

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

CIVIL APPEAL NO. ABU 66 OF 2015  
(High Court No. HBC 351 of 2009)

BETWEEN : THE NEW INDIA ASSURANCE CO. LTD.

*Appellant*

AND : 1. SAKIUSA SOLI  
2. RAIWAQA BUSES LIMITED  
3. KAMINIELI TUIMAVANA  
4. LAND TRANSPORT AUTHORITY

*Respondents*

Coram : Chandra RJA

Counsel : Mr. K. P. Patel for the Appellant  
Mr. D. Singh for the 1<sup>st</sup> Respondent  
Mr. M. A. Khan for the 2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent absent and unrepresented  
Ms. P. Colati for the 4<sup>th</sup> Respondent

Date of Hearing : 29 March, 2017

Date of Ruling : 22 September, 2017

RULING

[1] This is an application filed on 11 September 2015 seeking leave to appeal the decision of the High Court Judge (Justice Corea) which was pronounced on 11 June 2014.

- [2] The 1<sup>st</sup> Respondent filed a summons pursuant to Order 15, rule 18 and Order 33 rule 3 of the High Court Rules 1988 for an order:

*“That New India Assurance Company Limited is liable to indemnify any judgment against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under comprehensive Motor Vehicle Comprehensive Policy No.9222623/3104/286256 and the compulsory Third Party Policy No.922623/3144/272916 over their Bus No.RBL001 for passengers risk liability up to a maximum amount of \$100,000.00 in respect of each claim arising out of road accident.”*

- [3] The Master of the High Court gave a Ruling on 26 March 2012 as follows:

*“The interpretation of this court is that the 1<sup>st</sup> Named Third Party in terms of the Motor Comprehensive Policy No. 922623/3104/286256 is liable for passenger risk cover of \$100,000 applied to each claimant. (AND NOT THE AGGREGATE SUM OF ALL CLAIMS OF PASSENGERS).”*

- [4] The Appellant sought leave to appeal the decision of the Master as the ruling of the Master was an interlocutory order pursuant to Order 59 of the High Court Rules.
- [5] The learned High Court Judge by his decision dated 11 June 2014 refused leave to appeal the Master’s decision.
- [6] The Appellant then sought leave from the High Court in the first instance to appeal the decision of the learned High Court Judge to the Court of Appeal.
- [7] The said application was heard by Justice Seneviratne of the High Court who refused to grant leave to the Appellant by his judgment dated 20 August 2015.

**Chronology of events:**

- [8] The Appellant filed his application seeking leave to appeal the decision of the High Court (Justice Corea's decision given on 11 June 2014) to the Court of Appeal on 11 September 2015 with a supporting affidavit.
- [9] The 1<sup>st</sup> Respondent filed an affidavit in reply on 9 November 2015 stating that the Appellant should seek leave to appeal against the Ruling of Justice Seneviratne delivered on 20 August 2015, that the application for leave to appeal the decision of Justice Corea's decision (11 June 2014) is out of time by 91 days, that the proposed grounds of appeal lack merit, there was no arguable appeal and praying that the application of the Appellant be dismissed with costs.
- [10] The 2<sup>nd</sup> Respondent filed an affidavit in reply on 13 November 2015 stating that the application of the Appellant was out of time, that leave should have been sought against the decision of Justice Seneviratne, that the grounds of appeal are not meritorious, that there was no arguable appeal and prayed that the application of the Appellant should be struck out with costs on an indemnity basis.
- [11] The Appellant submitted that the rules have been complied with in making their application.
- [12] The original ruling that was challenged was the Ruling of the Master of the High Court delivered on 26 March 2012, which was an interlocutory order. Pursuant to Order 59 Rule 8 of the High Court Rules, the Appellant had sought leave to appeal from the High Court by filing summons on 30 March 2012 which was within the 7 days as required by Rule 9 in Order 59.
- [13] The High Court (Justice Corea) refused leave to appeal by decision made on 11 June 2015 and thereafter the Appellant sought leave to appeal to the Court of Appeal pursuant

to section 26(3) of the Court of Appeal Rules, according to which such an application should be made in the first instance to the Court below, i.e. from the High Court.

[14] It is that application that was heard by Justice Seneviratne who refused leave by decision dated 20 August 2015.

[15] The present application seeking leave to appeal has been sought by the Appellant pursuant to Section 12(2)(f) of the Court of Appeal Act 1949.

#### **Compliance of the procedure**

[16] The question that has to be considered is whether the Appellant has followed the proper procedure in making his application seeking leave to appeal the Ruling of the Master which was an interlocutory order.

[17] **New India Assurance Company Ltd v. Panach Investment Ltd** [2017]FJCA 46; ABU0059.2016 (12 May 2017) was a case similar to the present case, where leave to appeal an interlocutory appeal of the Master was refused by the High Court in the first instance, and thereafter an application for leave had been renewed before the same High Court. The High Court refused leave and consequently an application for leave to appeal was sought from the Court of Appeal pursuant to section 12(2)(f) of the Court of Appeal Act. Calanchini P in his Ruling stated:

*“[3] The summons states that the application for leave to appeal is made pursuant to section 12(2)(f) of the Court of Appeal Act 1949(the Act). It is therefore made on the basis that the Ruling is an interlocutory ruling of the High Court for which leave of the court below or the Court of Appeal is required. In accordance with the requirement of Rule 62(3) of the Court of Appeal Rules (the Rules), the Appellant first sought leave to appeal from the Court below. Leave was refused by the learned High Court Judge in his Ruling delivered on 6 May 2016.*

[4] *However the correct procedure to follow when leave to appeal is refused by the court below (i.e. the High Court) is to renew the application for leave to appeal before the Court of Appeal this is the effect of Rules 26(3) which states:*

*“whenever under these Rules an application may be made either to the court below or to the Court of Appeal, it shall be made in the first instance to the court below.”*

[5] *It must be noted that there is simply no right to appeal a refusal by the court below to grant leave to appeal under section 12(2)(f). The only course of action permitted under the legislation is to renew the application by way of a fresh application for leave to the Court of Appeal.* (Emphasis added)

[6] *The issues that are to be observed in an appeal are not the same as the issues that are considered when a renewed application for leave to appeal comes before a single judge of the Court under section 20(1) of the Court of Appeal Act. As a result the application for leave to appeal the Ruling of the court below refusing leave to appeal the earlier decision of the High Court delivered on 17 June 2015 is dismissed for want of jurisdiction.”*

[17] In view of this position taken up in the above Ruling, the application for leave to appeal pursuant to section 12(2)(f) in the present case falls in to the same position as in that case and therefore the Court has no jurisdiction to entertain the application of the Appellant.

[18] Consequently the consideration of the position taken up by the Respondent as regards delay in making the application become irrelevant.


[19] In the above circumstances the application of the Appellant is dismissed for want of jurisdiction.

- [20] The Appellant had also sought a stay of further proceedings on or resulting from the decision of Justice Corea pronounced on 11 June 2014 pending the determination of the intended appeal by the Court of Appeal.
- [21] In view of the dismissal of the application for leave to appeal, the necessity of granting a stay does not arise as there are no proceedings before this Court.

Orders

1. *The Application for leave to appeal is dismissed.*
2. *Appellant shall pay costs in a sum of \$1000.00 each to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent within 21 days from the date of this Ruling.*



  
.....  
**Hon. Justice Suresh Chandra**  
**RESIDENT JUSTICE OF APPEAL**