

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 324 OF 2023

[Appeal of the Acting Master's Ruling
delivered on 27th June 2025 in Civil Action
No. HBC 324 of 2023]

BETWEEN: **SHANICK BUILDING CONTRACTORS PTE LTD**
a limited liability company whose registered **APPELLANT/DEFENDANT**
office is located at Shot 3, Lees trading
Complex, Centrepoin, Suva, Fiji

A N D: **HYBRID AUTO CENTRE PTE LTD** a limited
Liability Company whose registered office **RESPONDENT/PLAINTIFF**
is located at lot 3 Ratu Dovi Road,
Lees Trading Complex, Suva, Fiji

Counsel: Ms. S. Kant for Appellant/Defendant
 Ms. L. Jackson for Respondent/Plaintiff

Date of Hearing: 08th October 2025

Date of Judgment: 21st January 2025

RULING

[Extension of time to file Application for Leave to Appeal]

Introduction

1. The Appellant/Defendant (hereinafter referred to as the Appellant) filed this Inter Parte Summons for Extension of Time (hereinafter referred to as the Summons) on 7 August 2025, seeking the following orders:

i) *The time for filing the Appellant's application for leave to appeal the ruling delivered on 27th June 2025 be extended pursuant to Order 3 Rule 4 of the High Court Rules 1988.*

ii) *The cost of this application is in the cause.*

2. The Summons was supported by an Affidavit of Pradip Prasad, which set out the factual background of this application. The Respondent / Plaintiff (hereinafter referred to as the Respondent) vehemently objected to the Summons. The Respondent filed an affidavit of Shazeel Khan, setting out the Respondent's objections, which was followed by the affidavit in reply by Pradip Prasad. Subsequently, the Court heard the oral submissions of the Learned Counsel for the Appellant and the Respondent. Additionally, the Learned Counsel for the parties filed their respective written submissions. Having carefully considered the respective affidavits and oral and written submissions of the parties, I now pronounce the ruling on this matter.

The Chronological Background

3. It is prudent to set out the chronological background of the proceedings to understand the circumstances in which this Summons was filed. The Respondent issued the writ of Summons, together with the Statement of Claim, against the Appellant on the 25th of October 2023. The Appellant was personally served with the writ and the Statement of Claim on the 2nd of November 2023, which led to the filing of the Affidavit of Service on the 28th of November 2023. As per the relevant Orders of the High Court Rules, the Appellant was supposed to file his acknowledgement of service by the 16th of November 2023 and the Statement of Defence by the 30th of November 2023.
4. The Appellant failed to file the acknowledgement of service within 14 days of the service of the Writ and the Statement of Claim, as required under Order 12 Rule 4. Notwithstanding this failure, the Appellant filed a document, "Notice of intention to defend", on 27th November 2023. The Appellant further failed to file the Statement of Defence within the time limit stipulated under Order 18 Rule 2. Consequently, the Respondent filed an Ex Parte Summons

for leave to enter an Interlocutory Judgment against the Appellant under Order 19 Rule 6 on 18th January 2024. Meanwhile, the Appellant filed the Statement of Defence on 26th January 2024.

5. On 14 March 2024, the Learned Acting Master struck out and dismissed the Appellant's Notice of Intention to Defend and the Statement of Defence and entered an interlocutory judgment against the Appellant. Thereafter, the Appellant issued a Summons seeking an order to stay the execution of and to set aside the Interlocutory Judgment entered by the Learned Acting Master on 14 March 2024. The Learned Acting Master held a hearing, allowing both the Appellant and the Respondent to present their respective factual and legal arguments, and then delivered his ruling on 27 June 2025, refusing the Appellant's Summons to stay the execution of and set aside the Interlocutory Judgment.
6. Aggrieved by the Learned Acting Master's ruling, the Appellant filed a Summons on 15 July 2025, seeking leave to appeal against the ruling, together with an Affidavit in Support. The Summons was accompanied by a Summons for a stay of execution of the Learned Acting Master's ruling. On the 6th of August 2025, the Learned Counsel for the Appellant applied to withdraw the two Summons, which the Court allowed. Subsequently, on the 7th of August 2025, the Appellant filed this Inter Parte Summons for Extension of Time, seeking the orders outlined above.

Order 3 Rule 4 & Order 59 of the High Court Rules

7. Having outlined the chronological background of the proceedings, I will now briefly discuss the procedure for appealing to the High Court against the orders and judgments of the Master of the High Court.
8. Order 59, Rules 8 to 17, set out the procedure for appealing the Master's decisions. The appeal process comprises two distinct procedures, viz., one for appeals from the Master's final orders and judgments, and the other for appeals from the Master's interlocutory orders and judgments. An appeal against the Master's interlocutory orders and judgments must first obtain leave of the High Court. As set out under Order 59, Rule 11, an application for leave to appeal must be filed in the High Court and served within 14 days of the Master's

interlocutory order or judgment. Once leave is obtained, the appeal must be filed and served in the High Court within 7 days of the order granting the leave. (*see: Order 59 Rule 9 (2)*)

9. Although Rule 59 Rule 10 has provided the procedure for seeking an extension of time to file an appeal against the final orders and judgments of the Master, it has not expressly provided such a procedure for extending the time to file an application for leave to appeal against interlocutory orders and judgments of the Master. The Courts in Fiji have, thus, found assistance from Order 3 Rule 4 of the High Court Rules so as to deal with such an application seeking an extension of time to file an application for leave to appeal against such interlocutory orders and judgments of the Master. (*see: Veilave v Naicker [2017] FJHC 131; HBC159.2013 (17 February 2017), Costerfield Ltd v Denarau International Ltd [2018] FJHC 55; HBC214.2012 (7 February 2018), Mishra Prakash & Associates v Nagan Engineering (Fiji) Ltd [2018] FJHC 198; HBA001.2010 (19 March 2018)*).

10. Having carefully considered the series of judicial decisions made under Order 3 Rule 4 on whether to extend the time to file an application to leave to appeal against an interlocutory order or a judgment of the Master, the main factors the Court needs to take into account are:
 - i) The length of the delay,

 - ii) The reasons for the failure to file within time,

 - iii) Whether there is a ground of merit justifying the Appellate Court's consideration,

 - iv) Whether there has been a substantial delay, nonetheless, is there a ground of appeal that will probably succeed?

 - v) If the time is extended, will the Respondent be unfairly prejudiced? (*see: Veilave v Naicker [2017] FJHC 131; HBC159.2013 (17 February 2017), Costerfield Ltd v Denarau International Ltd [2018] FJHC 55; HBC214.2012 (7 February 2018), Mishra Prakash & Associates v Nagan Engineering (Fiji) Ltd [2018] FJHC 198; HBA001.2010 (19 March 2018)*)

The length and the Reasons for the Delay

11. In this matter, the Learned Acting Master delivered his ruling on the 27th of June 2025, and this Inter-Parte Summons for Extension of time was filed on the 7th of August 2025, nearly 27 days after the expiry of the stipulated time prescribed under Order 59 Rule 11. As per Order 59 Rule 11, the Appellant was required to file the application for leave to appeal on or before the 11th of July 2025. The Appellant initially filed a Summons seeking leave to appeal on the 15th of July 2025, which was later withdrawn. The withdrawn Summons, filed on the 15th of July 2025, indicated the Appellant's intention to appeal against the Learned Acting Master's ruling, although it was still out of time by 3 days.
12. In this Summons, the Appellant sought only an order for an extension of time to file the application to leave to appeal, and no order for leave to appeal was sought if the extension is granted. The Learned Counsel for the Respondent raised an issue, arguing that the delay continues because no such order for leave to appeal has yet been sought. I do not wish to delve deeply into this issue, but I find, adopting a more liberal and favourable approach to the Appellant, that seeking an extension of time indicates the Appellant's intention to file an application to leave to appeal if the extension is granted.
13. It appears that the Appellant expressly indicated to the Court and the Respondent the intention to file an application for leave to appeal against the ruling of the Learned Acting Master on 15 July 2025 by filing a summons for leave to appeal, which was out of time by 3 days under Order 59, Rule 11. The sole purpose of withdrawing the said summons was to issue a new summons seeking an extension of time to file the application for leave to appeal under Order 3, Rule 4, as the withdrawn summons was out of time by three days. Hence, the delay in filing the application for leave to appeal is only 3 days if the Court grants the extension. This confusion should have been easily avoided if the Learned Counsel for the Appellant had at least taken a moment to properly read Order 59, Rules 8 to 17, before initiating the filing of the documents at the Registry.
14. The Appellant's affidavit in support asserted that the delay arose from confusion about the nature of the Learned Acting Master's ruling, specifically whether it was a final order or an

interlocutory ruling. Ultimately, the Appellant and the Appellant's Counsel believed it was a final order; accordingly, they believed the correct procedure was to file a Notice of Appeal within 21 days of the ruling. However, I find this assertion untenable, as the Appellant filed a summons to leave to appeal on the 15th of July 2025, rather than a Notice of Appeal, if the Appellant believed the ruling was a final order. The Learned Counsel for the Appellant responded during her oral submissions, stating that it was her mistaken belief that any appeal against the Master's ruling, whether final or interlocutory, required leave to appeal (*see: page 39 of the proceedings dated 3rd September 2025*). I am at a loss to understand how a qualified lawyer failed to comprehend the Order 59 rules 8 to 17, which do not set out the appeal procedure in convoluted legal language.

The Proposed Grounds of Appeal

15. I shall now consider whether there are any merits to justify the Appellate Court's consideration. The Appellant tendered the following proposed grounds of appeal as an annexure to the Affidavit in Support:

- i) *That the Learned Master erred in both law and fact in failing to give due weight to paragraph 6 of the judgment, wherein the Court found that there was no merit in the Plaintiff's position regarding variation claims a finding which directly supports the existence of a meritorious defence.*
- ii) *That the Learned Master erred in applying the principles from Evans v Bartlam and other authorities by placing undue emphasis on procedural irregularities rather than determining whether the Defendant's pleadings disclosed triable issues, which is the core test for setting aside default judgment.*
- iii) *That the Learned Master erred in concluding that no explanation was provided for the late filing of the Defence and Counterclaim, when the Defendant's position was clearly that the Defence had already been filed and accepted by the Court Registry, and the application was for reinstatement, not permission to file anew.*

- iv) *That the Learned Master erred in stating that no draft Statement of Defence was annexed, when this was unnecessary the Defendant was not seeking leave to file a proposed pleading, but reinstatement of pleadings already filed and served.*

- v) *That the Learned Master erred in proceeding with the Plaintiff's application on an ex-parte basis despite the Defence and Counterclaim being on record. The application ought to have been converted to an inter partes hearing, and failure to do so resulted in a denial of natural justice and prejudice to the Defendant.*

- vi) *That the Learned Master erred in both law and procedural fairness by refusing to consider the judgment in Civil Action No. HBE 09 of 2023, despite the fact that it was the Master himself who specifically directed the Defendant during the Hearing to make further submissions on that very judgment. The Defendant complied with the direction and filed submissions on 21 May 2025 annexing the full ruling. It is therefore contradictory and procedurally unfair for the Master to later disregard the judgment on the basis that it was not filed by affidavit, when it was the Court's own direction that invited submissions on it. If the Master considered the judgment irrelevant or inadmissible, he ought not to have directed submissions on it in the first place. The Defendant was misled as to the scope and effect of the Court's instructions, and this denial of fair process materially affected the outcome.*

- vii) *That the Learned Master erred in finding that the Plaintiff would suffer irreparable harm if the judgment were set aside, when no specific evidence of prejudice or detrimental reliance was provided by the Plaintiff.*

- viii) *That the Learned Master erred in both law and fact by focusing disproportionately on criticizing Counsel for the Defendant, making adverse remarks and attributing procedural failings to "unlawful and irregular conduct" without any evidence. These comments were not supporting by affidavit, were related to substance of the application, and amounted to*

unfounded judicial commentary. The proper focus of the Court should have been on the merits of the Defendant's application, not personal allegations made against legal representatives. This diversion led to a failure to fairly assess the actual relief.

- ix) *The Appellant reserve the right to amend her grounds of appeal or file new grounds of appeal once the Court record is issued,*
16. The Learned Counsel for the Respondent, in her written submissions, addresses in detail the merits of the eight proposed grounds of appeal. However, the Learned Counsel for the Appellant took no trouble to provide such detailed submissions outlining the merits of the proposed grounds of appeal. Instead, the Learned Counsel for the Appellant, in two brief paragraphs, stated that the Appellant has meritorious grounds of appeal and then referred to the judgment of Amaratunga J in **Hybrid Auto Centre Pte Ltd v Shanick Building Contractors Pte Ltd** ([2025] FJHC 387: HBC 324.2023 (27 June 2025)), stating the finding that the Respondent owes \$7500 to the Appellant. Such a practice, adopted by the Learned Counsel for the Appellant, neither assists the Court nor protects the interests of the client the Learned Counsel represents.
17. Four proposed grounds of appeal, i.e. 1, 2, 4 & 6, relate to the contention that the Learned Acting Master erred in law and fact in determining that there was no meritorious or arguable defence presented by the Appellant. The central flank of the Appellant's argument before the Learned Acting Master was the dispute identified by Amaratunga J in **Hybrid Auto Centre Pte Ltd v Shanick Building Contractors Pte Ltd** (*supra*), which involved the Appellant and the Respondent. In that matter, the Respondent initiated proceedings to strike out the statutory demand sent by the Appellant regarding one of the invoices issued by the Appellant on the 11th of January 2023, which the Respondent declined to pay. In his judgment, Amaratunga J found a dispute between the parties regarding the payments and also acknowledged the existence of variations to the original building contract.
18. As stated in the Writ of Summons, both parties had agreed that any variation to the works would be on terms mutually agreed by the parties, and that the Appellant must give the Respondent an estimated extension of time to complete the construction. Paragraphs 10, 11,

and 12 of the dismissed and expunged Statement of Defence, produced before the Learned Acting Master as an annexure to the Affidavit in Opposition of Mr. Abdul Shekeb (The Respondent's Affidavit) during the hearing of the Summons to set aside the Interlocutory Judgment, state that the parties discussed a variation on 11 January 2023 that required further time to complete the construction, and that a dispute arose thereafter.

19. In his ruling, the Learned Acting Master refused to consider or give weight to the judgment of Amaratunga J, on the basis that the Appellant failed to set out in an affidavit the issues discussed and held in that judgment (*see paragraphs 31-33 and 52 of the ruling*). The existence of a meritorious or arguable defence is one of the central considerations the Court takes into account when determining whether to set aside a default judgment (*see: Evans v Bartlam (1937) 2 All ER 646, Fiji National Provident Fund v Datt [1988] FijiLawRp 14; [1988] 34 FLR 67 (22 July 1988), Wearsmart Textiles Ltd v General Machinery Hire Ltd [1998] FJCA 26; ABU0030U.1997S (29 May 1998)*). It appears that the Learned Acting Master held the view that the party seeking to set aside such a default judgment must present evidence of the existence of a meritorious or arguable defence only by affidavit. Thus, it appears to be an arguable ground of appeal whether the Appellant could establish the existence of a meritorious or arguable defence in other ways besides presenting an affidavit.
20. One of the orders the Appellant sought in the Summons for a stay of execution and the setting aside of the order granted on 14th March 2024 was to reinstate the Statement of Defence filed on 26th January 2026. It appears that, although the Learned Acting Master extensively discussed the legality and irregularity of the filing of the said Statement of Defence in contravention of the High Court Rules, he did not address whether to grant the order of reinstatement.
21. Despite the unsatisfactory explanation for the delay, I am significantly persuaded by the length of the delay, which was three days, and by the arguable grounds of appeal outlined above, to conclude that any prejudice that might be caused to the Respondent by granting an extension to file an application to leave to appeal could be compensated by imposing costs.

22. In conclusion, I make the following orders.

- (I) The Inter Parte Summons for an Extension of Time is allowed.
- (II) The Appellant is granted leave, subject to the order III below, to file and serve an application for leave to appeal within seven days of this order.
- (III) The Appellant must pay the Respondent costs of \$3000, summarily assessed before filing an application to leave to appeal, as set out in the preceding order.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

.....
Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

21st January 2025

Solicitors

Crown Law for Appellant/Defendant.

Jackson Bale Lawyers for Respondent/Plaintiff.