

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action HBC No 76 of 2020

BETWEEN : **JIM MORREL aka JIM MORREL** of Lot 347 Fletcher Road,
Vatuwaqa Suing on his behalf and on behalf of the
beneficiaries of the Estate of Adrian Raymond Morrel,
Retired

PLAINTIFF

AND : **B D LAKSHMAN & SON PROPERTIES LTD** a limited
liability Company having its registered office in Suva in the
Republic of Fiji

1st DEFENDANT

AND : **THE REGISTRAR OF TITLES** having its main office at
Ground Floor, Civic Tower, Suva, Fiji

2nd DEFENDANT

AND : **ATTORNEY-GENERAL OF FIJI** at Level 7, Suvavou House,
Victoria Parade who is being sued as representative of the
Registrar of Titles.

3rd DEFENDANT

Coram : **Banuve, J**

Appearances : Mr Lanyon for the Plaintiff
Ms Choo and Devi for the 1st Defendant
Mr Ram for the 2nd and 3rd Defendants

Date of Hearing : 12th September 2024

Date of Ruling : 25th September 2024

RULING

A. Introduction

1. An Inter Parte Summons for Leave to Appeal Out of Time was filed by the Plaintiff on 10th April 2024 seeking that;
 - (i) Time for giving Notice of Appeal and Grounds of Appeal against the decision of Master Lal on 6th October 2021 in HBC 76 of 2020 be extended.
 - (ii) The Appellant/Plaintiff be granted leave to appeal out of time the judgement delivered on 6th October 2021.
 - (iii) Costs of this Application be costs in the cause.
 - (iv) Any other orders that the Court may deem just and equitable in the circumstances.
2. The Summons was filed pursuant to Order 59, Rules 8-11 of the *High Court Rules* 1988 and the Inherent Jurisdiction of the Court.

B. Background

3. The Writ of Summons, indorsed with a Statement of Claim, was filed in this matter on 26th February 2020, and duly served on the Defendants.
4. A Summons to Strike Out the Plaintiff's Statement of Claim was filed by the First Defendant on 4th May 2020, pursuant to Order 18, Rules 18(1)(a)-(d) of the *High Court Rules* 1988. It was supported by the Second and Third Defendants.
5. In a ruling delivered on 6th October 2021, the Master struck out the Writ of Summons and Statement of Claim pursuant to Order 18, Rules 18(1)(a)-(d), and awarded costs to the Defendants.
6. The Summons for Leave to Appeal Out of Time of the Master, is being filed some 2 ½ years after the Master issued her ruling.

C. The Law

7. Order 59, Rule 9 of the *High Court Rules 1988* governs the filing of appeals against rulings of the Master. The appeal ought to have been filed within 21 days from the date of delivery or order of the Master, in this instance, on or before 27th October 2021.
8. As the Plaintiff did not file the appeal within the time prescribed, an application to enlarge time ought to have been made to the Master pursuant to Order 59, Rule 10(1), before the expiry of the period prescribed in Rule 9. If the appeal was not filed within the prescribed time, the application has to be made to a single judge, thereafter. The Plaintiff has filed the application in this Court, by way of Summons on 10th April 2024.
9. The ruling of the Master of 6th October 2021, was a **final** decision even though it was premised on an interlocutory application governed by Order 18, Rules 18(1) (a)-(d).¹ The Summons seeking enlargement of time from this Court was correctly filed pursuant to Order 59, r. 10, as it governs leave to appeal out of time against a final order.²
10. The issue however that needs to be determined is whether leave ought be granted to the Plaintiff as sought in the Summons and premised on facts deposed in the Affidavit in Support filed, on 10th April 2024.
11. I am grateful to counsels for the submissions they have provided.
12. In written submissions, counsel for the 1st Defendant referred to the Court of Appeal ruling in *Herbert Construction Company Ltd v FNPF* [2010] FJCA 3, which affirmed the nature of the power exercised by the Court in determining whether or not to grant leave to appeal out of time;

“ 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:

¹ *Gay v Resolution Trust Corporation* [2010] FJHC 268; HBA01.2009 (per Calanchini J)

² *Abbc Builders Ltd v Challenge Engineering Ltd* –Civil Case No HBC 76 of 2015 (per Sapuvida J)

- a. *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.*³

13. The Court will address relevant factors to determine whether leave be granted and take into account affidavit evidence provided and the submissions made by the parties.

D. The Reasons for the Delay

14. In the Affidavit in Support for Leave to Appeal, the Plaintiff deposes that the reason for the delay in filing his Notice of Appeal, a period of over 2 ½ years, was that he was undergoing medical treatment in Australia at the time the Master delivered her ruling on 6th October 2021, and that he was unable to contact his lawyers until around 3rd January 2024. In response, the First Defendant deposes that no evidence was provided by the Plaintiff of his visiting a hospital in Australia in mid or end of 2022, and that even if he was literally incapacitated, of which there was no evidence, he was discharged from hospital on 5th January 2022, and there is no record of his ever visiting the hospital, thereafter. There is a report of a day visit to a Medical Clinic in Campbelltown, NSW, on 5th February 2024, however there is no indication whether the Plaintiff had received any treatment in the clinic in the previous years which he alleges he was incapacitated.

On balance, the Court does not find the reasons provided by the Plaintiff as convincing on the grounds for delay, however it will examine other factors to determine whether leave ought to be granted, nevertheless.

E. The Length of the Delay

15. The delay of 2 ½ years is considerable and the explanation provided for it is not convincing, however authorities establish that even in the absence of a reasonable or satisfactory explanation for a substantial delay, it is still necessary to consider whether there is a ground of appeal that will probably succeed, in

³ Per Fernando, J

order to excuse the non-compliance with the Rules-*Pillay v Grey* –Civil Action No HBC 219 of 2013 (4 November 2015),⁴*Mishra v PRA Contractors (Fiji) Co Ltd*-Civil Appeal Miscellaneous 4 of 2013.⁵

F. Merits of the Appeal

16. At this stage, the Court need not go into the merit of the appeal but determine whether the appeal is wholly unmeritorious or unlikely to succeed, and whether there is a serious question for adjudication, as opposed to it being frivolous or vexatious⁶. No Notice of Appeal or Draft Notice of Appeal has been filed by the Plaintiff so that an assessment can be made by the Court on the merit of the appeal proposed.⁷

The lack of a Draft Notice of Appeal is symptomatic of the lax attitude that surrounds the prosecution of the proposed appeal, which the Court finds unacceptable.

17. The only ground of appeal that the Plaintiff proffers by way of affidavit evidence is whether the Registrar of Titles should have permitted the transfer of the estate property to the 1st Defendant. This ground is proffered, almost as an afterthought. It seeks to impose on the 2nd Defendant an extraneous duty to check documents lodged before her for registration. The Court would borrow a persuasive commentary from a neighboring jurisdiction on the role of the Registrar of Titles, on this issue in *Hwang Shu Fen v National Bank of the Solomon Islands* [2011] SBHC 29; HCSI 364 of 2008 (5 May 2011);(para 44);

“ The “duty” of the Registrar is to register documents . That duty must include checking the documents have been duly completed, in the sense that he is bound to check they have been duly completed in accordance with the requirements of the various Acts. As a matter of law, it is not part of his ‘duty’ to go behind the documents presented to him and make all manner of additional enquiries “

⁴ Per Alfred,J

⁵ Per Calanchini P

⁶ *Reddy Enterprises Ltd v Governor of Reserve Bank of Fiji* [1991] FJCA 4

⁷ Mishra at paragraph 16

18. The Court finds that the general appeal ground advanced as being wholly unmeritorious and without any chance of success, to warrant the grant of leave nor, is there a need to evaluate any other factors, given this finding.

FINDING

- (i) **The Summons for Leave to Appeal Out of Time is dismissed.**
- (ii) **Costs are awarded summarily at \$500.00 to the 1st Defendant and \$500.00 to the 2nd Defendant.**



Savenaca Banuve
Savenaca Banuve
Judge

At Suva
25th September, 2024