

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 94 of 2006

BETWEEN : ALI'S CIVIL ENGINEERING LIMITED
FIRST PLAINTIFF/FIRST RESPONDENT

AND : VITIANA TIMBERS (FIJI) LIMITED
SECOND PLAINTIFF/SECOND RESPONDENT

AND : HABIB BANK LIMITED
FIRST DEFENDANT/APPLICANT

AND : CHALLENGE ENGINEERING LIMITED
SECOND DEFENDANT/THIRD RESPONDENT

AND : NATIONAL BANK OF FIJI T/A COLONIAL NATIONAL BANK
THIRD DEFENDANT/FOURTH RESPONDENT

AND : DIRECTOR OF LANDS AND SURVEYOR GENERAL
FOURTH DEFENDANT/FIFTH RESPONDENT

AND : REGISTRAR OF TITLES
FIFTH DEFENDANT/SIXTH RESPONDENT

AND : ATTORNEY GENERAL OF FIJI
SIXTH DEFENDANT/SEVENTH RESPONDENT

BEFORE : Justice G. Deepthi Amaratunga

**COUNSEL : Ms. B. Narayan for 1st Defendant – Applicant
Mr. V. Prasad for Plaintiff – 1st Respondent
Mr. D. Sharma for 2nd Defendant – 2nd Respondent**

Date of Hearing : 23rd January, 2014

Date of Ruling : 30th January, 2014

RULING

INTRODUCTION

1. The 1st Defendant –Applicant (Defendant) seeks to extend the time period for the leave to appeal. The time period in which the Defendant needs to seek leave to appeal against an interlocutory decision is contained in Rule 16 of the Court of Appeal Rules. The Defendant has filed the motion seeking extension of time to seek leave of the court to appeal in the High Court. The power of the High Court to extend the time period for the leave to appeal is within the stipulated time period in terms of Rule 27 of the Court of Appeal Rules, and after expiration of time period stated in Rule 16 of Court of Appeal Rules only Court of Appeal can exercise it in terms of Section 20(1)(b) of Court of Appeal Act (Cap 12).

ANALYSIS

2. The power to extend the time is generally with the Court of Appeal in terms of the Section 20(1)(b) of the Court of Appeal Act(Cap12). The Section 20(1) states as follows

‘20(1) A judge of the Court may exercise the following powers of the Court-

- (a) *To give leave to appeal;*
- (b) *To extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;*
- (c) *.....’*

3. The jurisdiction to extend time period for leave to appeal is with the Court of Appeal in terms of the said provision law, but this has to be read with Rule 27 of the Court of Appeal Rules where in certain instances the court below is empowered to extend the time period. This is a concurrent jurisdiction hence Rule 26(3) of Court of Appeal Rules apply.
4. The Rule 16 of the Court of Appeal Rules stipulate the time period for filing notice of appeal in regard to interlocutory order. There is no provision that deals with the time period for leave to appeal, but it is presumed that leave to appeal should be made before the expiration of the time period for the stipulated in the said Rule 16 of the Court of Appeal.
5. The Court of Appeal Rule 27 states as follows

*'27. Without prejudice to the power of the Court of Appeal, under the High Court Rules as applied to the Court of Appeal, to enlarge the time prescribed by any provision of these Rules, the period for filing and serving notice of appeal under rule 16 may be extended by the Court below upon application made **before the expiration of that period**' (emphasis added)*
6. The application of rule 27 of the Court of Appeal Rules needs a qualification and that is the application for extension needs be made before the expiration of the said time period, if not, said rule 27 cannot be resorted and the court below lacks the jurisdiction to extend the time period stipulated in the rule 16 of the Court of Appeal Rules.
7. Court of Appeal Rule 26(3) states that whenever 'an application may be made either to the Court below or the Court of Appeal, it shall be made in the first instance to the Court below.' This has no application to the present application seeking extension of the time for the leave to appeal after expiration of stipulated time. There is no concurrent jurisdiction to the court below, once the stipulated time period in the Rule 16 of the Court of Appeal expired. The jurisdiction in such an instance exclusively vested with the Court of Appeal. The 21 day time period laid down in the Rule 16 of the Court of Appeal Rules expired, hence no application of the said Rule 26(3).

8. In this case the application to extend the time period for leave to appeal is against an interlocutory order of the High Court Judge and the present motion was filed outside the 21 day period, which excludes the jurisdiction of the High Court from dealing with the issue of extension of time and the general jurisdiction conferred in the Section 20(1)(b) of the Court of Appeal Act, needs to be invoked.

CONCLUSION

9. The Defendant's application to seek extension of time to leave to appeal needs to be struck off for want of jurisdiction in terms of Section 20(1)(b) of the Court of Appeal Act read with Rules 16 and 27 of the Court of Appeal Rules. It should be noted that application regarding stay is not struck off since there is concurrent jurisdiction in terms of Rule 34 of Court of Appeal Rules read with Rule 26(3) of the said rules.

Dated at **Suva** this **30th** day of **January, 2014**

.....
Justice Deepthi Amaratunga
High Court, Suva