

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCC 04 OF 2014

**BETWEEN:** **LABOUR OFFICER**

**APPLICANT**

**AND:** **ESEI PICTURES**

**RESPONDENT**

**Appearances:** *Ms. T. Sharma for the Applicant.*

*Mr. A. Khan for the Respondent.*

**Date /Place of Hearing:** *Monday 25 August 2014 at Suva.*

**Date/Place of Judgment:** *Monday 25 August 2014 at Suva.*

**Coram:** *The Hon. Justice Anjala Wati.*

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**RULING**

**(Extension of time to lay charges under ERP)**

**Catchwords:**

*Employment of Children Contrary to ERP – Charges not laid within time- Application for extension of time for a period of 6 months to lay charges against the respondent- time limitation imposed by statute- right of extension- maximum time, upon leave, for extension, within which charges must be brought.*

**Legislation:**

*The Employment Relations Promulgation 2007 (“ERP”): s. 262.*

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### **The Cause**

1. The applicant seeks an order for extension of time for a period of 6 months to lay charges against the respondent for acting contrary to the ERP. The application is sought to have been made under s. 262 of the ERP.

### **Grounds in Support**

2. The applicant filed two affidavits on 11 June 2014 and 22 August 2014. By an affidavit of 11 June 2014 the applicant stated that:
  - *The respondent is alleged to have employed children without parental consent, made them work beyond 8 hours a day post 10pm , and made them wear outfits they were uncomfortable with. These acts are contrary to the rights of the children guaranteed by the ERP. The respondent is well aware of this fact.*
  - *The offences were committed 12 months ago in November 2012. The limitation period under s. 262 of the ERP for laying of charges against the respondent has expired.*
  - *The respondent will not be prejudiced if the extension of time is granted.*
  - *The delayed application is not through fault on the part of the applicant.*
3. By an affidavit of 22 August 2014 the applicant stated that:
  - *On 11 December 2012 the Ministry of Labour (“MOL”) received information from the Ministry of Social Welfare (“MOSW”) that the respondent was recruiting children for film making and that the children were not paid any wages.*

Investigations were carried out on the same day by Labour Officers from Nadi, Lautoka and Ba.

- A report was sent to the Suva Office on 12 December 2012. Following the investigation, the MOL was satisfied that there were breaches of ERP.
- On 20 December 2012, the MOL wrote to Fiji Audio Visual commission (“FAVC”) to find out whether there was any arrangements between Esei Pictures and Global Business and Legal Consultancy in relation to the hiring of children and if the MOL could meet with the companies to know exactly who was responsible for hiring the children.
- On 21 December 2012 the FAVC responded that they did not have in their possession any documents to show the arrangements.
- On 19 February 2013, The MOL wrote to Global Business and Legal Consultancy to know whether there was any arrangement between Esei Pictures and Global Business and Legal Consultancy in relation to the hiring of children. The MOL also asked whether Mr. Vineel Vikash Nand was in charge of recruiting local workers on behalf of Global Consultancy as advised by Mr. Vineel Vikash Nand during investigations.
- On 25 January 2013 there was a meeting between the MOL, Global Business and Legal Consultancy, Esei Pictures and FAVC. In that meeting, the wages issue was sorted out. The Ministry there informed the parties about the practices and procedures in terms of employment of children.
- On 7 March 2013, Global Consultancy responded to their correspondence of 19 February 2013 and denied having any role in recruiting the children and further denying employing Vineel Vikash Nand.
- On 25 April 2013 the MOL wrote to the Registrar of Companies requesting for a company search of Esei Pictures. They received a search on 10 July 2013. A request for legal advice was sought from the AG’s Chambers on 16 September 2013 and an opinion dated 14 October 2013 was received from the AG’s

Chambers that the matter needed to be referred to the DPP's Office for prosecution. The file was referred to the DPP's office on 26 February 2014. On 20 May 2014 a response was received from the DPP's office indicating that the limitation period had expired under s. 262 of the ERP. The DPP's office instructed the MOL to apply for extension of time for laying of the charges.

- On 11 June 2014 an application was made. On 13 June 2014 the MOL received a letter from Khan & Co. indicating their client's position and that unnecessary costs were incurred due to halt of the release of the movie.
- The MOL understands the position of the respondent but it is for the MOL to monitor compliance of the ERP.
- This is the first case of employment of children and a lot of work was involved. The MOL had to go through a lot of hurdles thus it took some time in collecting the evidence, analysing the same and pursuing the necessary course of action.
- It is in the interest of justice that time be extended. One has to prevent such breaches from reoccurring.

### **The Preliminary Object**

4. Mr. A. Khan argued that this is one application which is not capable of extension of time under s. 262 of the ERP. He stated that s. 262 of the ERP read that ***“notwithstanding any other written law, proceedings for an offence against this Promulgation may be instituted within the period of 12 months after the act or omission alleged to constitute the offence except that the court may grant leave to extend such period for a further 6 months”***.
5. Mr. Khan argued that the applicant's affidavit states that the offence was committed in November 2012. Under s. 262 of the ERP, the applicant could lay charges as of right until November 2013. If for some reason it could not, it could have applied for an extension to lay charges until May 2014. S. 262 states that the 6 months extension is

of the original 12 months to lay the charges, which means that in total, with the indulgence of the Court, the applicant can enjoy the time limitation of 18 months within which charges can be laid. If the applicant wished to enjoy the extended period of time then the application for extension should have been made before the expiration of 12 months time.

6. Mr. Khan argued that in this case the application is made after 18 months which is on 11 June 2014 and the statute prohibits grant of any more time than 18 months within which the charges could be laid.
7. Since an application for extension was not made within time, this Court has no jurisdiction to hear the application for extension.

#### ***Response to Preliminary Objection***

8. Contrary to what is deposed in the affidavit Ms. Sharma argued that the offence was committed between 3 December 2012 and 11 December 2012. On Mr. Khan's objection, I questioned her on the appropriateness of making submissions contrary to what is deposed in the affidavit and Ms. Sharma stated that she could ask the Labour Officer Mr. A. Dayal to take stand and clarify the issue or she be given liberty to file a supplementary affidavit to that effect.
9. Ms. Sharma continued that under s. 262 of the ERP, the prosecution could have laid charges on or before 11 December 2013. She argued that the use of the word "may" in s. 262 is discretionary. Since s. 262 allows for extension of time, the MOL is within the 6 months period in applying for an extension as the application was made on 11 June 2014. Ms. Sharma said that the right to apply for extension expired on 11 June 2014.
10. There are genuine reasons for the delay in asking for the extension and it is in the interest of justice that time be allowed as this is one of the first cases of child labour prosecution in Fiji.

### **The Law and Analysis**

11. Mr. Khan has made a very humble request for a quick verdict in this case and since the issue is on a very simple point of law, I indicated to the parties that the Court could accommodate Mr. Khan's request in delivering a quick ruling in the matter.
12. S. 262 of the ERP sets the time limit for bringing of charges against a person or institution acting contrary to the ERP. It reads that "*notwithstanding anything in any other written law, proceedings for an offence against this Promulgation may be instituted within the period of 12 months after the act or omission alleged to constitute the offence except that the Court may grant leave to extend such period for a further 6 months*".
13. Under s. 262, the prosecuting authority has, as of right, 12 months to lay charges against a person or institution acting contrary to the ERP. If for some reason charges cannot be brought within 12 months, then, on an application of the prosecuting authority, the Court can grant extension of the 12 months for a further period of 6 months. In totality, and upon grant of leave for extension of time, the maximum period within which prosecution must be brought is 18 months from the date of the offence. There cannot be any application after 18 months for extension of the time for laying of charges. There can also not be any interrupted time between the 12 months and the extended 6 months. The time has to be extended from the date the 12 months expires. In other words, the extended time has to be a continuous period in the maximum of 18 months. The legislature unequivocally uses the words "*the Court may grant leave to extend **such period** for a further 6 months*". An extension therefore would have to begin from the date the 12 months expired.
14. If the 6 months were to be extended from the date of the application as sought in this case then the prosecution would have effectively enjoyed one years extension as the time for laying of charges expired in November 2013 (on the affidavit evidence) and on 11 December 2013 ( on the submission of applicant's counsel). That would be going against the spirit of the provisions setting out the time frame for laying of the charges.

15. If the prosecution wishes to enjoy the extended 6 months for the laying of the charges then an application for extension must be made before the expiration of the initial 12 months given by the legislature.
16. Ms. Sharma also argued that whether or not charges are laid within the 12 months is a matter for the discretion of the prosecution due to the use of the word “*may*” in s. 262 of the ERP. I find this argument naïve. The use of the word *may* gives the prosecuting authority an option to lay charges but if it is to lay charges, the setting of the 12 months limitation indicates that it has to be so done within the given timeframe without seeking indulgence from the Court but if further time is required the Court can grant an indulgence for 6 months and nothing more than that.
17. Ms. Sharma stated that it is not their fault that the application is made late because this is one of the first cases in Fiji and the collation of information and seeking of legal advice took some time. This has to be measured against the time frame stipulated by the legislature. The prosecuting authorities must realise the time limitation imposed by the statute and act according to the given time frame. If they cannot then the rights of the accused cannot be compromised.
18. Ms. Sharma says that the determining the rights of the children in regard their employment is an important issue and they must be given their day in Court. If this matter was indeed important than the applicant has no one but itself to blame for applying for extension late as it had before it all the information on 14 October 2013. By that time the initial 12 months for laying of the charges had not expired and an application could have been made earlier than it is so done.
19. Even if I were to give the applicants benefit by working the time period from 11 December 2012 then any extended period would have expired on 11 June 2014, the date on which the application is made. I have no powers to extended time for any period beyond 11 June 2014. Even if I were to hear the application on 11 June and grant time, the extension could not have been given because that day was the last day within which charges should have been brought against the respondent and

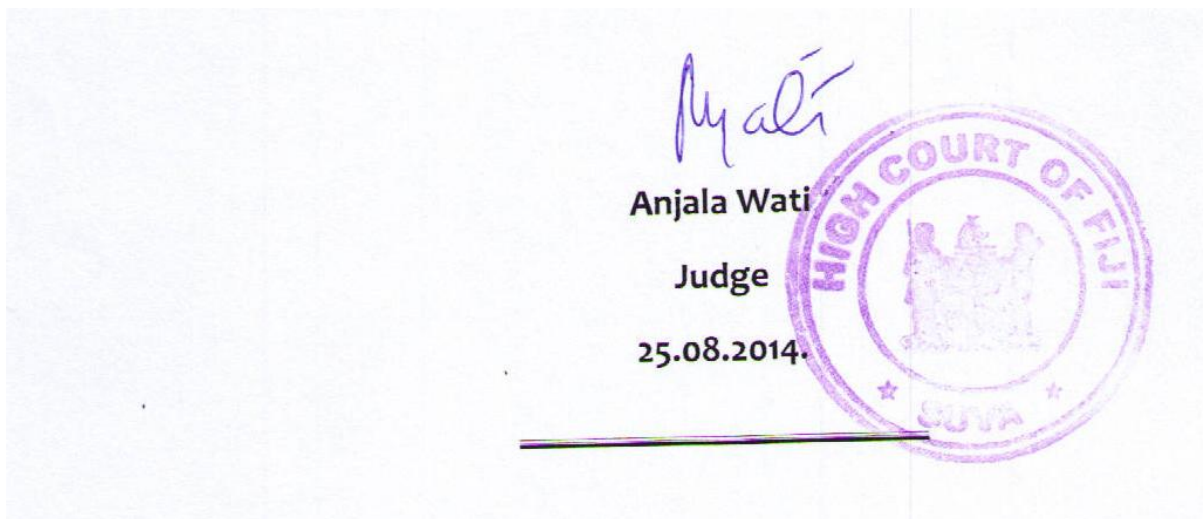
realistically I do not think that the applicant could have forwarded the file to the DPP's office for a proper charge to have been levied on 11 June 2014.

20. I therefore find that I now do not have any jurisdiction to entertain the application for enlargement of time as it is made after 18 months from the date of the alleged offence.

**Final Orders**

21. The application for extension of time for bringing of the charges against the respondent contrary to the ERP is refused and dismissed.

22. I shall hear the parties on the issue of costs on the date to be appointed by the Court upon consultation with the parties.



**To:**

1. **Ms. T. Sharma for the Applicant.**
2. **Mr. A. Khan for the Respondent.**
3. **File: ERCC 04 of 2014.**