

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Civil Action No. ABU 34 of 2005
(High Court Civil Action No. HBC 0233 of 2003L)

BETWEEN:

MOHAMMED SUBHAN
(f/n Mohammed Jan)

Appellant

AND

POST FIJI LIMITED

Respondent

Coram: Gallen, JA
 Ellis, JA
 Scott, JA

Date of Hearing: 24 July 2006

Counsel: *Appellant in Person*
 I. Fa for the Respondent

Date of Judgment: 28 July 2006

JUDGMENT OF THE COURT

- [1] On 4 July 2003 the Appellant's solicitors filed a summons in the High Court in Lautoka seeking leave to issue a writ of summons against the Respondent or, in the alternative, seeking an extension of time to issue the writ.

- [2] A supporting affidavit exhibited a copy of the proposed statement of claim. As will be seen from that document the Appellant was seeking damages for what he said was his wrongful dismissal by the Respondent in August 1993.
- [3] Under the provisions of Section 4 (1) (a) of the Limitation Act (Cap. 35 – the Act) actions founded on simple contract or on tort may not be brought after the expiration of 6 years from the date on which the cause of action accrued. It follows that in the case of the Appellant the limitation period expired in August 1999.
- [4] The summons filed in July 2003 stated that it was brought pursuant to:

“Sections 16 and 17 as well as other provisions,
Limitation Act”.

- [5] Part D of the Limitation Act, which contains Sections 16 and 17 is headed:

“Special provisions applicable to certain actions in
respect of personal injuries”.

The effect of these sections is to allow application to be made to the court for extension of the 6 year limitation period in cases where material facts relating to the cause of action did not become known to the Plaintiff until a date specified in Section 16 (3) (a) and (b).

- [6] A useful exegesis of the workings of Sections 16 and 17 of the Act maybe found in Order 110 of the 1967 Edition of the White Book.
- [7] Since the Appellant's proposed action was not in respect of personal injuries, neither Section 16 nor Section 17 had any application. There is no "other provision" in the Act which allows for a limitation period to be extended and accordingly the application filed on 4 July 2003 should have been dismissed.
- [8] Notwithstanding that leave to issue proceedings out of time should have been refused, the High Court in Lautoka did, in fact, grant leave on 18 July 2003.
- [9] There was some doubt about what happened next. According to an affidavit filed by Swastika Anjali Gosai on 2 September 2004, the writ in respect of which leave to file was obtained on 18 July 2003 was "inadvertently not collected until July 2004". By this time it was over 12 months old and accordingly by virtue of RHC 06, r7(1) had expired. A second application was therefore made to the Court, pursuant to RHC 06 r7(2), for the writ to be renewed.
- [10] On 2 November 2004 the High Court refused to renew the writ. This is an appeal, brought out of time, against that refusal, with leave granted by the President.

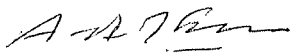
- [11] When the matter came before the President he caused enquiries to be made as to whether the writ had ever actually been issued. It was established that in fact it had not and that therefore Ms. Gosai's evidence was incorrect. It followed that the carelessness to which the High Court had referred in its ruling dated 2 November 2004 had not actually occurred. For that reason leave to appeal out of time against the High Court's refusal was granted.
- [12] In our view the Appellant faces the insuperable difficulty that the application to commence proceedings out of time was misconceived and that therefore the writ could not properly have been filed either in 2003 or in 2004. The limitation period relevant to the Appellant's claim had expired and therefore his claim was and remains statute barred. In these circumstances the question of error by the High Court in November 2004 does not arise.
- [13] In his oral submissions to us the Appellant explained that the delay between 1993 and the attempt to initiate civil proceedings 10 years later was caused by the unduly prolonged and ultimately unsuccessful criminal proceedings brought against him following his dismissal. He blamed both his former solicitors for mishandling his case. We have sympathy for the Appellant who does not appear to have been at all well served by the legal system in Fiji. Unfortunately, however, our sympathy cannot affect the outcome of the appeal before us.

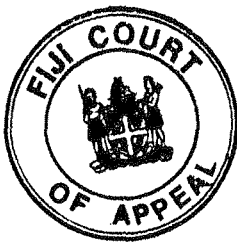
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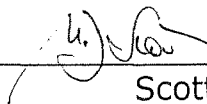
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1. Appeal dismissed.
2. No order as to costs.


Gallen J.A.


Ellis J.A.




Scott J.A.

Solicitors:

Fa & Co. for the Respondent