

IN THE COURT OF APPEAL FIJI ISLANDS
APPLICATION FOR LEAVE TO APPEAL
FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. MISC.10 OF2008S
(High Court Civil Action No. HBC20 of 2007)

BETWEEN:

PACIFIC AGENCIES (FIJI) LIMITED

Applicant

AND:

MARK SPURLING

Respondent

Coram:

Hickie, JA

Mention:

Monday, 1 September 2008, Suva

Counsel:

Ms B. Narayan for the Applicant
Mr H. Nagin for the Respondent

Date of Judgment: Wednesday, 3 September 2008, Suva

NOTATION

[1] The Applicant seeks Special Leave to Appeal to the Supreme Court from my judgment delivered on 22 August 2008 sitting as a Single Judge of the Court of Appeal wherein I refused the an Application seeking Leave to Appeal out of time from a judgment delivered by Justice Singh on 29 May 2008 in the High Court at Suva.

[2] The Applicant had written to the Registrar of the Supreme Court on 28 August 2008 seeking to ascertain when a Petition for Special Leave to Appeal (filed on 27 August 2008) would be issued.

[3] Also on 28 August 2008, Counsel for the Respondent had written to Counsel for the Applicant (with a copy to the Registrar of the Fiji Court of Appeal) stating as follows:

"We refer to your letter of 27th August 2008 and write to advise you that we are of the view that no Appeal lies to the Supreme Court against the Decision of the Court of Appeal refusing to allow Leave to Appeal Out of Time."

[4] I arranged for the matter to be re-listed before me on 1 September 2008, whereupon I explained to the respective Counsel for the parties:

(a) That I was minded to consider a grant of leave to the Supreme Court (subject to hearing from both Counsel) and in that regard to allow the Applicant time to file such an Application with certain questions for the Court of Appeal to consider and certify to be referred to the Supreme Court pursuant to a grant of leave;

(b) That there were some recent decisions of the Court of Appeal relevant to this issue, in particular, **Rosa v Chief Executive Office for Justice and Anor**, (Unreported, Court of Appeal Fiji Islands, Misc.File No. 8(B) of 2006S, 11 July 2008, Mataitoga, Powell and Bruce JJA); and

(c) That I was mindful of Section 122 of the Constitution as well as section 7(3) of the *Supreme Court Act* 1998 which states:

"(3) In relation to a civil matter (including a matter involving a constitutional question), the Supreme Court must not grant special leave to appeal unless the case raises-

(a) a far-reaching question of law;

(b) a matter of great general or public importance;

(c) a matter that is otherwise of substantial general interest to the administration of civil justice."

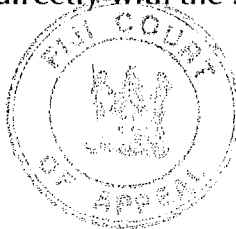
[5] At that point, I noted that the current "Petition for Special Leave to Appeal" (upon my very preliminary reading of it) did not seem to address any of the above three criteria.

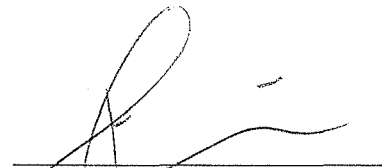
- [6] Counsel for the Applicant explained that they were seeking to Appeal directly to the Supreme Court rather than obtaining Leave of the Court of Appeal.
- [7] When I noted that the Application did not appear to be framed in terms of any of the three criteria outlined in section 7(3), Counsel for the Respondent assisted (with the consent of Counsel for the Applicant) in clarifying for the Court that his limited understanding (without having seen the Application) was that the Applicant wanted to submit an Appeal direct to the Supreme Court rather than have a question or questions filtered by the Court of Appeal. Counsel for the Applicant confirmed that this was the case,
- [8] I then explained to Counsel for the Applicant that if they wished to attempt to seek leave directly of the Supreme Court that was a matter for them. They should be on notice, however, that the Supreme Court may well ask why Counsel for the Applicant did not follow the “filter” procedure of first seeking leave of me in the Court of Appeal and, if leave be granted (which I was mindful to consider), then having certain questions clarified to be placed before them. I said that I was making a notation in the Court file and that I would advise the Court of Appeal/Supreme Court Registry accordingly.
- [9] If the Applicant had sought leave of the Court of Appeal, the questions I was minded to consider (in draft form) were these:
1. *Whether the correct interpretation of Rule 16 of the Court of Appeal Rules is that the time for filing and serving a Notice of Appeal shall be calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected, whichever first occurs, such that if a signed judgment is handed down on a certain date time runs from that date rather than later when the Orders in the judgment are “taken out” and sealed?*

2. *If an alternative course is undertaken, such as with ex tempore judgments, does that then mean that time runs from a different point, that is, not when the judgment is delivered but when it is entered or otherwise perfected?*
3. *If a judgment was signed and handed down on 29 May 2008, does that mean that six weeks ran from that date, that is, until 10 July 2008 inclusive?*
4. *Whether it is correct that if a single judge of appeal, exercising the power of the Court of Appeal to give or refuse leave in a Civil matter, refuses leave, the unsuccessful applicant has no right to make a further application for leave to the Full Court of Appeal, as such further application would amount to an abuse of process?*
5. *Whether once an Application for Leave to Appeal in a Civil matter has been refused by a single Judge of Appeal, then the correct procedure is the for Applicant to seek Leave of that judge to certify that there is a question or questions of significant public importance for the Supreme Court to consider?*

NOTATION OF THE COURT

[10] The Court notes: **"That the Applicant does not wish to seek Leave of the Court of Appeal and will be filing an Appeal directly with the Supreme Court."**




Hickie, JA

Solicitors:

Lateef and Lateef, Solicitors, Suva, for the Applicant
Sherani & Co, Solicitors, Suva, for the Respondent