

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

Civil Action No. **HBC 98** of **2021**

**BETWEEN:**           **SANGEETA DEVI PRASAD T/AS ALPINE FOREST INVESTMENT** having  
its principal place of business at Lot 87 Laqere, Nasinu, Fiji, Businesswoman.

**PLAINTIFF**

**AND:**               **BASIC INDUSTRIES PTE LIMITED** a duly registered company having its  
registered office at Jai Hanuman Road, Vatuwaqa, Suva, Fiji.

**DEFENDANT**

**BEFORE**        **:**       **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:**       **Ms. Tivao S. for the Plaintiff/Appellant**  
**Ms. Chowdhury M. for the Defendant/Respondent.**

**DATE OF JUDGMENT:** 21<sup>st</sup> August, 2025

**JUDGMENT**

*[Leave to Appeal out of time]*

## **Introduction**

1. The Plaintiff/Appellant filed the Inter-Parte Summons together with an Affidavit in Support for Leave to Appeal out of time and sought for the following orders:
  - (1) That the Plaintiff be granted leave to appeal out of time against the Order of the Master's court [Master Wicramasekra] delivered on 12<sup>th</sup> of February, 2024 in which his Lordship struck out the substantive matter.
  - (2) The cost of this application be costs in the cause; and
  - (3) Such further or other cost other orders as the Court in the circumstances considers appropriate.
2. The application is filed pursuant to Order 59, rule 8, 9, 10 and the inherent jurisdiction of this Honourable Court.
3. Subsequently, the Defendant/ Respondent filed its Affidavit in Opposition and states that it had no contract with the Plaintiff/Appellant nor any order was given for the Plaintiff/Appellant to provide the alleged services.
4. Both parties to the proceedings furnished court with their respective written submissions and orally argued the subject matter of Leave to Appeal out of time.
5. I will not reproduce here the entire written and/or oral submissions on Court Record. However, I will only refer to and or reproduce or highlight only the pertinent parts of the submissions whenever needed to address the pivotal issues. The current application for Leave to Appeal out of time Centres and/or revolves around Order 59, Rules 8, 9 and 10 of the High Court Rules, 1988.

### **Brief background to the substantive matter.**

6. On 25<sup>th</sup> March, 2021, the Plaintiff/Appellant filed legal proceedings against the Defendant/Respondent seeking inter alia judgment in the sum of \$339,315.41.
7. The Plaintiff/Appellant alleged that pursuant to a contract of sale the Plaintiff supplied timber and products such as furniture, kitchen cabinet and doors to the Defendant/Respondent.
8. The Plaintiff/Appellant also claimed to have entered into a contract with the Defendant/Respondent whereby, the Plaintiff/Appellant hired the Defendant/Respondent's trucks for cartage of building materials.

9. The Defendant/Respondent denied having entered into any contracts with the Plaintiff/Appellant.
10. On 12<sup>th</sup> February 2024, the Learned Master in his judgment struck out the Plaintiff/Appellant's substantive matter for Plaintiff/Appellant's non-compliance in moving the matter forward and enforced the Unless Order made on 17<sup>th</sup> October 2023 and to take effect on 12<sup>th</sup> February 2024 or next Mention date in place with 3,000 costs.

### **Determination**

11. The rationale for the Appellant/Original Plaintiff to seek an order for the Leave to Appeal out of time against the order of the Master, delivered on 12<sup>th</sup> February 2024 revolves on the two proposed grounds of appeal:
  - (i) The Learned Acting Master erred in law and in fact in not exercising proper discretion in striking out the Plaintiff's substantive Civil Action No. 98 of 2021 in favour of the Defendant/Original Defendant, effectively bringing proceedings to an end without allowing the Plaintiff to plead substantive case; and
  - (ii) The Learned Master erred in law and in fact in failing to find that there are serious issues to be tried.
12. However, the Defendant's position is that the proposed Grounds of Appeal have no merits as the substantive matter was struck out due to the consistent non-compliance of the Court's orders on the Summons for Direction [Order 34 of the High Court Rules 1988 to enter the action for trial].
13. The Learned Master was justified in dismissing the Plaintiff's substantive action in light of the fact that the Appellant/Original Plaintiff's solicitors consistently failed to comply with the orders made in accordance with the Order 34 Summons for Directions.
14. At paragraph 13, the Appellant/Original Plaintiff puts the blames onto her former solicitors for not providing her proper updates to this matter. The Appellant/Original Plaintiff's own admissions at paragraph 13 and 14 of her affidavit reveals and confirms that she was not happy with the conduct of her former solicitors. What did she do then, about the conduct, If that was so, then she could have either approached and spoken to her solicitors and/or thought of changing counsel. However, she did nothing to ensure proper conduct of her case was in the hands of a responsible lawyer who would have complied with the Court's directions and took the matter for assignment to a judge in terms of Order 34 Summons and subsequently the matter was heard, deliberated upon and determined accordingly, rather than failing to comply with the earlier stages of the Order 34 Directions and having the matter ready for allocation to a Honourable Judge.

15. When any Court of law given directions and Orders then it ought to be coupled with rather than defying the directions tantamounting to non-compliance.
16. In the current case, the Learned Acting Master made the orders on the Summons for Directions on 7<sup>th</sup> March 2023 coupled with Unless Orders intact, extended its compliance from the 17<sup>th</sup> October 2023 and subsequently to 6<sup>th</sup> December 2023 respectively and exercised its discretion in granting further time for the Appellant/Plaintiffs to comply with the said orders.
17. On 12<sup>th</sup> February 2024, the Appellant/Plaintiff was unable to satisfy the Court as to why the order for 'Unless Order' made on 17<sup>th</sup> October 2023 should not be made effective. Hence, the Learned Master was satisfied and found that the Appellant/Plaintiff was not moving the matter forward. The Learned Acting Master was then prompted pursuant to the unless orders made on 17<sup>th</sup> October 2023 that the Appellant/Plaintiff's pleadings are struck out with a cost of \$3,000 and proceedings struck out.

18. **Appeal from Master's Decision [Order 59 rule 8]**

*8(1) "An appeal shall lie from a final order or judgment of the Master to a single judge of the High Court."*

*(2) "No appeal shall lie from an interlocutory order or judgment of the Master to a single judge of the High Court without the leave of a single judge of the High Court which may be granted or refused upon the papers filed."*

19. However, there is a time limit for making an application for Leave to Appeal an Order or Judgment of the Master. In case of a final decision, the timeframe to Appeal is 21 days in accordance with order 59 rule 9 [O 59, R 9].
20. The Master's decision to struck out the Plaintiff's substantive matter was made on 12<sup>th</sup> February 2024 and therefore the timeframe the Appellant/ Plaintiff to Appeal the decision would have expired on 4<sup>th</sup> March 2024. However, the Appellant/Plaintiff's written submissions at paragraph 3 admits that the timeframe to file that Appeal expired on 14<sup>th</sup> March 2024.
21. The Appellant/Plaintiff's failure to file and serve the leave application against the Master's Decision instead prompted her to file and serve an application for Leave to Appeal out of time on 28<sup>th</sup> March 2024 which in fact upon calculation is 23 days after the time of appeal the Master's Decision had expired.
22. Order 59 rule 11 [O 59, r 11] is mandatory that any party who seeks Leave to Appeal an interlocutory order or judgment shall have to make the application within 14 days from the date of the delivery of the order or judgment.

23. However, there is no provision in Order 59 of the High Court Rules for **Extension of time to file and serve application for leave**. Rule 10 provides for **Extension of time for the filing and service** of notice of appeal or cross appeal to be filed under Rule 9 but **does not deal with the leave application**. The omission of provision for **Extension of time for Leave application is therefore deliberate**.
24. Order 59 is a code dealing with all matters relating to this jurisdiction of the Master and for the Appeals from the Master's decision. Thus, the clear intention of order 59 is that its specific provisions are to apply over the general provisions of Order 3 rule 4 of the High Court Rules 1988. In **AG v Howard** [2010] NZCA 58; (2011) 1 NZLR 58, the New Zealand Court of Appeal held:
- "That an appeal against the decision of Human Review Tribunal could not be regularized under another legislative framework when the Human Rights Act 1993 specifically sets out procedural requirements of how an appeal is to be concluded."*
25. The requirements that are necessary under Order 59 rule 11 cannot be fulfilled at a later stage. Then the meaning of these orders and rules would become of no use at all.
26. Therefore, it is very clear that the Summons filed by the Appellant/Plaintiff's to seek Leave to Appeal the Master's order of 12<sup>th</sup> February 2024 is **out of time**.
27. When the application is clearly out of time to seek Leave to Appeal the Master's Decision, this Court is not interested or not required to look into **the merits or demerits of the Decision of the Master**.
28. In the **Herbert Construction Company Limited 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 of Appeal stated:
- "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) *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."*
- (a) **Length of delay**
29. The Appellant/Plaintiff failed to file its Appeal within 21 days, then, further failed to file an application for Extension of time before the Learned Master and after expiry of 21 days in accordance with Order 59 rule 9(a), the current application seeking to file the appeal out of

time is filed after a lapse of 23 days from the expiry of 21 days to Appeal. The delay is rather inordinate.

*(b) Reasons for delay*

30. The contents of the Appellant/Plaintiff's affidavit filed is all along blaming the solicitors' conduct in handling her matter. She had a choice of terminating the current Counsel and seeking other representations to ensure her case was moved forward. However, she did nothing until the current application was filed.

*(c) Chances of succeeding*

31. The appeal does not seem to have any chances of success since the proposed Appeal grounds show no merits.

*(d) Prejudice*

32. The Learned Master extended the compliance period of the orders on Summons for Directions together with the impact of the unless orders in place. Further, time and opportunity was given to the Appellant/Plaintiff's but chose not to move the matter forward.

Therefore, the Defendant would be prejudiced if this Court grants the order sought to Appeal out of time.

33. The case of **Samuela v Linzi Dresses Ltd** [1980] 1 All ER 803 at p 8412, clearly emphasizes that whilst the Court has the discretionary powers to extend the timeframe imposed under an Unless Order, this discretion must be exercised cautiously and with due regards to the necessity for maintaining the principle **that orders are made to be complied with and not to be ignored.**

**In conclusion**

34. The Appellant/Plaintiff's Counsel failed to provide the Learned Master with any reasons for his non-compliance of the Orders granted on the Summons for Directions when he was fully aware that extension opportunities were granted for due compliance otherwise the unless order in place will be enforced against the Appellant/Plaintiff and will result in the substantive matter being struck off.
35. This is exactly what happened herein. The rules are there to be abided by the parties to the proceedings to ensure further movement and determination of the case at hand is maintained rather than act otherwise.

36. If the Appellant/Plaintiff's Counsel carried out the requirements and necessities as per the Learned Master's orders in terms of the Summons for Directions, then after due compliance the matter would have moved further for allocation, hearing and determination by a Judge. This was not the case herein, however, there was non-compliance instead.
37. Therefore, I hold that the Appellants/Plaintiff's application seeking for Leave to Appeal out of time does not succeed even after deliberation on the Grounds of Appeal and is accordingly dismissed.

#### **Costs**

38. The matter proceeded to full hearing on the application seeking for Leave to Appeal out of time with written submissions.
39. It is only just and fair that I order a summarily assessed costs against the Appellant/Plaintiff's in the sum of \$3,500, to be paid within 21 days timeframe.

#### **Orders**

- (i) The Appellant/Plaintiff's application seeking for Leave to Appeal out of time does not succeed and the substantive action is ordered dismissed in its entirety.
- (ii) The Learned Master Decision remains intact.
- (iii) The Appellant/Plaintiff's is ordered to pay a sum of \$3,500 as summarily assessed costs to the Defendant within 21 days time frame.
- (iv) File closed and to be returned to the High Court Registry.

Dated at Suva this 21<sup>st</sup> day of August , 2025.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

CC: Shirley Lavenia Susan Legal, Suva  
Messrs. Neel Shivam Lawyers, Suva