

IN THE EMPLOYMENT RELATIONS COURT AT SUVA
CIVIL JURISDICTION

ERCA Case No. 07 of 2023

IN THE MATTER of an appeal from the decision of
EMPLOYMENT RELATIONS TRIBUNAL Civil
Case No. ERT WC 38 of 2021

BETWEEN: **THE LABOUR OFFICER** for and on behalf of the dependents of
the deceased **SAMUELA DONU** of Vusuya Road, Nausori

APPELLANT

(Original Applicant)

AND: **SOUTH PACIFIC WASTE RECYCLERS** 5 Bulei Street,
Laucala Beach Estate

RESPONDENT

(Original Respondent)

For the Appellant: Ms. Liku

For the Respondent: Mr. Singh

Date of Hearing: 20th June 2024

Date of Ruling: 28th August 2024

RULING ON SUMMONS FOR LEAVE TO APPEAL OUT OF TIME

1. This is the Ruling on the application for leave to appeal out of time filed by the Appellant, the Labour Officer seeking the following orders from the Court: -

- (i) That the time for giving notice of intention to appeal the Interlocutory Order of the Legal Tribunal Mr. Aleem Shah delivered at the Employment

Relations Tribunal on the 12 May 2023 in the Employment Relations Tribunal Workmen Compensation Case No. 38 of 2021 be extended.

- (ii) That the Appellant be granted leave to appeal out of time the Interlocutory Order of 12 May 2023.
 - (iii) That the costs of this application be costs in the cause; and
 - (iv) Such further and/or other orders as this Honourable Court deems just and equitable.
2. The Summons was filed on the 14th of July 2023 and is supported by the affidavit of Shabana Khan, Senior Labour Officer. The affidavit in support was deposed on the 14th of July 2023 and filed on the same day.
 3. The Summons was first called on the 11th of August 2023 and the application was opposed so directions were made for the filing of affidavit in opposition.
 4. An initial hearing date for the application was fixed however this has now been vacated and a fresh hearing date was fixed for 20th June 2024.

Evidence in support of the application

5. The application is made on the following facts as deposed in the affidavit of Shabana Khan as follows: -
 - (i) The appellant had originally filed a Workman's compensation claim at the Employment Relations Tribunal on the 24th February 2021.
 - (ii) On the 19th of January 2022 the respondent filed a Striking out Application on the basis that the claim was statute barred pursuant to section 13 of the Workmen's Compensation Act.
 - (iii) On the 12th of May 2023 the tribunal struck out the appellant's claim on the basis that the claim was statute barred.

- (iv) The Ministry informed the Dependent of the outcome of this matter on the 25th of May 2023 and also advised her of the options open to her and the appeal timeline requirement.
 - (v) The Dependent had not come earlier as she was pregnant and had not been feeling well hence the delay in her coming to the office and receiving advice.
 - (vi) On the 1st of June 2023, the Dependent advised the Ministry that she would like to appeal the decision of the Tribunal.
 - (vii) The delay in this case has been approximately 5 weeks and on the 27th June 2023, the Ministry transferred the deceased worker's file to the Office to proceed with the appeal.
 - (viii) The appellant has good prospects of success in the appeal as the Tribunal erred in both law and in fact in determining that the workman's compensation claim was statute barred when in fact the claim was filed in the prescribed form in the timeframe stipulated in the Act.
 - (ix) The Appellant submits that the Tribunal erred in law in misinterpreting section 13 of the Workmen's Compensation Act.
 - (x) He submits that he has a meritorious appeal, and he appends his proposed Grounds of Appeal, with 4 proposed Grounds of Appeal.
 - (xi) The Appellant therefore seeks orders in terms of the Summons so that the Court may properly consider the proper interpretation of section 13 of the Workmen's Compensation Act.
6. The application is opposed, and the Respondent filed the affidavit of Sanjay Kirpal in opposition, deposed on the 5th of October 2023 and filed on the 6th of October: -
- (i) He has been advised by his counsel that the time limit to appeal a decision of the Tribunal is 28 days. This application is made after that time -period has lapsed and the explanation given in the affidavit for the delay is unreasonable and unjustified.

- (ii) He is also advised by his counsel that the Tribunal did not err in law and in fact. He further states that the claim was filed after the expiry of the 3-year period outside of the time stipulated in the Act.
 - (iii) The Respondent also submits that the proposed grounds of appeal have no merit, nor does it raise any questions of law to be tried by the Appellate Court. The ruling by the Tribunal is correct as he had applied the leading case on section 13 in the subject matter which has already been decided by the High Court.
 - (iv) The Respondent will be prejudiced if this Honourable Court grants the extension of time to appeal. It will be a miscarriage of justice, and the Respondent will suffer unnecessary costs and inconvenience in the matter to defend an appeal which is doomed to fail anyway.
 - (v) The Respondent refutes the submission of the Appellant that the Act was misinterpreted by the Tribunal. The Tribunal acted and followed the ambit of the Workmen's Act in dismissing the claim. The limitation period for a claim of compensation is 3 years and the Tribunal has justified the reasoning in its ruling while dismissing the claim.
 - (vi) The Respondent maintains that the Grounds of appeal are not meritorious and the application for extension of time should be refused and dismissed with costs.
7. The parties have filed their respective written submissions and supplemented these with oral arguments in Court.
8. The matter was then adjourned for Ruling on the application for leave to appeal out of time.
9. After receiving submissions from both sides, the matter is now adjourned for Ruling on the application to extension of time to appeal out of time.

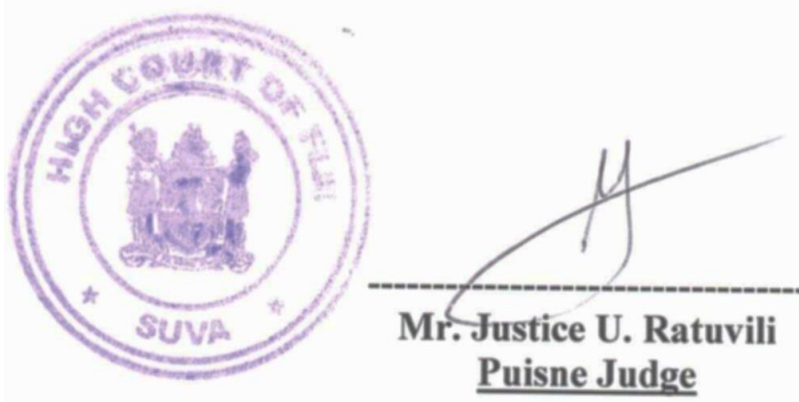
Analysis

10. Under the Workmen's Compensation Act 1964, at section 22 (4), an aggrieved party must appeal any decision of the Tribunal within 30 days, however the High Court may, if it thinks fit, extend the time to appeal.
11. The power to extend the time for appeal is a discretionary power vested in the Court, and the general principles applicable to the same are as follows: -
 - (a) The length and reason for the delay.
 - (b) Prejudice to the party or to the interest of justice.
 - (c) The merits of the application for leave.
12. The Tribunal struck out this claim on the 12th of May 2023 and this application was filed on the 14th of July 2023, a delay of 5 weeks.
13. The reasons given for the delay is that the Dependent was unable to attend to the Appellant for advice and further instructions, as she was heavily pregnant and unwell at that time. Once she attended and was properly advised, the Appellant then filed this application for leave to appeal against the interlocutory order of the Tribunal, striking out the claim for compensation.
14. The Appellant further submits that there are meritorious grounds of appeal, and the Court needs to correct an error in interpretation of the provisions of the application of section 13 of the Workmen's Compensation Act.
15. The Appellant submits that there will be no serious prejudice to the Respondent if the time for appeal is granted, therefore the Appellant proposes that the Court grant leave for extension of time to appeal.

16. The Respondent on the other hand, submits that the application is doomed to fail as the grounds of appeal lack merit. There was no error in law or in fact by the Tribunal and this appeal is doomed to fail.
17. The delay is not justified as the Respondent could have moved in a more timely manner and prosecuted this appeal within the time frame prescribed.
18. The Respondent will be severely prejudiced if this matter proceeds as the law is settled and this will be a futile exercise for the Appellant.
19. The Respondent also filed the following case authorities: -
 - (a) Khan vs Suva City Council [2011] FJHC 272; HBC 406/2008
 - (b) Kelton Investments Ltd and Tappoo Limited vs Civil Aviation Authority of Fiji & another (Civil Appeal No. 34/95)
 - (c) Buddy's Transport & Hiab Trucks Pty vs Selva Nadan (trading as Selva Tours and Transfers) [2023] FJHC 845
 - (d) Shiri Sharma vs Secretary of Labour [1975] 21 FLR 190
20. In ruling on this application, I have considered the facts deposed in the respective affidavits as well as the submissions filed in Court.
21. The delay in filing the appeal is a period of 5 weeks and the reasons given for the delay are set out in the affidavit in support.
22. The Appellant submits that the appeal is meritorious and ought to be heard by this Court as it relates to the proper interpretation of section 13 of the Workmen's Compensation Act.
23. I find that the delay is not inordinate, that the appeal grounds at the very least are arguable and ought to be ventilated before the Court therefore I will exercise my discretion and grant an extension of time to the Appellant.

This is the ruling of the Court: -

- 1. The Appellant is granted leave for extension of time.**
- 2. The Appellant shall file and serve the Grounds of Appeal in 14 days and the matter will thereafter take its own course.**
- 3. Each party will bear their own costs.**



*cc: - Office of the Attorney-General
- Sherani & Co.*