

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**APPELLATE JURISDICTION**

**CIVIL APPEAL NO. HBA 9 OF 2020**  
NADI MC CIVIL ACTION NO. 604 OF 2014

**BETWEEN** : **ALVIN RAJ** of Lautoka, a Businessman trading under the name and style of **ALVIN RAJ & ASSOCIATES**.

**APPELLANT/DEFENDANT**

**AND** : **ANWAR HASSAN SHAH** of Meigunyah, Nadi, Businessman.

**RESPONDENT/PLAINTIFF**

**Appearances** : Mr R. Singh (on instruction) for the appellant  
Mr J. Sharma for the respondent  
**Date of Hearing** : 14 July 2020  
**Date of Judgment** : 14 July 2020

## **J U D G M E N T**

[01] This is an appeal against a decision of the Magistrate's Court sitting at Nadi. By her decision dated 26 April 2018, the learned Magistrate ("*the Magistrate*") had overruled an objection or a preliminary issue raised under the Limitation Act, section 4 (1) (d) (i). Thereafter, the appellant made application to the Magistrate for extension of time to appeal that decision. The Magistrate struck out that application for default of appearance on 9 August 2018. Then the appellant filed an application to reinstate the struck out application. The Magistrate, by her decision of 29 November 2019, dismissed the application for reinstatement of the leave to appeal out of time application.

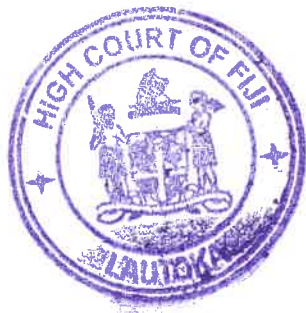
[02] The Magistrate's ruling of 29 November 2019 appears to be an interlocutory one because she had dismissed an application for reinstatement of the leave to appeal out of time application.

- [03] On 18 December 2019, the appellant filed a notice of intention to appeal the decision of 29 November 2019.
- [04] The Magistrate dismissed the appellant's leave to appeal out of time application for want of appearance. The appellant could simply have filed a fresh application as the first application was dismissed for default instead of filing a reinstatement application and then file an appeal against the decision refusing to reinstate.
- [05] The appeal before this court has come up without grounds of appeal being filed. The appellant must, within one month from the date of the decision appealed from, file in the court below the grounds of his appeal, and must cause a copy of such grounds of appeal to be served on the respondent (see Magistrates Court Rules (MCR), O 37, R 3 (1)).
- [06] The appellant had intended to appeal the decision of the Magistrate delivered on 29 November 2019. He had filed a notice of intention to appeal on 18 December 2019, which is out of time. He should have filed a notice of intention to appeal within 7 days after the day on which the decision appealed against was given (see MCR, O 37, R 1).
- [07] What happens when the appellant fails to file grounds of appeal? On the appellant failing to file the grounds of appeal within the prescribed time, he shall be deemed to have abandoned the appeal, unless the court below or the appellate court shall see fit extend the time (see MRC, O 37, R 4).
- [08] The appellant's application to extend the time to appeal had been dismissed by the Magistrate.
- [09] Since the appellant had failed to file his grounds of appeal within the prescribed time (30 days) he is deemed to have abandoned the appeal.
- [10] For these reasons, I conclude that there is no properly constituted appeal before this court. I would, therefore, dismiss the appeal with summarily assessed cost of \$800.00 payable to the respondent and \$600.00 payable to the Nadi Magistrates

court registry for preparation of copy records. The original record is to be returned to Magistrates Court, Nadi forthwith.

### **Result**

1. Appeal deemed abandoned.
2. Appellant shall pay summarily assessed costs of \$800.00 to the respondent and \$600.00 to the Nadi Magistrates Court Registry.
3. The registry is ordered to return the original record to the Nadi Magistrates Court.



*M. H. Mohamed Ajmeer*  
14/7/20

.....  
M. H. Mohamed Ajmeer

**JUDGE**

**At Lautoka  
14 July 2020**

Solicitors:

Fazilat Shah Legal for the appellant

Janend Sharma Lawyers, Barristers & Solicitors for the respondent