

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
EXERCISING CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 220 of 2020.**

**BETWEEN** : **HAROON ALI SHAH** Former Barrister & Solicitor of the High Court, was trading as HAROON ALI SHAH Esq, but now of Vuda Point, Lautoka.  
**DEFENDANT- APPLICANT**

**AND** : **SUMAN SHALINI DEVI**, formerly of Razak Road, Lautoka, but now of 130, Kerrs Street, Wiri, Auckland, New Zealand, Resource Manager  
**PLAINTIFF- RESPONDENT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie.

**APPEARANCES** : Ms. Prasad. R- for the Defendant- Applicant.  
Mr. Heritage S. For the Plaintiff- Respondent

**HEARING** : By way of written submissions.

**WRITTEN SUBMISSIONS:** Filed by the Defendant-Applicant on 3<sup>rd</sup> June 2025.  
Filed by the Plaintiff-Respondent on 30<sup>th</sup> July 2025

**DATE OF RULING** : 6<sup>th</sup> November 2025.

**RULING**  
**(ON LEAVE TO APPEAL)**

**A. INTRODUCTION:**

1. Before me is an Application for Leave to Appeal (to the Court of Appeal) preferred by the Defendant ("the Applicant").
2. By the Application filed on 8<sup>th</sup> May 2024 and dated 20<sup>th</sup> May 2024 the Applicant seeks leave to Appeal to the Court of Appeal against my Ruling dated and delivered on 1<sup>st</sup> May 2024.
3. By the said Ruling, this Court refused the Applicant's Application for leave to Appeal to this Court against the Learned Master's ("Master") Ruling dated and delivered on 18<sup>th</sup> October 2023, dismissing the Applicant's Summons for striking out the plaintiffs' action, pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules of 1988.
4. The Application is supported by an Affidavit sworn by the Applicant Mr. Haroon Ali Sha, on 08<sup>th</sup> May 2024 and filed along with his Application. The Application states that it is made pursuant to Rule 26 (3) of the Court of Appeal Rules.

5. The Court of Appeal Act (CAA), section 12 (2) (f) deals with the requirement to seek leave for interlocutory Appeals, while R 26 (3) provides that where an Application can be made either to the High Court or to the Court of Appeal, it must first be made to the High Court. The High Court Rules O 3, R 4 deals with the High Court's power to extend time under the High Court Rule.
6. The Plaintiff- Respondent ('the Respondent') opposes the Application.

**B. The Issues.**

7. One of the threshold questions is whether any leave was required to make a second or renewed Application to the Court of Appeal when the Court below has refused leave to Appeal. Learned Counsel for both the parties were at liberty to address on this threshold issue. But none of them done ~~50~~.

**The Applicant's Submissions in Brief:**

8. The Applicant in his submissions has quoted the Rule 26 (3) of the Court of Appeal Rules, which states as follows;

*Applications to Court of Appeal*

*(3) Wherever under these Rules an application may be made either to the Court bellow or to the Court of appeal it shall be made in the first instance to the Court bellow.*

9. They also, in paragraph B-2 of their written submissions, submit that; *"In terms of section 12 (f) of the Court of appeal Act (CAA) no appeal shall lie without the leave of the judge or the Court of Appeal from any interlocutory Order or interlocutory judgment made or given by a judge of the High Court subject to the exceptions given in sections 12 (f) (i) –(v). Similarly, Rule 26 (3) of the Court of Appeal rules directs that when the High Court has the power to grant the Appellant leave to Appeal to the Court of Appeal, the said application must first be made in the Court bellow".*
10. They submit that there are arguable issues of some importance, which calls for further arguments from both sides leading to an authoritative decision of the Court of Appeal. and that the existence of the arguable issues demonstrates that the test in Rotomould (Fiji) Ltd [2006] FJHC 871 at [19] and in Fiji Public Service Commission [FCA Civil Appeal No. 11 of 1989 at 5). Therefore, they move for leave to appeal my decision dated 1<sup>st</sup> May 2024 by which the application for leave to Appeal against the Master's Ruling dated 18<sup>th</sup> October 2023 was dismissed.

**Respondent's Submissions in Brief:**

11. The Respondent's argument, on the other hand, was that the Ruling of this Court is an interlocutory one and requires leave to appeal. They cite the case Law authorities In **Kelton Investment Limited and Tappoo Limited v Civil Aviation Authority of Fiji and another** [1995] FJCA 15; ABU 0034d.95s (18 July 1995) and in **Niemann v Electronic Industries Ltd.** [1978] vic Rp 44; [1978] V.R. 431 at page 44.

12. I find that the submissions made by both parties are not assisting this Court in determining the question raised by this Court.
13. In the present case, an application for leave to appeal against the Master's ruling dated 18<sup>th</sup> October 2023 was made to this Court within the prescribed time, but failed to serve it within the stipulated time period. The sad Application was dismissed by this Court through my Ruling dated 1<sup>st</sup> May 2024 on the ground of Applicant's failure to serve it within the prescribed time period, and the Applicant was ordered to pay \$2,000.00 costs to the Respondent. However, without prejudice to above, before dismissing so, this Court has also considered the merits of the Grounds of Appeal filed before me on 1<sup>st</sup> November 2023, along with the Summons For Leave To Appeal against Master's Ruling.

**The Decision:**

14. In this ruling, I will concentrate on the threshold question of whether leave by this court is required to Appeal again the decision of this Court made refusing leave to Appeal.
15. It will be noted that there is no right of appeal against a decision granting leave to appeal. The question then arises is as to whether there is a right of Appeal against an order refusing to grant leave to Appeal. I would answer the question in the negative. The reason is as follows: -
16. The CAA, s. 12 (2) (f), states that no appeal shall lie without leave of the Judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a Judge of the High Court.
17. The CAR, R 26 (3), explains how Applications to the Court of Appeal are to be made. It says wherever under these Rules an application may be made either to the court below or to the Court of Appeal it shall be made in the first instance to the court below. Therefore, it is seen that where the High Court refuses an application for leave to appeal, a further application for leave may be made to the Court of Appeal.
18. Hon. Justice Calanchini, then President of the Court of Appeal, in his Lordship's judgment in the case of **Fred Wehrenberg v Sekaia Suluka & Ors, Commissioner of Police, AG and Minister for Justice ABU 99 of 2017** said this (at para 5):

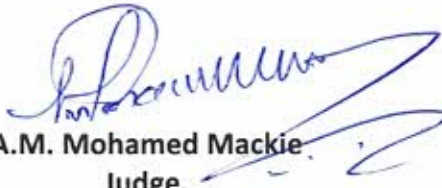
*"Being interlocutory orders, leave to appeal to the Court of Appeal was required from either the court below (i.e., the High Court) or from the Court of Appeal pursuant to section 12 (2) of the Court of Appeal Act 1949 (the Act). Where the court below and the Court of Appeal enjoy concurrent jurisdiction in respect of an application, the application must first be made to the court below under Rule 26 (3) of the Court of Appeal Rules (the Rules). In the event that the court below (the High Court) refuses the application, it may be then renewed in the Court of Appeal. Pursuant to section 20 (1) of the Act a judge of the Court of Appeal may exercise the Court's power to grant leave to appeal and to grant a stay of proceedings to prevent prejudice to the claims of a party pending the appeal."*

## Conclusion

19. I conclude, for the reasons set out above, that there is no right of appeal against a decision made granting leave to appeal. In the same way, there is no right of appeal against the decision refusing to grant leave to appeal. When the court below (the High Court) refuses leave to appeal, the applicant may make his or her renewed or second or further application to the Court of Appeal pursuant to R 26 (3) of the CAR. Such an application can be made without leave of the court below (the High Court) which refused leave to appeal. In other words, leave is not required to make a further application for leave to appeal to the Court of Appeal, where the High Court refuses leave to appeal. Therefore, this application is a misconceived one.
20. I am inclined to follow the decision of Hon. Mohamed Ajmeer -J (as he then was), in *Whittaker v Bank of the South Pacific Ltd [2018] FJHC 635; HBC155.2009 (20 July 2018)*, wherein a similar application before the High Court for leave to Appeal to the Court of Appeal was dismissed.
21. Accordingly, I dismiss and strike out the application in hand with summarily assessed costs of \$500.00 payable to the Respondent by the Applicants within 21 days.

## The Final Orders:

- a. Application of the Defendant -Applicant, seeking for leave to Appeal to the Court of Appeal against the decision of this Court made on 01<sup>st</sup> May 2024, is dismissed.
- b. The Application for stay also dismissed, as no need arises to consider the same.
- c. The Applicant shall pay summarily assessed costs of \$ 500.00 (Five Hundred Fijian dollars) to the Respondent within 21 days.

  
A.M. Mohamed Mackie  
Judge.



At the High Court of Lautoka on this 6<sup>th</sup> day of November, 2025.

## **SOLICITORS:**

**For the Defendant/ Applicant**  
**For the Plaintiff/ Respondent**

**Messrs. Fazilat Sha Legal, Barristers & Solicitors**  
**Messrs. Iqbal Khan & Associates, Barristers & Solicitors**