

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

Civil Appeal No. 1 of 2025

Magistrates Court Appeal No. 11 of 2024
SCT No. 368 of 2024

Edlin Mani

Appellant

Inoke Yacarogovinaka Soqoiwasa

Respondent

Representation: Both in Person.

Date of Hearing: 14th March 2025

Ruling

A. Introduction

- [1] The Appellant in this matter is seeking enlargement of time. The enlargement of time is sought to appeal the Judgment of the Learned Magistrate of 26th September 2024. The Appellant is additionally seeking that Learned Magistrates Judgment be set aside and stayed pending the determination of the appeal.
- [2] The parties agreed to have the matter heard by way of written submissions. They filed written submissions. It has been considered.

B. The Law

- [3] **Order 37** of the Magistrates' Court Rules (MC Rules) deals with civil appeals. In order to appeal the decision of a Magistrate in the High Court an appellant needs to do two things. Firstly, the appellant must file a notice of intention to appeal and then file the grounds of appeal.
- [4] **Order 37 Rule 1** of the MC Rules, which deals with the notice of intention to appeal is as follows: "**every appellant shall within 7 days after the day on which the decision appealed against was given, give to the respondent and to the court by which such decision was given (hereinafter in this Order called "the court below") notice in writing of his or her intention to appeal, provided that such notice may be given**

verbally to the court in the presence of the opposite party immediately after judgment is pronounced.”

[5] In simple terms an appeal of the decision of a Magistrate is initiated:

(i) by giving verbal notice to the Court in the presence of the opposite party immediately after judgment is pronounced, and/or

(ii) by the appellant giving notification in writing to the respondent and the Court within 7 days on which the decision appealed against was given.

[6] Following the verbal notification or filing of intention to appeal the appellant is supposed to within one month from the date of the decision appealed, including the day of such date, file in the Magistrates’ Court the grounds of the appeal and serve a copy of the grounds filed on the respondent.

[7] **Order 37 Rule 3 (1) Magistrates Court Rules**, provides that: **“the appellant shall within one month from the date of the decision appealed from, including the day of such date, file in the court below the grounds of his [or her] appeal, and shall cause a copy of such grounds of appeal to be served on the respondent.”**

[8] The other important rule is **Order 37 Rule 4**, which states that **“on the appellant failing to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit to extend the time.”**

[9] **Order 37 Rule 4** basically states that if an appellant fails to file the grounds of appeal within the prescribed time (which is 30 days), the appellant shall be deemed to have abandoned the appeal, unless the Magistrates’ Court or the High Court shall see fit to extend the time. **Order 37 Rule 4** provides for the enlargement of time and it states that extension of time can be sought for the filing of the grounds of appeal.

C. The Case Laws

[10] In **Katafono v. Brown unreported Civil Action No. HBC 135 of 2014** and **Jans Rental Cars (Fiji) Limited v. Nand and Lutz, unreported Civil Action No. HBM 147 of 2014**, His Lordship Justice Kamal Kumar (as he then was) looked at the issues of leave to appeal out of time. The Rulings were delivered in January 2016.

[11] Justice Kumar was of the view that that under **Order 3 Rule 9** of the MC Rules the High Court and the Magistrates’ Court has jurisdiction and discretion to extend time for filing notice of intention to appeal and grounds of appeal.

[12] **Nand v. Famous Pacific Shopping (NZ) Limited (2010) FJHC 619; Civil Appeal No. 6 of 2009** and **Loks Crane and Contractors Limited –v- Clutch Systems (Fiji) Limited unreported Civil Appeal 31 of 1999 Lautoka** delivered on 17th July 2002, set out the four issues the Court must deal with when it is exercising its discretion in dealing

with the issue of enlargement or leave to appeal out of time. These are as follows:

- (a) the length of the delay,
- (b) the reasons for the delay,
- (c) the merits of the proposed grounds, and
- (d) any prejudice likely to result to the Respondent.

D. Leave to appeal out of time (Enlargement of time)

- [13] I would go over each issue in turn. The first issue is the length of delay. The notice of intention to appeal was to have been filed by 3rd October 2024. The grounds of appeal was to have been filed by 25th October 2024. The notice of enlargement of time was filed on 21st January 2025. The delay is of about 110 days for the filing of the notice of intention to appeal.
- [14] No reasons for the delay are advanced by the Appellant. The Appellant has not explained the reasons for the delay in filing the appeal within the requisite period.
- [15] The Appellant's has 3 proposed grounds of appeal. I have perused the Magistrates records. The matter was dealt with by way of written submissions. The Learned Magistrate made his judgment based on the written submissions. This ground has no merit.
- [16] The Appellant had filed a notice of motion and an affidavit on 25th September 2024. The motion sought that the Respondents submissions be struck out. On 19th September 2024 the Learned Magistrate had directed both parties to file their submissions. The judgment was set for 26th September 2024 at 2pm.
- [17] On 26th September 2024 the Learned Magistrate considered the motion and found that it was filed on 25th September 2024. It was not in compliant with Order 26 Rule 17 of the Magistrate Court Rules. The motion was not served 2 clear days from the assigned hearing date. The Learned Magistrate dismissed the motion. He was correct. This ground has no merit.
- [18] The Appellants affidavit was filed with the motion. The motion was dismissed. The affidavit was dismissed with it. The submissions of the parties which was relevant was considered. This ground also has no merit.
- [18] The Respondent is entitled to the fruits of the judgment. He will be prejudiced if he is not allowed to enforce or bear the fruits of the judgment. Having considered all the factors dealing with the issue of enlargement or leave to appeal out of time. I find that this application should be refused. There is no basis to set aside the judgment or grant stay.
- [19] The Appellant is to pay the Respondent \$250.00 within 30 days. The costs have been summarily assessed.

E. **Court Orders**

- (a) The Appellant application seeking enlargement of time to appeal, to set-aside and stay of the Judgment of the Learned Magistrate dated 26th September 2024 is refused.
- (b) The Appellant is to pay the Respondent \$250.00 as costs within 30 days. The costs have been summarily assessed.

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Chaitanya S. C. A. Lakshman
Puisne Judge

13th May 2025

