted Order 18 Rule 18 (1) (a) of the High Court Rules dealing with strike out. The submissions of the parties in relation to the strike out application was considered by the Learned Acting Master. Having gone over the ruling of the Learned Acting Master I am of the view that the Learned Acting Master was correct in his approach and his reasoning. The actions of the officers were allowed under the Fijian Competition and Consumer Commission Act 2010 and were not arbitrary or malicious. The relevant sections of the FCCC Act 2010 relied upon were correctly cited by the Acting Learned Master. I find that the Learned Acting Master did not treat the matter lightly. He cautioned himself that the order is used sparingly and only in exceptional cases. He was considering the totality of the matter. He gave his reasons for striking out the matter.

[9] The 3rd proposed ground of appeal is that *“...[t]he learned Acting Master ...erred in law and in fact in holding that the alleged acts of the Defendants are covered under the immunity provision under Section 139 of the Fijian Competition and Consumer Commission Act 2010, when the applicability of the said provision should be based on the determination of the alleged acts of the Defendants and whether they were malicious or arbitrary which are matters to be determined at trial.* The 3rd proposed ground of appeal deals with Section 139 (protection of officers) of the Fijian Competition and Consumer Commission Act (“FCCC Act”) 2010 which provides that *“no suit, prosecution or other legal proceedings shall lie against the Commission, any*

inspector or any other officer administering this Act, for anything done in good faith under the provisions of this Act or of any regulations or orders made thereunder." The Acting Master found alleged acts of the Defendants in the absence of any facts pleaded in support of the claim that they were malicious or arbitrary were covered under Section 139 of the FCCC Act 2010. I do not find any reason that I should disagree with the Learned Acting Master. I note that there are no facts pleaded to show that the actions of the Defendants were malicious or arbitrary. Section 15 of the FCCC Act 2010 lists out the functions and powers of the FCCC. It has very wide ranging powers and functions. All these were considered by the Learned Acting Master.

[10] The 4th proposed ground of appeal is that "*...[t]he learned Acting Master ...erred in law and in fact when striking out the matter without considering that Order 18 rule (1) of the High Court Rules 1988 allowed for the Court to direct an amendment of the pleadings while considering an application for strike out in terms of order 18 rule (18) (1) (a).*" The submission on behalf of the Appellant is that Order 18 Rule 18 should only be used sparingly and only in exceptional cases. I note that where a statement of claim purports to plead that the Defendants engaged in misleading and deceptive conduct, engaging in unconscionable conduct and false and misleading representation but fails to plead essential elements of that alleged misleading and deceptive conduct, engaging in unconscionable conduct and false and misleading representation, no evidence in support is required, but the court makes its determination upon perusal of the pleading itself. The relief sought is declaration that the Defendants breached Section 75, 76 and 77 of the FCCC Act. This is a plain and obvious case where the provisions of O.18 r.18 should be prevailed upon. The Appellant was subject to the allegations not the other way around for Sections 75, 76 and 77 of the FCCC Act to be applied to the Defendants. It should also be noted that the application of Order 18 rule 18 is discretionary. The Learned Acting Master correctly pointed out that "*the Plaintiff is completely flawed and misguided in these legislative provisions in claiming that the Defendants had breached these sections and the Plaintiff thus suffered damages due to such breach.*"

[11] The 5th proposed ground of appeal "*...[t]he learned Acting Master ...erred in law and in fact in holding that it was his view that this action was brought primarily with the intention of annoying or embarrassing the Defendants and or brought for collateral purposes and that irrespective of the motive, that these proceedings are obviously untenable or manifestly groundless as to be utterly hopeless, and thus these proceedings become frivolous and vexatious, given that there was no facts or allegations pleaded by the Defendants by which the Learned Acting Master would come to such a basis.*" Having dealt with the matter, the Acting Learned Master gave his view. This was following his analysis of the material before him. He was entitled to form that view on the material before him.

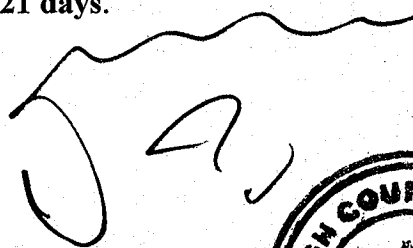
[12] The 6th proposed ground of appeal is that "*...[t]he learned Acting Master ...erred in law and in fact in awarding costs on a scale which was not justified in all circumstances of the case.*" and the 7th proposed ground of appeal is that "*[t]hat the costs ordered the Acting Master ...against the Appellant is manifestly harsh and excessive*". Both these proposed grounds of appeal deal with costs. The costs awarded by the Acting Master was \$10,000.00. It should be noted that apart from the FCCC there are 4 other persons as 2nd Defendants in this matter. The Acting Master

was entitled to award the costs summarily. He found it on the basis of what he termed it as “*a classic example of an abuse of process of the court*”. He summed the matter as such and this supported his basis for the costs award.

- [13] The delay in filing the leave application is approximately 159 days. The threshold for merits for the application contained in the proposed grounds of appeal are not adequate to grant extension of time and also to grant leave to appeal. In my view if time is enlarged there will be prejudice to the Defendants.
- [14] The summons seeking extension of time and leave to appeal are dismissed. Cost is summarily assessed in favour of the Defendant’s in the sum of \$2000.00 to be paid by the Plaintiff within 21 days.

E. **Court Orders**

- (a) The Plaintiffs summons seeking extension of time and leave to appeal are dismissed.
- (b) Cost is summarily assessed in favour of the Defendants in the sum of **\$2000.00** to be paid by the Plaintiff **within 21 days**.



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Chaitanya S.C.A Lakshman
Puisne Judge
29th July 2024

