

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

Civil Action No. HBC 193 of 2023

**BETWEEN:**            **PACIFIC ENERGY (SOUTH WEST PACIFIC) LIMITED**

**PLAINTIFF/APPELLANT**

**AND:**                    **AKSHAY AMAR CHAUDHARHY, RAJAN RAHUL CHAUDHARY**  
**and SHARMILA DEVI as Executors and Trutees of the Estate**  
**of RAMENDRA PRASAD**

**FIRST DEFENDANT/RESPONDENT**

**AND:**                    **FARMERS FISH AND CHIPS HOLDINGS PTE LIMITED**

**SECOND DEFENDANT/RESPONDENT**

**AND**                    **MOBIL OIL AUSTRALIA PTY t/a MOBIL OIL (FIJI)**

**THIRD DEFENDANT/RESPONDENT**

For Plaintiff/Appellant                    : Mr Chang. K  
For 1st & 2<sup>nd</sup> Defendant/Respondent   : Mr Pal. A  
For 3<sup>rd</sup> Defendant/Respondent         : Mr Singh. V  
Date of Hearing                                : 24 June 2025  
Before    : Waqainabete-Levaci, S.L.T.T, Puisne Judge  
Date of Judgment                            : 3 October 2025

**J U D G E M E N T**  
**(APPLICATION FOR LEAVE TO APPEAL)**

## **PART A - BACKGROUND**

1. The application before this Court is an application seeking Leave to Appeal the decision of the Honorable Master on 19 August 2024 in which the Master made the following Orders:

(1) On the First and Second Defendant's application filed on 15 February 2024 this action HBC 193 of 2021 is struck out pursuant to Order 18 Rule 18 (1) (d).

(2) The Plaintiff's application for enlargement of time to file statement of claim is dismissed.

(3) The Plaintiff is to pay First and Second Defendants cost summarily assessed at \$1,500.00.

(4) The Plaintiff is to pay the Third Defendant cost summarily assessed

2. Together with their Summons, the Appellant has filed their Affidavit in Support appending a copy of the Draft Notice and Grounds of Appeal they intend to rely upon.

## **AFFIDAVITS**

3. The Counsel working in the law firm acting for the Plaintiff, deposed an Affidavit as they were knowledgeable of the case and was aware of the pending proceedings with access to case files.
4. The Affidavit deposed that action number 193/21 seeking for specific performance against the Defendants, the separate action containing an incorrect form of Writ which gave rise to the second action. In action number 204/21 they seek reliefs for the Supply agreement to remain on foot and remain valid and binding and a claim for liquidated damages of \$1,620,550.19 and an interest of 15% per annum up to the date of judgment and damages for tortious interference of the plaintiffs contractual right with pre and post judgment interest.
5. An application for interim injunction was dismissed on 23 November 2021 and an application for striking out by the Defendant was withdrawn in April of 2022.

6. An appeal was made against the interlocutory decision and is pending before the Court of Appeal.
7. The deponent admitted that HBC 193 of 2021 was a clerical error and that as a result the statement of claim was incorrectly formatted giving rise to the filing a new Writ for HBC 204 of 21.
8. An application for consolidation was also dismissed.
9. On 19 August 2024 Master struck out action 193 of 2021 for abuse of process and did not grant the application for leave for extension of time to file their Statement of Claim. This Masters Orders are the basis for the application for Leave to Appeal.

## **SUBMISSIONS**

10. The Plaintiff submits they rely upon Order 59 Rule (8), (11) and (16) of the High Court Rules empowering the High Court to determine applications for leave to appeal from the Master of the High Court.
11. They also argue that the basis for granting leave to appeal an interlocutory decision is whether the decision was wrong and caused substantial injustice relying on the case of Sambhu Lal Construction (Fiji) Ltd -v- Modern Aluminium & Glass (Fiji) Pte Ltd [2025 FJHC 244; HBC 326.2020 (28 April 2025) which relied on the grounds cited by Justice Mackie in Devi -v-Shah [2024] FJHC 316 where it was held that there need be a wrong and sufficient doubt which caused some substantial injustice before leave is granted. Also where the decision was unreasonable or unjust or demonstrated error <sup>1</sup>or where there was exceptional circumstances.
12. The Plaintiffs argue that the Master failed to apply the authority in Veilave -v- Naicker [2017] FJHC 131; HBC 159.2013 for determining whether or not to grant further time and misinterpreted and misapplied the doctrine of abuse of process when striking out the action. There was also no clear reasoning and referred only to the Justice Levaci's judicial commentary. Reference to Dover District Council -v- CPRE Kent [2017] UKSC 79 in which the Supreme Courts of UK required that judicial decisions must have clear reasoning.

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<sup>1</sup> Neimaan -v- Electronic Industries Ltd [1978] VR 451 cited by Gates J in Prasad –v- Republic of Fiji & Attorney General (No. 3) [2000] FJHC 265; [2000] 2 FLR 81

13. That as a result the decision, the Plaintiff's submitted that it caused wider effects of prejudice by striking out the Plaintiffs application failing to consider the arguments advanced in respect of plaintiff's appeal.
14. The Plaintiff submitted that Master failed to consider that the ruling delivered did not recognize the basic clerical error for which the Court of Appeal had then considered and determined that that there was a meritorious appeal when extending time to appeal.
15. Finally, the Plaintiff referring to VT (by her litigation friend, the Official Solicitor) -v- NHS Cambridgeshire and Peterborough Integrated Care Board [2024] EWHC 294 court has a duty to actively manage its cases of its own initiative or on application and Michelle Hepburn -v- Royal Alexandria Hospital NHS & Glasgow Infirmary [2010] CSIH 71 where it was held that court possesses inherent powers to do what is necessary to maintain character as a court of justice essential in its constitutional function as well.
16. In response the 1<sup>st</sup> and 2<sup>nd</sup> Defendants argued that the test for granting leave to appeal in an interlocutory order was referred to by Pathik J from the case of Bank of Hawaii [1998] FJHC 226 the case of Ex Parte Bucknell [1936] in which there are exceptional circumstances for granting leave.
17. Following on from leave, where appeal is sort, in Kelton Investments Limited & Tappo's Limited -v- Civil Aviation Authority of Fiji and Anr (Civil App 51/95) where there is a real prospect of success. They Defendants argue that the grounds are vague and lack sufficient particulars as was discussed by Callanchini JA in Nasese Bus Company -v- Chand [2013] FJCA 9.
18. In Ground 1, the First and Second Defendants argue that the Plaintiff was unable to identify what prejudice was caused to them and the wider effects of Masters decision nor the test applied by Master that was wrong. For Ground 2, the Plaintiff does not specify how did the Master misinterpreted the tests. For Ground 3, No clear explanation of what the prejudice was and its wider effects. For Ground 4, argued that there was no clear principles of fairness that was omitted by Master as well as how the Plaintiff was prejudice and its wider effects. Defendant argued for Ground 5, the Plaintiff failed to establish how Master erred in implementing costs.
19. The Defendant further argued that the lack of clarity was prejudicial as they were unaware of what was the issue of appeal. Furthermore, there were no prospects of success if leave was granted. The Plaintiff caused inordinate delay in filing their Appeal and there was no proper reasons for the delay.

20. In the Third Defendants submissions, they argue that the Plaintiff has admitted in their Affidavit that it was a clerical error causing the two similar actions to be filed. There is already a ruling finding that the duplicity of an action is an abuse of process. In arriving at the decision to strike out the cause of action, the Master considered the delay of 2 years 5 months which she ruled was an abuse of court process dragging Defendants into interlocutory applications. The appeal in the court of appeal is pending for an action that should have begun correctly by way of 193 of 2021. Hence the allow leave is a duplicity of the original action which was struck out.
21. The third Defendant argued that leave should not be granted as there were no exceptional circumstances.
22. In response the Plaintiff argued that in regards to the grounds of appeal, the Master's ruling was void of these tests nor discussion of the same nor void of reasons for prejudice. They also argued that there were interlocutory applications prior to the application for leave for extension of time, the reason why the application for leave was delayed. In regards to the error, the Plaintiff in reply submits that an error should not be struck out but that consolidation should be done to regularize the error.

#### **PART D: LAW AND ANALYSIS**

23. The right to appeal from a Masters decision is provided for in Order 59 Rule (8), time for appealing is in Rule (9) and extension of time to appeal in Rule (1) of the High Court Rules. It prescribes as follows:

#### ***PART 11 – APPEAL FROM THE MASTER Appeal from Master's decision (o.59, r.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.

***Application for Leave to Appeal (O.59, r.11)***

Any application for leave to appeal an interlocutory order or judgment shall be made by summons with a supporting affidavit, filed and served 14 days of the delivery of the order or judgment.

24. The Plaintiff is seeking leave to appeal against the interlocutory ruling of the Master delivered on 19 August 2024, filed on 2 September 2024, falling within the requisite timeline.
25. In Goundar -v- Ministry of Health [2008] FJCA 40; ABU 0075.2005s (9 July 2008) Byrne JA, Powell JA and Khan JA held that:

[37] This is the position. Where proceedings are commenced in the High Court in the Court's original jurisdiction and the matter proceeds to hearing and judgment and the judge proceeds to make final orders or declarations, the judgment and orders are not interlocutory.

[38] Every other application to the High Court should be considered interlocutory and a litigant dissatisfied with the ruling or order or declaration of the Court needs leave to appeal to that ruling order or declaration. The following are examples of interlocutory applications:

1. an application to stay proceedings;
2. an application to strike out a pleading;
3. an application for an extension of time in which to commence proceedings;
4. an application for leave to appeal;
5. the refusal of an application to set aside a default judgment;
6. an application for leave to apply for judicial review.

26. Hence since this is an appeal against the Masters decision to strike out the application, the Court finds that an application for Leave to appeal was appropriate.
27. The Third Defendant argued that the service was delayed, serving 2 days after the due date of service.
28. The court finds that the delay in service should not render the application for leave to appeal as abandoned. The Court finds that the other Defendants were served on time and hence in accordance with Order 2 rule (1) of the High Court Rules, renders the non-compliance an irregularity but does not nullify the proceedings.

### ***Principles of Leave to Appeal***

29. The principles to determine whether or not grant Leave to Appeal was discussed in Niemann v. Electronic Industries Ltd [1978] VicRp 44; [1978] V.R. 431 at page 441 where Supreme Court of Victoria (Full Court) held as follows:

".....leave should only be granted to appeal from an interlocutory judgment or order, in cases where substantial injustice is done by the judgment or order itself. If the order was correct then it follows that substantial injustice could not follow. If the order is seen to be clearly wrong, this is not alone sufficient. It must be shown, in addition, to affect a substantial injustice by its operation."

30. Taking this into consideration the Court considers the application before it.
31. The Applicant plaintiff seeks leave to appeal the decision of the Master to strike out the Statement of Claim of the Plaintiff. There are 6 grounds the Applicant relies upon. They argue that it was upon the Master to move the Court to exercise its powers in order to properly administer justice.
32. The Applicant Plaintiff further argued that it had at all times admitted there was a clerical error in the form of Statement of Claim. That in making this admissions, they had attempted to consolidate the Statement of Claim with the action before this Court which was not granted.
33. The Applicant Plaintiff argued that they had also applied for leave to extend time for filing the Statement of Claim. It was in making that application that the Defendants sort to strike out the claim for which the Master allowed. Having considered the application and the Grounds of Appeal, the Master had not considered the application for Leave to extend time for filing the Statement of Claim and determined to strike out the matter on the grounds of striking out.
34. The Master in her ruling had stated:

“The Application for extension of time was made on 22<sup>nd</sup> February 2024 a lapse of some 2 years and 5 months, off the time period provided by the rule for service of statement of claim.

15. The First and Second Defendant in HBC 204/21 had filed for striking out on 12<sup>th</sup> October 2021.

16. Yet the Plaintiff had failed to move this court seeking enlargement of time.

17. The action of the Plaintiff is an abuse of court process, dragging the Defendants to make an interlocutory application and/or defend proceedings in both the actions.'

35. The Master had perused the draft Statement of Claim, the application for extension of time to file Statement of Claim and the reasons for doing so. The Master decision rested on the basis of continued inordinate delays, the existence of simultaneously similar Statement of Claims for the same Plaintiff and Defendants which was to her a reason for abuse of process and the refusal of the High Court to consolidate on the basis of an error of the Court.
36. The Plaintiff had relied upon UK SC decisions for ease of reference to support their argument.
37. It is correct that the Courts have a responsibility and duty to provide cogent and appropriate reasoning for their decision. However these reasons must be relevant to the manner in which the decision came about. Not necessary are reasons required to be lengthy and tedious but purposeful and contextual.
38. The Plaintiff had provided cases to the court from UK precedences on the duties of Court to provide reasons which the Court acknowledges.
39. Master of Rolls, Lord Phillips in the case of Peter Andrew English -v- Emery Reimbold & Struck Ltd and DJC Withers (Farms) Ltd -v- Ambic Equipment Ltd and Verrechia t/ Freightmaster Commercials and Commission of Police for the Metropolis [2002] EWCA civ 605 (Appeal from QBD), cited Henry LJ remarks in the case of Flannery -v- Halifax Estate Agencies Ltd [2000] 1 WLR 277 which where it was stated that:

“(1) The duty is a function of due process and therefore of justice. Its rationale has two principle aspects. The first is that fairness surely requires that the parties especially the losing party should be left no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in Ex Parte) whether the court had misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not.

40. Justice of Appeal, Justice Premalatika stated the importance of judicial reasoning in the case of Professional Security Services -v- Labour Officer [2024] FJCA 334; ABU099.2023 (28 November 2024):

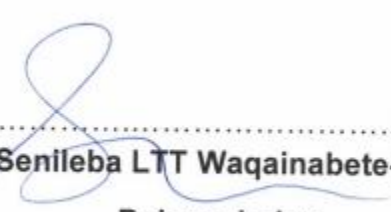
“[38] Therefore, while it goes without saying that the giving of adequate reasons lies at the heart of the judicial process and therefore a duty to give reasons exists, the scope of that duty is not to be determined by any hard and fast rules. Broadly speaking, reasons should be sufficiently intelligible to permit appellate review of the correctness of the decision and the requirement of reasons is tied to their purpose and the purpose varies with the context. A judge’s reasons should not be so ‘generic’ as to be no reasons at all but they need not be the equivalent of a jury instruction or summing-up to the assessors. Not every failure or deficiency in the reasons provides a ground of appeal, for the appellate court is not given the power to intervene simply because it thinks the trial court did a poor job of expressing itself. Where the trial decision is deficient in explaining the result to the parties, but the appeal court considers itself able to do so, the appeal court’s explanation in its own reasons is sufficient. There is no need in that case for a new trial.

[39] If in the opinion of the appeal court, the deficiencies in the reasons prevent or foreclose meaningful appellate review of the correctness of the decision or if the trial judge’s reasons are not sufficient to carry out the mandate of the appellate court *i.e.* to determine the correctness of the trial decision (functional test), the trial judge’s failure to deliver meaningful reasons for his decision constitutes an error of law within the meaning of section 23 of the Court of Appeal Act. However, if no substantial miscarriage of justice has occurred as a result, the deficiency will not justify intervention under section 23 and will not vitiate the conviction or acquittal, for such an error of law at the trial level, if it is so found, would be cured under the proviso to section 23 of the Court of Appeal Act.

41. The Plaintiff referred to Dover District Council -v- CPRE Kent (Supra) which the Court finds is distinguished from the matter before this Court. The Dover (Supra) is a judicial review against the District Councils decision which they argued did not contain any reasons. Decisions by District Councils are totally different from decisions of a Court of Law.

42. Would the master arrived at the same decision if she had rendered to the test for extension of time to file statement of claim? The Plaintiff argues that the principles were not properly laid out nor discussed as to the reasoning. The Court finds there is a miscarriage of justice if the matter were not to be considered on appeal. These are matters pertinent to the Applicant Plaintiffs argument. The Master reasons did not properly analyze the legal context for which she had arrived at her decision.
43. The Court will not go into the particularization of each ground of appeal. However it is sufficient to say at this point that there would be a miscarriage of justice that would be prejudicial to the Applicant/Plaintiff if leave to Appeal is not granted.
44. The principles to grant extension of time weighs out prejudice against the delays for failing to file on time. These principles can also be considered in light of the striking out grounds. The Master hence had failed to take these issues into consideration, more particular when an application for extension of time was upon her.
45. The Applicant Plaintiff also seeks to appeal against Masters Costs orders. The Court finds the assessment was made to arrive at an imposition of costs. The Court is of the view that there are good grounds to appeal against the cost orders.
46. The Court finds that on analysis of the grounds of Appeal, the High Court will be in a position to determine prospects of success.
47. The Court finds that it will grant leave and also award costs at \$500.
48. **The Court Orders as follows:**
- (a) That the application for Leave to Appeal is granted;*
- (b) Costs summarily assessed for the Plaintiff/Applicant at \$500.*



  
Ms. Senileba LTT Waqainabete-Levaci  
Puisne Judge