

IN THE COURT OF APPEAL
APPELATE JURISDICTION

CIVIL APPEAL NO. ABU 18 of 2014
(ILSC No. 18 of 2013)

BETWEEN : **KALISITO MAISAMOA**

Appellant

AND : **THE CHIEF REGISTRAR**

Respondent

Coram : **Chandra JA**
Lecamwasam JA
Amaratunga JA

Counsel : **Mr. I. Fa for the Appellant**
Mr. A. Chand and Mr. V. Prasad for the Respondent

Date of Hearing : **5 February 2016**

Date of Judgment : **26 February 2016**

J U D G M E N T

Chandra JA

1. This is an application for leave to appeal against the Ruling of the Commissioner of The Independent Legal Services Commission of 3rd March 2014 filed on the 28th of March 2014.

2. In the said notice of appeal the Grounds of appeal were set out as follows:

1. *That the Commissioner had erred in Law and in fact extending the definition of the word "argue" in Section 50(2) of Legal Practitioners Decree 2009 as not only to mean to "dispute" or "disagree" but to also means "affirm, propose, submit, explain or to assent to a proposition" and through the extended definition bringing the alleged "appearance" by the Appellant in the High Court case of State v. Lily Raruke Solvalu as a prohibited conduct under Section 50(2) of the Legal Practitioners Decree.*
2. *That Section 50(2) of the Legal Practitioners Decree 2009, does not prevent the Appellant or any legal practitioner for that matter appearing in the High Court in any matter on a mention date to take directions in that matter.*
3. *That the Commissioner erred in law holding that the Appellant had acted in breach of Section 50(2) of the Legal Practitioners Decree by appearing in the case – State v. Lily Raruke Solvalu – CR No. HAC 359 of 2012 on a mention date to take direction.*

Factual Matrix

3. The Appellant was charged with eight counts of unsatisfactory professional conduct in contravention of section 50(2) of the Legal Practitioners Decree 2009.
4. The charges being that during the period of 12th October 2012 to 6th May 2013 the Appellant who had been enrolled as a Barrister and Solicitor on 18th August 2011, had entered appearances in the High Court whilst he was not entitled to appear, pursuant to Section 50(2) of the Legal Practitioners Decree, 2009.
5. At the hearing before the Commissioner on 3rd March 2014 the Appellant sought to have the matter struck out on the basis that section 50(2) did not prohibit from "appearing" in court the proscription being confined to "arguing" a matter.

6. Both parties filed written submissions and the Commissioner by his Ruling dated 3rd March 2014 dismissed the application to strike out.
7. The Appellant filed a notice of appeal on the 28th of March 2014 against the said Ruling as stated above.

The Application for Leave to Appeal

8. Rule 16(a) of the Court of Appeal Act (Cap.12), provides for the time within which a Notice of Appeal should be filed.

Rule 16(a) provides:

“16. Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph(4) of rule 15 within the following period (calculated from the date on which the judgment or order of the Court was signed, entered or otherwise perfected), that is to say –

- (a) In the case of an appeal from an interlocutory order, 21 days;*
- (b) In any other case, 6 weeks.”*

9. The Respondent took up the objection that the notice of appeal had not been filed within 21 days from 3rd March 2013 as required of Rule 16(a) of the Court of Appeal Rules, but 25 days after the Ruling of the Commission was delivered and therefore it being out of time, should be struck out.
10. The Appellant did not address this objection in his written submissions, but in his oral submissions stated that it was within time on the basis that the Registry has accepted it and that if it was out of time that the Registry would not have accepted it. He further submitted that in computing the time period for filing the notice of appeal, public holidays have to be excluded. The written submissions addressed the main issue before the Commissioner regarding which no final decision had been given.

11. The Appellant did not file a notice of appeal seeking leave to appeal out of time as he maintained that he had filed the notice of appeal within time.
12. It is quite clear that the notice of appeal is out of time by four days and there was no attempt made to explain the delay which may have been a matter to be considered if the application was one seeking leave to appeal out of time.
13. Since the Ruling against which the notice of appeal has been filed was a preliminary matter taken up by the Appellant the Ruling is an interlocutory order and the main hearing is yet to be taken up.
14. Therefore the only matter that this Court would consider at this stage is whether the Appellant had complied with the provisions of Rule 16(a) in filing his notice of appeal against an interlocutory order.
15. Rule 16(a) does not specify that in computing the time period of 21 days for filing the notice of appeal, that public holidays should be excluded. Section 51 of the Interpretation Act (Cap.7) deals with computation of time and provides:

“51. In computing time for the purpose of any written law, unless a contrary intention appears –

(a) A period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) If the last day of the period is a Saturday, Sunday or a public holiday (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) Where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day

happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) Where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time."

16. The submission of Counsel for the Appellant to the effect that public holidays are excluded when computing the period of time to file a notice of appeal is erroneous and without any merit. The Ruling was given on the 3rd of March 2014 and in terms of Section 51(a) of the Interpretation Act, the day on which the Ruling was given is excluded when computing the time period, so that time would start running from the 4th of March 2014. The notice of appeal should have been filed on the 24th of March 2014 which was a Tuesday and not a public holiday. It was not an excluded day in terms of Section 51(b) and (c) of the Interpretation Act. By filing the notice of appeal on the 28th of March 2014 the Appellant was out of time by 4 days.

17. In **Fa v. Tradewinds Marine Ltd and Anor.** (Unreported, Fiji Court of Appeal, Civil Appeal No.ABU0040 of 1994, 18 November 1994) where the delay was 4 days, Thompson JA said:

"That is a very short period but time-limits are set with the intention that they should be observed and even lateness of only a (sic) four days requires a satisfactory explanation before an extension of time can be granted. In this case....the applicant has given no explanation at all."

18. In **Rupeni Silimuana Momoivalu v. Telecom Fiji Limited** (Unreported, Court of Appeal ABU0037 of 2006, 7 September 2007, Byrne, Pathick and Mataitoga JJA) Byrne JA stated that :

"[11] This Court has said time and again that its rules are there to be obeyed. Litigants who choose not to, do so at their peril....."

19. In Shah v. Fiji Islands Revenue and Customs Authority and 2 Ors (Unreported, Court of Appeal, ABU0001 of 2007, 4 July 2008, Byrne, Pathik and Hickie JJA) it was held :

"34..... That the Court will expect adherence to the Rules save in the absence of special circumstances."

20. In the present case, as in Fa v. Tradewinds Marine Ltd and Anor. (Supra) no explanation was offered for the delay and Counsel sought to justify the filing of the notice of appeal as being in time by stating that the Registry accepted it because it was within time as otherwise the Registry would have refused to accept it, and that in computing the time period public holidays are excluded. These are very unsatisfactory explanations to say the least specially with the Appellant being a Legal Practitioner and no attempt was made to have the notice of appeal considered as a notice of appeal seeking extension of time.
21. In the above circumstances in terms of Rule 16(a) of the Court of Appeal Act and the authorities cited herein, the appeal of the Appellant is struck out being out of time.

Lecamwasam JA

22. I agree with the views expressed by Chandra JA.

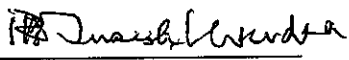
Amaratunga JA

23. I agree with the reasons and the conclusion of Chandra JA.

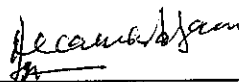
Orders of Court

1. *The appeal of the Appellant is struck out.*
2. *The Appellant shall pay costs in a sum of \$2,000.00*

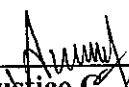




Hon. Justice S. Chandra
JUSTICE OF APPEAL



Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL



Hon. Justice G. Amaratunga
JUSTICE OF APPEAL