IN THE SUPREME COURT OF FIJI
[APPELLATE JURISDICTION]

CIVIL PETITION NO. CBV 0005 of 2024
[Court of Appeal No. ABU 0029 of 2023]

BETWEEN	:	**RITESHWARAN REDDY**
		Petitioner
AND	:	**RANJNI RANJITA REDDY**
		Respondent
Coram	:	**The Hon. Justice Salesi Temo, President of the Supreme Court** **The Hon. Justice Anthony Gates, Judge of the Supreme Court** **The Hon. Justice Brian Keith, Judge of the Supreme Court**
Counsel	:	**Mr. M.H.M. Ajmeer and Ms. V. Cava for the Petitioner**
	:	**Mr. R. Charan for the Respondent**
Date of Hearing	:	**13 October 2025**
Date of Judgment	:	**30 October 2025**

JUDGMENT

Temo, P:

[1] I agree with His Lordship Mr. Justice Gates' judgment and conclusions.

Gates, J:

[2] On 7th March 2024 the single judge in the Court of Appeal refused enlargement of time for the notice of appeal to the Court of Appeal to be filed from a decision of the High Court.

[3] This being a civil proceedings further appeal could only be made by way of petition to the Supreme Court. A petition was accordingly lodged in the Supreme Court registry on 19th April 2024.

Background facts

[4] The petitioner sued his sister the respondent. Their father Bal Reddy died on 2nd November 2016. The petitioner claims his father had made a will on 7th October 2016 [the 2016 will] in which the petitioner was the sole beneficiary, executor and trustee of the estate.

[5] But on 20th March 2017 the respondent had obtained a grant of Letters of Administration for an earlier will dated 15th August 2013 [the 2013 will]. The testator had appointed one Anirudh Prasad to be the executor and trustee.

[6] On 5th November 2019 the petitioner filed a writ of summons and statement of claim against the respondent in the Lautoka High Court. He sought amongst other orders the revocation of the original grant of probate to the respondent and instead a grant of probate to himself (now the petitioner) for the 2016 will.

[7] The trial took place over 2 days. The petitioner gave evidence and called one Ropate Tuigunu, a solicitor's conveyancing clerk, who said he had been the attesting witness to the 2016 will. The respondent herself gave evidence and called 3 witnesses. On 22nd February 2023 the trial judge delivered his judgment rejecting the petitioner's claim for the 2016 will. Instead the judge pronounced the validity of the 2013 will.

Application for enlargement of time in the Court of Appeal

[8] The application was brought before the single judge in the Court of Appeal seeking an enlargement of time within which the appeal could be filed. It was sought pursuant to section 20 of the Court of Appeal Act and Rule 27 of the Court of Appeal Rules. Such applications are brought by summons with a supporting affidavit.

[9] The single judge took into account several factors applicable to this case usually considered in these applications. The factors were set out in ***NLTB v Khan*** [2013] FJSC1; CBV0002.2013 (15 March 2013). They were:

> *"(a) The length of the delay.*
> *(b) The reason for the failure to file within time.*
> *(c) Whether there is a ground of merit justifying the appellate court's consideration or where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? and;*
> *(d) If time is enlarged, will the Respondent be unfairly prejudiced."*

Length of Delay

[10] The appeal was filed 12 days after the appeal period of 6 weeks from the date of the impugned judgment had expired [Rule 16 (b) Court of Appeal Rules]. This was not a particularly long delay but even such a delay could prejudice the respondent's rights, and the finalising of the property interests each held from the grant of probate already made for the 2013 will.

[11] The single judge referred to other cases. Leave had been rejected in ***Latchmi v Moti*** [1964] 10 FLR 138 [47 days] and even in ***Avery v No. 2 Public Service Appeals Board and Others*** [1975] 2 NZLR 86, where the delay was only 11 days. As was said in ***Avery*** the whole history of the matter must be considered when deciding whether leave should be granted for the appeal to proceed. Similarly, in ***NLTB v Khan*** it was said at paragraph 30 *"every case turns on its own special facts, though the principles for approaching such applications remain the same and all must be weighed".*

[12] In ***Fiji Industries Ltd v National Union of Factory and Commercial Workers*** [2017] FJSC 30; CBV0008.2016 (27 October 2017) Keith J had said:

> *"25. The bottom line here is that each case should be considered on its facts, with none of the factors which the court is required to take into account trumping any of the others. Each factor is to be given such weight as the court thinks appropriate in the particular case. In the final analysis, the*

court is engaged on a balancing exercise, reconciling as best it can a number of competing interests. Those interests include the need to ensure that time limits are observed, the desirability of litigants having their appeals heard even if procedural requirements may not have been complied with, the undesirability of appeals being allowed to proceed which have little or no chance of success, and the prospect of litigants who were successful in the lower court having to face a challenge to the decision much later than they could reasonably have expected."

[13] That broad approach to the usual factors to be considered was further confirmed and applied in ***Naidiri v Taleniwesi*** [2025] FJSC 7; CBV0022.2023 (30 April 2025).

The reason for the failure to file within time

[14] The single judge noted that the principal reason for the delay according to the petitioner was the fault of his counsel. Counsel had been provided by the Legal Aid Commission [LAC]. The petitioner claimed that the judgment had not been explained to him, and that he was not informed of his right to appeal.

[15] The petitioner's affidavit contained several errors. It stated:

"9. THAT after the ruling the Legal Aid Commission and neither my trial counsel informed me of the meaning of the Judgment and my right to appeal and the time frame of appeal.

10. THAT I was confused and relied on the legal expertise of the Legal Aid Commission to guide me with the appeals procedures and process.

11. When the Legal Aid Commission was not assisting, I requested the documents, and the Commission only delivered the High Court pleading and documents to my new Counsel on the 12 April 2023 at 2.30pm.

12. THAT my current counsel made an attempt to file the appeal on the 6th of April 2023 in the Court of Appeal but was informed by the Court of Appeal registry that the appeal should have been filed on the 11th of April 2023.

13. THAT the current Counsel had no option but to file leave out of time of delay of one day in filing the appeal.

14. THAT the reason for delay is since Legal Aid Commission failed to deliver the file on time and failing to advise me properly of my right to appeal the High Court decision."

He said the LAC did not assist him, and delayed handing over the file to his new counsel. The delay meant a delay in his studying the file, and in being able to discuss it with his counsel.

[16] Paragraph 12 has confusing and mistaken dates.

[17] The single judge commented:

> *"18. The appellant, is an electrician by profession and would have the appropriate level of education, to be aware of the right of a litigant to access the Court. He had challenged the validity of his late father's 2013 Will and while I am not presuming that he would have been aware of his right to appeal, if he was dissatisfied with the High Court findings, he would have, as an interested and educated person, been curious to find out firstly the Court's decision and its effect on his personal interests, and secondly on how to challenge the Court's findings, if he was dissatisfied with it."*

[18] The explanation given by the petitioner is vague and unsatisfactory. Much more was needed to have been deposed to in the affidavit. He would, or should, have been greatly assisted in the task by his new solicitor.

[19] In ***Minister of Tourism and Transport v Tower Insurance (Fiji) Ltd and 3 Others*** (unreported) Civil Appeal ABU0032.01 12th November 2001 Byrne J gave some guidance on what condescending to particulars might entail [page 5-6]:

> *"Has there been a satisfactory explanation for this delay? In my judgment there has not. I consider the affidavit of A.S. deficient in many relevant respects of which I consider some to be the following:*
>
> *(1) The affidavit does not say who put the file away in the filing cabinet.*
>
> *(2) Nothing is said of what became of the Memorandum and the Ruling.*
>
> *(3) Nothing is said about whether the Solicitor-General's office has a system of maintaining diary notes.*
>
> *(4) Nothing is said about who is responsible for maintaining records. If there is any such person no explanation is given as to how and why the practice was overlooked in this case.*

(5) Nothing is said as to how the oversight or misunderstanding was brought to the attention of A.S.

(6) What prompted him to make enquiries with the Registry only on the 8th of June 2001? Why had he not previously made such an enquiry?"

[20] The petitioner has not disclosed whether he was present when judgment was delivered, or when he spoke to his counsel about the judgment, its effect, and what action or appeal could be taken. Did he return to see his counsel at the LAC Office? When did he request the documents? When did he engage another solicitor? Did he sign an authority for his new solicitor to obtain the documents from the former solicitor?

[21] The single judge did not regard the petitioner's explanation as adequate. That conclusion was understandable and correct.

Merit of the appeal

[22] The petitioner had bought his action to court. It was his burden to prove the validity of the will he produced, the 2016 will, and thereby to establish the basis for the revoking of the 2013 will.

[23] There were reasons of substance, which taken together, provided the foundation for the judge's conclusion that the 2016 will had not been proven. The first of these was the failure by the petitioner to provide the court with the original will. An Examiner of Questioned Documents will only be able to verify a signature on an original document. The failure to exhibit this most important document in a probate case undermined the petitioner's case. Its absence was explained by the petitioner in two conflicting accounts. In his Affidavit of Testamentary Scripts [paragraph 11] the petitioner deposed that the original will was with the Principal Probate Registry, but in cross-examination during the trial he stated that he had the original at home. He never explained why the original was not exhibited as part of his case. It clearly could have been. Why was it not produced? Adverse inferences could properly be drawn from the failure to produce, and from the failure to explain why it was not produced.

[24] The respondent had said that there had been a third will made by the testator, that was in 2007. She said the petitioner knew that will had been revoked, and that the 2013 will was made to replace it. By the 2013 will, the petitioner had to comply with certain conditions first and then he was entitled to a share of the estate property. The testator had reduced the petitioner's share in the estate she said because the petitioner had not been helping the testator as he became old and sickly.

[25] The petitioner accepted the execution, contents and existence of the 2013 will. It was not disputed. The respondent said the 2016 will only came to light in 2018, after eviction proceedings had been instituted against the petitioner, when he found the 2016 will in a drawer. He would therefore have thought, after the testator's death, that the property was to be administered in accordance with the 2013 will.

[26] The petitioner's witness was a solicitor's clerk. He drew up the testator's will of 2016, which the petitioner sought to prove as valid. That witness said he witnessed the signing with one priest, Govind Lal. The clerk said the petitioner had informed him subsequently that "Govind Lal is now dead". No documentary evidence was produced to prove that Mr Lal had indeed died, and therefore that that witness was no longer available to prove the proper execution of the 2016 will by the testator.

[27] No document was produced, such as an instruction to act, with details of what the testator wanted to be included in the new will, prior to its drafting and perfection.

[28] Evidence was given by the respondent as to why the petitioner had been given a lesser share of the estate property by the testator in the 2013 will. In contrast, no evidence was given by the petitioner as to why the respondent should have been completely excluded from the 2016 will.

[29] The judge found there was insufficient evidence produced by the petitioner for the court to arrive at a firm conclusion that the deceased had in fact visited the solicitor's office on 7th October 2016 to give instructions for the preparation of the purported will. The

respondent's witness Rajinesh Chand said he took the testator for a check-up at the hospital that same day. This was just 25 days prior to the testator's death on 2nd November 2016. The testator was partially paralysed at the time, confined to a wheelchair, and assisted by a close family member. After attending the clinic and obtaining necessary medicines prescribed, the testator was taken home in the afternoon. Mr Chand's evidence was that he had remained with the testator for the rest of the day. It is unlikely that the petitioner's father would have disinherited his daughter and left everything to the petitioner and then not informed the petitioner of this change. The solicitor's clerk who drew up the 2016 will would surely have informed the new beneficiary of the change also.

[30] None of the grounds reached the standard required in the opinion of the single judge, that of a ground of merit. I give two examples of the grounds:

> *"2.* ***THAT*** *the learned Judge had failed to assess the evidence adduced including the need to have required the assistance of an expert witness before he reached the conclusion that the impugned last Will was a forgery.*
>
> *3.* ***THAT*** *the learned Trial Judge erred in law and in fact by holding that the Will dated 7th October 2016 is not proved by relying on the respondents/defendant's unproven allegation that there are "grey areas around the purported Will of 7th October 2016" when what where the grey areas affecting the Will was never particularised in the Statement of defence or Counter-claim or any evidence was led at trial."*

Ground 2

[31] Since the petitioner failed to provide the original will in this case there would have been no point in the judge calling for an expert witness on the genuineness or otherwise of the signature.

Ground 3

[32] This ground misunderstands the burden of proof. Since probate had already been obtained on the 2013 will, it remained for the petitioner at trial to prove the validity of the 2016 will.

To speak of "unproven allegations", places a burden on the respondent to prove the invalidity of the 2016 will. It was for the petitioner to prove the validity of the will, the 2016 will he sought to propound. This ground clearly lacks merit.

[33] There is no need to canvass the other grounds which the single judge found lacking in merit and which had very little chance of success. The judge was right to arrive at that view.

Prejudice to the respondent

[34] The single judge had this to say on prejudice:

> *"25. The Grant of Probate for the administration of the estate of Bal Reddy to his daughter, the Respondent, was made on 20 March, 2017 almost 7 years ago. The Appellant filed his Writ challenging the Grant, almost 18 months later.*
>
> *26. According to the Appellant, he was only made aware of the Grant, much later, when the Respondent, his sister and the Administrator of the estate, began discussing with him the distribution of the estate. This is hardly a valid reason or excuse, given the length of time it had taken for him to challenge their father's Will and even more so, knowing that the Appellant himself admitted that he was aware of the existence of the 2013 Will and its contents.*
>
> *27. This Court is satisfied that a further delay to the orderly administration of the estate of the deceased Bal Reddy would greatly prejudice the Respondent and her rights and interests given the length of time that has elapsed since the Grant. In any event the Appellant is also a beneficiary to the estate, subject to certain conditions being met by him."*

[35] The testator died in 2016, now almost 9 years ago. The estate is still to be finalised. If the petitioner fails to meet the conditions that he must fulfil, if he is to share in the gift to him in the 2013 will, the eviction proceedings will no doubt continue. But the delay in the proceedings here has not caused significant prejudice to the respondent.

[36] The application to this court to overturn the decision of the Court of Appeal refusing enlargement of time within which to appeal to that court, does not meet any of the requirements of section 7 (3). No far reaching question of law is involved. This case does not raise a matter of great general or public importance, nor is it otherwise of substantial

general interest to the administration of civil justice. Special leave is refused, and the petition is dismissed. The petitioner must pay the respondent $2,000 costs.

[37] The petition to this court was lodged on 19th April 2024, the Court of Appeal's decision being delivered on the 7th March 2024. The petition to the Supreme Court was therefore filed out of time. The solicitors have failed to lodge their petition within time, and there has been no application for an enlargement of time. The error was mentioned by the respondent's counsel, with no comment coming from the petitioner's counsel. The petition and affidavit in support are to be served on, "all parties to the proceedings who are directly affected by the petition and such service to be effected within the same 42 day period fixed for lodgement of the petition", at the Court Registry [Rule 5 Supreme Court Rules 2016]. Service on the respondent was 4 days late. In view of the fact that the petitioner was seeking indulgence for being out of time with his appeal from the High Court, the petitioner or his solicitors ought not to have allowed their petition to be out of time in the further appeal from the Court of Appeal decision. Strictly speaking, because the petitioner is out of time, and has not applied for enlargement, the petition proceedings are not before us. As a matter of caution though, we have considered the petition on its merits.

Keith, J:

[38] I agree with the judgment of Gates J which I have read in draft. There is nothing I can usefully add.

Orders of the Court:

1. *Special leave refused.*
2. *Petitioner to pay the respondent $2,000 costs.*

The Hon. Justice Salesi Temo
President of the Supreme Court

The Hon. Justice Anthony Gates
Judge of the Supreme Court

The Hon. Justice Brian Keith
Judge of the Supreme Court

Solicitors:

S. Nand Lawyers for the Petitioner
Ravneet Charan Lawyers for the Respondent