

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0049 of 2019
[High Court at Lautoka Case No. HBM 26 of 2016]

BETWEEN : **JOSUA NATAKURU** *Appellant*

AND : **THE ATTORNEY GENERAL** *Respondent*

Coram : **Prematilaka, RJA**

Counsel : **Appellant absent and unrepresented**
: **Respondent absent and unrepresented**

Date of Mention : **09 August 2022**

Date of Ruling : **12 August 2022**

RULING OF THE COURT

- [1] The appellant appealed against the High Court judgment dated 29 June 2017 dismissing an application for constitutional redress.
- [2] The appellant had been a serving prisoner at least for some time, if not in full, during the time he has pursued his application in the High Court and the Court of Appeal.
- [3] His appeal had been deemed abandoned in terms of the Court of Appeal Rules. He had thereafter filed an application for extension of time to appeal in April 2019. The respondent had filed an affidavit in opposition and the appellant too had tendered an affidavit in reply.

Only the respondent had filed written submissions. The respondent had sought dismissal of the appeal with cost.

- [4] In the meantime the appellant had been released from prison and he had visited the Court of Appeal Registry in person on 01 June 2022 and what transpired on that day had been recorded in the case file by a court clerk as follows:

‘Appellant came to the Registry on 01/06/22 at 9.15am. He was aggressive, violent and verbally abusive, extremely loud and threatening. He apparently just got out of jail. He’s been informed of the adjournment to 03/06/2022 at 9.30am. Details of the Appellant has been updated on every file.’

- [5] The appellant was absent and unrepresented in this court on 03 June 2022 (he has signed the acknowledgement of service of notice of mention on 01 June 2022 which is available in the file) as was on the previous day and the court *inter alia* directed the Registry to notice the appellant of the next date *i.e.* 09 August 2022 to appear in person or be represented by counsel. The Registry had complied with the court’s directive fully on 06 June 2022 and the court clerk had recorded the conversation with the appellant as follows:

‘I spoke with Mr. Natakuru today (06/06/22) at 3.30pm. He called on 7488365 to get an update on his civil matters. He’s been informed that he’s civil matters are to be called on 09/08/22. I have made it clear to Mr. Natakuru that he needs to appear on the day and if he fails to appear – all appeals will be dismissed. He is fully aware of the next date and the consequences of failing to appear.’

- [6] The appellant was once again absent and unrepresented on 09 August 2022. Despite having had ample notice of 03 June 2022 and 09 August 2022 he was absent and unrepresented. He clearly has no intention of prosecuting the appeal. The Court of Appeal said in **Registrar of Titles v Prasad** [2001] FJCA 5; Abu0009D.2001s (8 June 2001) that the new Rules send a clear message to all prospective appellants - it is the appellant’s duty to file appeals, and to take all steps to push the appeal to a hearing.

- [7] The principles that have emerged from the cases in relation to extending time to appeal are as follows. The overarching consideration is the interests of justice. The factors relevant to

that inquiry are the length of the delay and its reasons; the parties' conduct; the extent of the prejudice caused by the delay; the prospective merits of the appeal; and whether the appeal raises any issue of public importance (vide Almond v Read [2016] NZCA 147 (Harrison, Wild and Kós JJ) [Almond (CA)] and Janferie Maeve Almond v Bruce James Read [2017] NZSC 80 (30 May 2017)).

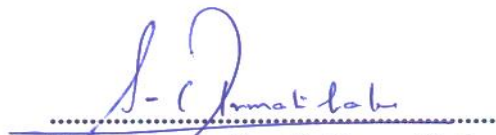
[8] I have examined the matter at hand in so far as the appellants' application for enlargement of time under section 12(1)(b) is concerned in the light of principles established in Fiji and set out in Sundar v Prasad [1997] FJCA 39; Abu0022d.97s (10 November 1997) *vis-à-vis* the High Court judgment, the appellants' papers filed in this court and respondent's submissions. In my view, the delay is very substantial, explanation for delay is inexcusable and unacceptable and I find that his appeal is devoid of any merits. To my mind, the appeal is frivolous as well as vexatious. The extension of time, if granted will prejudice the respondent to the extent stated in the written submissions by way of wasting tax-payer money in the continued prosecution of an unmeritorious appeal. It will also unduly consume valuable judicial time and the administrative time of the Registry.

[9] In the circumstances, I refuse extension of time to appeal and make the following order dismissing the appeal in terms of section 20(1)(g) of the Court of Appeal Act.

Orders

1. Extension of time to appeal is refused.
2. Appeal dismissed in terms of section 20(1)(g) of the Court of Appeal Act.




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL