

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

CIVIL APPEAL NO. ABU 067 of 2020
[In the High Court at Lautoka Case No. HBA 06 of 2020]
[Magistrates Court at Nadi Civil Action No. 33 of 2018]

BETWEEN : **SAROJINI DEVI** father's name Lalta Prasad of Sabeto, Nadi.

Appellant

AND : **SHANIL KUMAR** of Keoliya, Sabeto, Nadi.

1st Respondent

ROHIT RAJNESH BHAN of Keoliya, Sabeto, Nadi.

2nd Respondent

ROHITAASH RAVNEEL KUMAR of Keoliya, Sabeto, Nadi.

3rd Respondent

Coram : **Prematilaka, RJA**

Counsel : **Appellant in person**
Ms. A. Bilivalu for the 02nd and 03rd Respondent
01st Respondent is absent and unrepresented.

Date of Hearing : **06 June 2025**

Date of Ruling : **12 June 2025**

RULING

- [1] The background to this application for enlargement of time to appeal the judgment of the High Court dated 30 June 2020¹ are, according to the High Court Judge, as follows.

[04] In April 2018, Sarojini Devi, the plaintiff/appellant (“the appellant” in these proceedings) filed a claim in person against Shanil Kumar, Rohitaash Ravneel Kumar and Rohit Rajnesh Bhan, the first, second and third defendants/respondents respectively (collectively “the respondents” in these proceedings), claiming damages.

[05] Subsequently, the claim was amended and a formal amended statement of claim was filed on 18 September 2018.

[06] In the amended statement of claim, the appellant alleged that the respondents failed to do work properly and all in act of joint enterprise stole parts of damaged vehicle Nissan Blue Bird registration No. U 12 and sought damages of \$19, 220.00 together with costs on indemnity basis.

[07] None of the respondents had filed their statement of defence nor had appeared at the court to contest the claim brought against them. As such, the hearing proceeded in the absence of the respondents.

[08] At the hearing in the absence of the respondent, the appellant gave sworn evidence and tendered some documents in evidence. Thereafter, the Magistrate delivered his ruling dismissing the appellant’s claim. The appellant appeals that ruling to this court.

- [2] The High Court judge in his judgment on 30 June 2020 confirmed the Ruling of the Magistrate on formal proof dated 30 January 2020 and dismissed the appeal without costs.

- [3] The appellant’s summons for extension of time to appeal was filed on 17 August 2020 and is out of time by about 02 weeks. The counsel for the 02nd and 03rd respondents has raised a preliminary objection to the appellant’s summons on the basis that in terms of section 12(1)(c) of the Court of Appeal Act, the appellant could appeal to the Court of Appeal only on a question of law as her purported appeal is a second-tier appeal against the High Court judgment given in its appellate jurisdiction on the Ruling of the Magistrates court. The 2nd and 3rd respondents argue that there is no such question of law identified by the appellant and therefore the appellant’s summons should be struck out.

¹ **Devi v Kumar** [2020] FJHC 484; HBA06.2020 (30 June 2020)

Should the appellant's application for extension of time to appeal in terms of Rule 17(3) of CA Rules be allowed?

Law on enlargement of time

- [4] It is well settled now that this Court has an unfettered discretion in deciding whether or not to grant the leave out of time². However, the appellate courts always consider five non-exhaustive factors to ensure a principled approach to the exercise of the judicial discretion in an application for enlargement of time namely (i) the reason for the failure to file within time (ii) the length of the delay (iii) whether there is a ground of merit justifying the appellate court's consideration (iv) where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? and (v) if time is enlarged, will the respondent be unfairly prejudiced?³ Nevertheless, these matters should be considered in the context of whether it would be just in all the circumstances to grant or refuse the application and the onus is on the appellant to show that in all the circumstances it would be just to grant the application⁴. In order to determine the justice of any particular case the court should have regard to the whole history of the matter, including the conduct of the parties⁵. In deciding whether justice demands that leave should be given, care must also be taken to ensure that the rights and interests of the respondent are considered equally with those of the applicant⁶.
- [5] Since the reason for the delay is an important factor to be taken into account, it is essential that the reason is properly explained - preferably on affidavit - so that the court is not having to speculate about why the time limit was not complied with. And when the court is considering the reason for the delay, the court should take into account whether the failure to observe the time limit was deliberate or not. It will be more difficult to justify the former,

² **State v Minister for Tourism and Transport** [2001] FJCA 39; ABU0032D.2001 (12 November 2001); **Latchmi v Moti** [1964] FijiLawRp. 8; [1964] 10 FLR 138 (7 August 1964)

³ **Native Land Trust Board v Khan** [2013] FJSC 1; CBV0002.2013 (15 March 2013); **Fiji Revenue and Customs Services v New India Assurance Co. Ltd.** [2019] FJSC 34; CBV0020.2018 (15 November 2019); **Norwich and Peterborough Building Society v Steed** (1991) 2 ALL ER 880 C.A.; **CM Van Stilleveldt v B V v. E L Carriene Inc.** [1983] 1 ALL ER 699 of 704.

⁴ **Habib Bank Ltd v Ali's Civil Engineering Ltd** [2015] FJCA 47; ABU7.2014 (20 March 2015)

⁵ **Avery v Public Service Appeal Board** (No 2) (1973) 2 NZLR 86

⁶ Per Marsack, J.A. in **Latchmi v Moti** (supra)

and the court may be readier to extend time if it was always intended to comply with the time limit but the non-compliance arose as a result of a mistake of some kind.⁷

- [6] The length of the delay is determined by calculating the length of time between the last day on which the appellant was required to have filed and served its application for leave to appeal and the date on which it filed and served the application for the enlargement of time.⁸ The length of the delay in the case of the appellant is a little over 02 weeks. 40 days have been considered ‘a significant period of delay’⁹. Delay of 11 days¹⁰ and 47 days¹¹ also have defeated applications for enlargement of time. Even 04 days delay requires a satisfactory explanation¹². However, in some other instances, delay of 05 months and 02 years respectively had not prevented the enlargement of time although delay was long and reasons were unsatisfactory but there were merits in the appeal.¹³
- [7] Rules of court must, prima facie, be obeyed and in order to justify a court in extending the time during which some step in procedure is required to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.¹⁴
- [8] The delay is substantial and the appellant has not explained the reasons for the delay at all. Granting of enlargement of time is likely to cause prejudice to the respondents as two courts have held in their favor and there is a need to see a finality to the matters in dispute. However, the most crucial question is whether the appellant’s intended appeal has enough merits as to warrant the grant of enlargement of time. But to decide that, the court has to examine the proposed grounds of appeal.

⁷ **Fiji Industries Ltd v National Union of Factory and Commercial Workers** [2017] FJSC 30; CBV0008.2016 (27 October 2017)

⁸ **Habib Bank Ltd v Ali's Civil Engineering Ltd** (supra)

⁹ **Sharma v Singh** [2004] FJCA 52; ABU0027.2003S (11 November 2004)

¹⁰ **Avery v Public Service Appeal Board** (supra)

¹¹ **Latchmi v Moti** (supra)

¹² **Tavita Fa v Tradewinds Marine Ltd and another** ABU 0040 of 1994 (18 November 1994) unreported

¹³ **Formscaff (Fiji) Ltd v Naidu** [2019] FJCA 137; ABU0017.2017 (27 June 2019) & **Reddy v. Devi** [2016] FJCA 17; ABU0026.2013 (26 February 2016)

¹⁴ **Ratnam v Cumarasamy** [1964] 3 All E.R. 933

- [9] Unfortunately, the appellant has not submitted any proposed grounds of appeal along with her summons and cannot be identified from several affidavits filed. Even when her affidavits are examined, one cannot gather proper grounds of appeal either. This court has already highlighted the need to comply with this fundamental requirement in **Malani v DPP & A.G** ABU 019 of 2022 (06 June 2025).

[11] The precision of grounds of appeal in an application for leave to appeal is a fundamental requirement in appellate procedure. Courts across Commonwealth jurisdictions have consistently emphasized that grounds of appeal must demonstrate merit, be clearly articulated, concise, and sufficiently specific, identifying precisely the alleged errors of law, fact, or mixed fact and law. Vague or generalized complaints (e.g., ‘the judge was wrong’) are insufficient and such overly broad grounds are generally disfavored, as they hinder the efficient administration of justice and do not assist the appellate courts in identifying the realistic prospect of success of an appeal.

[13] The court will not sift through voluminous submissions to find a possible ground. Grounds that are too general or merely assert that the decision is ‘wrong’ are inadequate. Grounds of appeal must not merely restate the relief sought or make vague complaints; they must isolate the legal or factual issues. Grounds should be ‘succinct and focused’ and not contain argumentative or discursive material. The precision of grounds avoids confusion between the grounds and the arguments in support of those grounds. A ground must point to a recognisable legal or factual error. A general complaint that the trial was ‘unfair’ without more detail will not suffice. The appellate function is not to retry cases, but to review for material legal error, which must be identified specifically in the grounds. Grounds alleging the trial judge ‘misdirected himself’ without reference to how or where would be rejected and grounds must identify the alleged misdirection and its effect. Grounds must disclose a triable question, not merely express dissatisfaction with the outcome. Grounds should not be prolix, must be legally intelligible, and set out the precise error of law, fact, or principle.

[14] Consequences of imprecise grounds may be the refusal of leave to appeal, result in strike-out of the appeal and prejudice the appellant’s case, as appellate courts are reluctant to allow amendments or new grounds unless exceptional circumstances exist.

[15] Precision in grounds of appeal is not a mere technical requirement; it is central to the integrity of the appellate process. Grounds must be clear, focused, and refer to specific errors in the judgment under appeal. Courts across the Commonwealth have made it clear that imprecise, vague, or overly general.

[10] In a second-tier appeal, the need to raise such precise question/s of law is not only a matter of convenience or common law but a statutory requirement in terms of section 12(1)(c) of the Court of Appeal Act. Rule 29(3) of the Court of Appeal Rules specifically highlights the duty to state precise grounds of appeal. The Court of Appeal said of section 12(1)(c) in **Punja and Sons Ltd v New India Assurance Co Ltd** [2019] FJCA 250; ABU115.2017 (29 November 2019):

[10] As stated earlier, the High Court judgment that is being challenged in this court was in respect of an appeal filed by the Appellants against the Decision of the Master. That appeal was governed by Order 55 Rule 3 of the High Court Rules and was by way of rehearing. The appeal to this court is against the judgment of the High Court and has been made in terms of Section 12 (1)(c) of the Court of Appeal Act. This therefore is a second tier appeal and Section 12 (1)(c) of the Court of Appeal Act provides that an appeal shall lie “on any ground of appeal involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court of Appeal”.

[11] Before venturing to consider this appeal, this court therefore has to be first satisfied that the grounds of appeal urged by the Appellants contain questions of law. In order to do so, it is necessary to understand as to what a “question of law” is.¹⁵

[11] The Court in **Punja and Sons Ltd** very helpfully elaborated as to what would constitute a ‘question of law’: Needless to say, that this list is not exhaustive.

- (a) inferences from the primary facts found are matters of law,*
- (b) The question whether the tribunal has misdirected itself on the law or the facts or misunderstood them or has taken into account irrelevant considerations or has failed to take in to account relevant considerations or has reached a conclusion which no reasonable tribunal directing itself properly on law could have reached or that it has gone fundamentally wrong in certain other respects is a question of law,*
- (c) Given the primary facts, the question whether the tribunal rightly exercised its discretion is a question of law,*
- (d) Whether the evidence is in the legal sense sufficient to support a determination of fact is a question of law,*
- (e) Whether there is or is not evidence to support a finding, is a question of law”.¹⁶*

¹⁵ See **Chand v Fiji Times Ltd**, (2011) FJSC 2 (8 April 2011), **Bulu v Housing Authority** (2005) FJSC 1 (8 April 2005) and **Lakshman v Estate Management Services Ltd** [2015] FJCA 26 (27 February 2015)

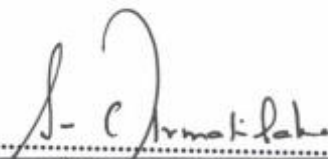
¹⁶ As per **Colettes Ltd v Bank of Ceylon**, (1982) 2 Sri Lanka Law Reports 514.

[12] Therefore, the appellant's summons for enlargement of time to appeal the High Court decision is not sustainable for lack of discernable grounds of appeal. Secondly and more crucially, the appellant has not placed any questions of law in compliance with section 12(1)(c) of the Court of Appeal Act read with Rule 29(3) of the Court of Appeal Rules for consideration of this Court in support of her second-tier appeal. This is fatal to any success of her summons for enlargement of time. In the circumstances, this court has no alternative but to dismiss the appellant's summons for enlargement of time to appeal the High Court Judgment.

Orders of the Court:

1. *Enlargement of time to appeal the High Court judgment dated 30 June 2020 is refused.*
2. *Summons for enlargement of time to appeal the High Court judgment dated 30 June 2020 is dismissed.*
3. *No costs is ordered against the appellant.*




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

Solicitors:

In-Person for the Appellant
Legal Aid Commission for the Respondents