

IN THE COURT OF APPEAL AT SUVA
CIVIL JURISDICTION

Civil Appeal No. ABU 0014 of 2006
High Court Civil Action No. HBC 576/05

BETWEEN : VODAFONE FIJI LIMITED

Appellant

AND : MINISTER FOR INFORMATION, COMMUNICATIONS
AND MEDIA RELATIONS

First Respondent

AND : ATTORNEY GENERAL OF FIJI

Second Respondent

Mr Lateef : *for Appellant*

Mr Sweeney : *for Respondent*
with Mr Tamata

RULING

Overview:

This is an application to fix security for costs as Rule 17 of the Court of Appeal Rules stipulates and it is an appeal against an interlocutory order of the High Court delivered on *19 December, 2005*, where the learned Judge had denied the Appellant (original plaintiff) an injunction against the Respondents (original defendants). The Notice of Appeal was filed on *13 February, 2006*. The order of the High Court was signed, sealed or otherwise perfected on *7 February, 2006*.

Respondent's Case:

At the hearing of the security for costs application, the counsel for the Respondents argued that the appeal was incompetent and should not have been accepted and must now be dismissed. He submitted that it was out of time due to the fact that the

time runs from *19 December, 2005*, the day the judgment was delivered and signed. The 21 days allowed for an appeal against an interlocutory order, according to *Rule 16 of the Court of Appeal Rules*, ends well before *13 February, 2006*, when the appeal was filed.

He further argued that the wordings of *Rule 16* had three alternatives and the very first one of them must be considered and which states that the time should run from when the judgment of the Court was delivered and signed by the Judge. There was not so much discussions on the other two alternatives (sealed or otherwise perfected) as the Counsel wished to stay on the signed judgment delivery date as the date when the 21 days of appeal should run.

Mr Sweeney submitted if the date was to run from the other two alternatives of *Rule 16*: being the date the order was sealed and/or perfected then the matter may take ages and the other party will always be on time even if the order was sealed 2 years after the delivery date.

Appellant's Case:

Mr Lateef had submitted that the issue to be decided by the Court is the fixing of security for costs and not the oral application by the Respondents on whether the appeal is competent or not and this Court cannot hear such an application but that it should be brought before the Master or the Single Judge of Appeal formally. It always beats me when a counsel wants to decide for the Court who to hear what as if those who sit on the bench do not know their role.

The Master is the Master of the High Court and not Court of Appeal unless and until his role is clarified. Counsel could have done better if he submits the exact law and rules which gave him the boldness to give such a statement.

He argued that the 21 days run from the date the order was signed, sealed or otherwise perfected and had cited four competent authorities (case laws) that supported his submission.

In Dr Patrick Muma v. The University of the South Pacific and Others, Civil Appeal No. ABU/0052/9 the Court had ordered that the time for appeal runs from when the order is signed, sealed or otherwise perfected and these three alternatives as Mr Sheeney had wrongly interpreted, is referring to a single document; when the judgment order is signed and sealed and it thereby perfected. In his USP case the Court had ordered that the application to seek leave to appeal out of time was not necessary, even though the judgment had already been delivered one year earlier,

because the judgment order has not been signed, sealed or otherwise perfected.

There were other cases cited, (*The Official Receiver v. Petrie Limited, Civil Appeal No. ABU 0049/97*; *Tevita Fa v. Trade Winds Marine Limited & Anrs, Civil Appeal ABU0040/94*; and *Kenneth John Hart v. Air Pacific Limited, Civil Appeal No. 23 of 1983*), and they all supported the decision that the time for appeal runs from when the judgment order is signed, sealed or otherwise perfected as **Rule 16** stipulates.

The Appellant had submitted that in the case where they may not have sealed the order within 21 days, which they actually did not, it is open to any other parties to seal and/or perfect the order. The Judge may alter or modify his judgment any time between its delivery up to the day it is signed, sealed or perfected. After the signing, sealing and perfecting of the formal order there will be no more power to alter or to modify it. He therefore submits that the date should run from the date of signing, sealing or perfecting of the order rather than from the signed judgment delivery date.

Discussions:

Rule 16 of the Court of Appeal Rules and Order 42, Rule 6(3) of the High Court Rules provides the process to follow and they are quite clear. This is a simple matter of procedures and it would not need to go before a Single Judge to be decided. The rules are there for the Registrar to administer its role. A law student would have been able to analyze that the appeal was not out of time and that the Registrar is the authority to tell the parties as such, otherwise, the registry would not have accepted the notice of appeal in the first place.

The Appellant did not apply for leave to appeal out of time before a Single Judge and the Court could not find any basis where we have to take the matter to a Single Judge and to do so would be an abuse of process of the Court. On the other hand, if the Respondents were serious that the appeal was incompetent then they should file the proper application.

In the absence of any formal application before a Single Judge and in the Court's consideration of the correct procedures to take according to the rules, the Court is satisfied that the appeal is in order and is competent.

Decision:

In light of the submissions made by Counsel for the parties, the Court is satisfied that the appeal is not out of time and since the Counsel for the Respondent had

given his consent that the security for costs be dispensed with, the Court now orders the following:

1. The application by the Respondents that the appeal was out of time is dismissed.
2. Security for Costs is dispensed with.
3. Appellants to file the records at the Registry within 21 days or 14 days upon receipt of Judges' notes (if there is any), whichever is later.



E. KOROÏ
Deputy Registrar

Tuesday 28th February, 2006
@ 10am