

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

**CIVIL APPEAL NO. ABU 098 of 2023**  
**[In the High Court at Lautoka Case No. HBC 193 of 2007]**

**BETWEEN** : **MOHAMMED KASIM** son of Abdul Rajeeet formerly of Wairuku, Rakiraki, Fiji but presently of 2827 E Hampton Way Fresno, United States of America, Farmer.

***1<sup>st</sup> Appellant/ Original 1<sup>st</sup> Defendant***

**AND** : **ROSHAN ALI SHAH** son of Mohammed Kasim formerly of Wairuku, Rakiraki, Fiji but presently of 2827 E Hampton Way Fresno, United States of America, Mechanic.

***2<sup>nd</sup> Appellant/ Original 2<sup>nd</sup> Defendant***

**AND** : **DILHRA ALI** son of Mohammed Kasim formerly of Wairuku, Rakiraki, Fiji but presently of 2827 E Hampton Way Fresno, United States of America, Driver.

***3<sup>rd</sup> Appellant/ Original 3<sup>rd</sup> Defendant***

**AND** : **KHIRUL NISHA** daughter of Saiyad Hussein formerly of Wairuku, Rakiraki, Fiji but presently of 2827 E Hampton Way Fresno, United States of America, Domestic Duties.

***4<sup>th</sup> Appellant/ Original 4<sup>th</sup> Defendant***

**AND** : **NAUSHAD ALI** of Rakiraki, Fiji, unemployed as the Administrator of the Estate of Moharam Ali and trustee of the Estate of Abdul Rahiman by way of Letters of Administration De-Bonis Non (With Will) No. 66933.

***1<sup>st</sup> Respondent/ Original Plaintiff***

**AND** : **THE RESITRAR OF TITLES**

***2<sup>nd</sup> Respondent/ Original 5<sup>th</sup> Defendant***

**Coram** : **Prematilaka, RJA**

**Counsel** : **No appearance for Appellants**  
**Mr. V. Singh for the 1<sup>st</sup> Respondent**  
**Mr. A. Bauleka for the 2<sup>nd</sup> Respondent**

**Date of Mention** : **27 February 2025**

**Date of Ruling** : **05 March 2025**

## **RULING IN CHAMBERS**

[1] At the conclusion of the trial, High Court on 02 March 2016 held in favour of the 01<sup>st</sup> respondent (original plaintiff) and found that the 1<sup>st</sup> to 4<sup>th</sup> appellants (original defendants) have failed to establish their counter claim which therefore ought to be struck out. Accordingly, the High Court Judge made the following orders:<sup>1</sup>

- (a) *The transfer executed by the 1st Defendant in favour of the 4th Defendant and registered in respect of Certificate of Title number 32617 is set aside;*
- (b) *The purported cancellation of Certificate of Title number 32617 is set aside;*
- (c) *The purported Partial Transfer of Certificate of Title number 32617 from the 4th Defendant to the 2nd Defendant is set aside;*
- (d) *The Certificate of Title number 37434 issued in favour of the 2nd Defendant is cancelled.*
- (e) *The purported Partial Transfer of Certificate of Title number 32617 from the 4th Defendant to the 3rd Defendant is set aside;*
- (f) *The Certificate of Title number 37434 issued in favour of the 3rd Defendant is cancelled;*
- (g) *5th Defendant is ordered to create a New Original Certificate of Title number 32617 reflecting Caveat number 51287, application for removal of Caveat number 540226 endorsed but not registered, Court order number 542654;*
- (h) *Declaration that neither the 2nd, 3rd or 4th Defendants cannot claim to have acted bona fide in the relevant matters is granted.*
- (i) *The 2nd Defendant to forthwith deliver vacant possession of Lot 1 on DP 8991 to the Plaintiff;*
- (j) *The 3rd Defendant do not interfere with the Plaintiff's quite possession of Lot 2 on DP 8991;*
- (k) *The 1st to 4th Defendants not in anyway, manner or form interfere with the Plaintiff's possession of Lots 1 and 2 on Deposited Plan 8991 and be restraint*

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<sup>1</sup> **Ali v Kasim** [2016] FJHC 135; HBC193.2007 (2 March 2016)

*from any further dealing on the two said Lots;*

- (l) The 1st Defendant to specifically perform agreements entered into on the 8th day of July, 1992 and 27th day of June, 1992 with the late Abdul Rahiman and the Plaintiff.*
- (m) The Plaintiff is entitled to Special and General Damages and interest on all damages. Damages to be determined by the Hon. Master of High Court, Lautoka.*
- (n) The 1st to 4th Defendants shall pay the Plaintiff costs summarily assessed in a sum of \$3,500.00. No order for costs against the 5th Defendant.*
- (o) The Counter-Claim of the 1st to 4th Defendants is dismissed and struck-out.*
- (p) The matter to be referred to the Master's Court for Assessment of Damages.*

[2] S Nand Lawyers on behalf of the appellants had on 20 October 2023 filed a notice of motion seeking leave to appeal out of time the High Court decision.

[3] Natasha Khan Associates had lodged an affidavit on 19 March 2024 in opposition to the said application for enlargement of time to appeal. When the matter was called on 28 November 2023, 11 December 2023 and 02 February 2024, the appellants had been legally represented but on 21 March 2024 and 03 June 2024 they had not been represented. On 14 August 2024, Ms. C. Vikashini had appeared for the appellants and moved for 03 months to obtain the probate. However, when the matter was again called on 14 December 2024, there was no appearance for the appellants and this court directed the Court of Appeal Registry to serve notice on the appellant's solicitors to comply with the previous directive. In response to the notice, Ms. K. Kumar appeared for appellants on 30 January 2025 and asked for 21 days to file an application for probate in the High Court and stated that the paper advertisement had been published. Accordingly, the matter was adjourned and mentioned on 27 February 2025 and once again there was no appearance for the appellants. Senior counsel, Mr. Nandan who was present in court confirmed that though one of their associates appeared for the appellants on the last day on instructions from S Nand Lawyers, his firm had not received instructions to appear for the appellants on 27 February 2025.

[4] The 01<sup>st</sup> appellant's affidavit filed in this court reveals that the appellants' appeal had earlier been abandoned due to non-compliance. According to the 01<sup>st</sup> respondent's affidavit it was abandoned in the year 2016 itself. Further, the current application for extension of time to appeal is late by more than 07 ½ years. The delay is inordinate and inexcusable,

and it is not in the interests of justice for this application to continue and would result in undue prejudice to the respondents.

- [5] The appellants and/or solicitors for them had failed to fulfil their undertakings and to comply with the directives of this court to prosecute the application for enlargement of time to appeal in a diligent manner. The counsel for the respondents moved that the matter be struck off for non-prosecution.
- [6] The powers vested in terms of section 20(1)(a) and 20(1)(b) of the Court of Appeal Act allow a single Judge of this court to give leave to appeal and extension of time to file a notice of appeal or an application for leave to appeal (as in this case). Similarly, section 20(1)(g) grants a single Judge the authority to *'dismiss an appeal for want of prosecution or for other causes specified in the rules'*. While this provision explicitly mentions the dismissal of appeals, it does not directly address applications for leave to appeal or applications for extensions of time. However, section 20(1)(k) extends a single Judge's powers to *'generally, to hear any application, make any order or give any direction that is incidental to an appeal or intended appeal'*.
- [7] This suggests that a single Judge of this court possesses ancillary powers to manage proceedings related to appeals, which could reasonably include dismissing applications for leave to appeal or for extensions of time due to want of prosecution. Therefore, it is reasonable to conclude that under section 20(1)(g) of the Court of Appeal Act, the power to dismiss an appeal for want of prosecution extends to dismissing applications for leave to appeal or applications for extensions of time to appeal on similar grounds. This interpretation aligns with a single Judge's ancillary powers to manage proceedings effectively and is consistent with practices observed in other Commonwealth jurisdictions. This interpretation also aligns with the court's inherent authority to manage its docket and ensure the efficient administration of justice.

[8] Several Commonwealth jurisdictions have addressed the issue of dismissing applications for leave to appeal or for extensions of time due to want of prosecution.<sup>2</sup> These decisions illustrate the courts' inherent powers to manage their proceedings and ensure the efficient administration of justice. These cases demonstrate that courts across various Commonwealth jurisdictions possess the authority to dismiss applications for leave to appeal or for extensions of time due to want of prosecution. This power is exercised to prevent abuse of process and to ensure the efficient administration of justice and prevent undue delays.


[10] It appears to me that the appellant's solicitors are not prosecuting his appeal with due diligence and the appeal should be dismissed for want of prosecution coupled with inordinate delay and undesirable prejudice to the respondents.

**Orders of the Court:**

[1] *Appellants' application for extension of time to appeal is dismissed in terms of section 20(1)(g) of the Court of Appeal Act.*

[2] *Appellants jointly and severally are directed to pay \$1,500.00 each as costs to the 01<sup>st</sup> and 02<sup>nd</sup> respondents respectively (total of \$3,000.00) within 21 days hereof.*



  
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**Hon. Mr. Justice C. Prematilaka**  
**RÉSIDENT JUSTICE OF APPEAL**

**Solicitors:**

No appearance for the Appellants  
Natasha Khan Associates Lawyers for the 1<sup>st</sup> Respondent  
AG's Office for the 2<sup>nd</sup> Respondent

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<sup>2</sup> **Giacomini Consulting Canada Inc. v. The Owners, Strata Plan** EPS 3173, 2023 BCCA 473 and **Syed Omar bin Syed Mohamed v. Perbadanan Nasional Bhd.** [2013] 1 MLJ 461