

IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION

Civil Appeal No: HBA 12 OF 2016

BETWEEN : 1. SANJAY SINGH VERMA  
2. BABITA KUMAR

APPELLANTS

AND : 1. DIWAKAR LAL  
2. ASHIKA REKHA CHAND

RESPONDENTS

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Coram : The Honorable Mr Justice David Alfred

Present : The First Appellant in Person  
Ms N Raikaci for the Respondents

JUDGMENT

1. Both these Appeals came up for hearing on 3 August 2016, and this Judgment relates to both.

2. At the outset, Counsel for the Respondents stated she had a preliminary objection to raise viz that both Appeals were not properly before the court. This was because she contended:
  - (i) The Grounds of Appeal were filed out of time. (the Grounds).
  - (ii) The Grounds of Appeal were never served on the Respondents.Thus Order XXXVII rule 3 of the Magistrates' Courts Rules (the Rules) had not been complied with.
3. The First Appellant said the Grounds had been filed within time and the Grounds had been served on the First Respondent. When the First Respondent who was present in court denied this, the First Appellant then alleged it had been served on the Second Respondent. Whatever the case, the First Appellant confirmed the Grounds were never served on the Solicitors for the Respondents though the Notices of Intention to Appeal had been served on the said Solicitors.
4. With regard to the filing of the Grounds, the First Appellant alleged that they had been filed within time in each case but the Registry had stamped the date of filing of each as being on a later date. He said he could show this by reference to the register of the Nausori Magistrates Court, if given time to do so.
5. Counsel for the Respondents objected and asked for both Appeals to be dismissed with costs.
6. As the facts of the objection are contained within a small compass I was able to peruse the Record and the relevant Rules before arriving at my decision.
7. Rule 3(1) states the appellant shall within one month from the date of the decision appealed from, including the day of such date, file in the court below the grounds of his appeal and shall serve a copy of such grounds on the respondent.
8. A perusal of both Court files concerned show in each case the following:
  - (i) The decision appealed against was made by the Magistrate on 26 May 2015.
  - (ii) The Grounds of Appeal were filed on 29 June 2015 which is out of time. This is crystal clear from both the date stamp of the fees paid on the first page and the date stamp of the

date of filing in the Magistrates Court, Nausori on the reverse of the Grounds which both state 29 June 2015.

(iii) There is no affidavit of service of the Grounds on the Respondents or their Solicitors.

9. I am of opinion that I am not entitled to go behind the dates stamped by court officials on documents as the dates they were filed. For any Court to do so, would open a Pandora's box which will result in there being no finality to any litigation and time frames imposed by law or the Rules will be respected in their breach rather than in their observance. So granting any time to the Appellant to produce the register would not be justified.
10. Based on everything before me, I was of the considered opinion that both Appeals were time barred and not properly before me.
11. I therefore dismissed both Appeals on 3 August 2016 but made no order as to costs.

**Delivered at Suva this 4<sup>th</sup> day of August 2016.**



David Alfred  
**JUDGE**  
High Court of Fiji