

IN THE EMPLOYMENT RELATIONS COURT**AT SUVA****APPELLATE JURISDICTION****CASE NUMBER:** ERCA 10 of 2016**BETWEEN:** **DIRECTOR ASHABHAI & COMPANY LIMITED**
APPELLANT**AND:** **BRIJMA WATI**
1st RESPONDENT**AND:** **MINISTRY OF LABOUR, PRODUCTIVITY &
INDUSTRIAL RELATIONS**
2nd RESPONDENT

Appearances: Mr. V. Sharma for the Appellant.
No Appearance for the 1st Respondent.
2nd Respondent Discharged from Proceedings.

Date/Place of Judgment: Friday 28 April 2023 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Leave to Appeal)

A. Catchwords:

Employment Law – whether leave to appeal is required from a final decision of the Employment Court exercising appellate jurisdiction – whether the time to appeal should be extended – whether the workmen’s compensation proceedings should be stayed – in considering the question of extension of time the issue of delay causing prejudice to the widow of the deceased considered with the appellant’s choice to delay the matter after being warned by this court to carefully consider the issue of the need for leave to appeal.

B. Cases:

1. Labaibure v. Land Transport Authority [2017] FJCA 131; ABU0127, 2016 (20 October 2017).

C. Legislation:

- 1. Court of Appeal Act 1949: s. 3(4).*
- 2. Employment Relations Act 2009 (“ERA”): ss. 219 and 244.*

1. The employer has filed a summons seeking leave to appeal my decision of 4 October 2019. I heard an appeal from the Tribunal and upheld its decision.
2. The appellant also seeks an order for extension of time to file the appeal in the Court of Appeal. A further order is sought asking for a stay of proceedings in the Tribunal which application I had declined on 12 February 2020. My minutes of 20 February 2020 reads as follows:

“Mr. Nawaikula to investigate into the issue the need for leave to appeal under the ERA and also whether the application for stay will be maintained given my views that the deceased widow is very old and this matter is almost 8 years old. The matter needs to be tried and if the outcome is not suitable a stay of execution of the orders may be the alternative option. For now I am not minded to stay the proceedings in the lower court”.

3. In the Employment Relations Court both the employer and the Ministry of Labour, Productivity & Industrial Relations had appealed the decision of the Tribunal of 18 July 2016. The decision in the Tribunal arose from a workmen’s compensation claim filed by the wife on behalf of her husband who had died at work on 3 April 2007.
4. In its judgment, the Tribunal found that the claim of the wife was not time barred under s. 13 of the Workmen’s Compensation Act Cap. 94, the applicable Act at the time, in that she had 6 years to bring the action as she had “good cause” why she could not bring the matter within 12 months from the date of the death.

5. The “good cause” was found to be the delay by the Permanent Secretary for Employment, Productivity & Industrial Relations (“PS”) in advising the widow that the office of the PS would not be instituting a claim on her behalf. The Tribunal therefore ordered that the substantive matter be heard.
6. The Permanent Secretary of the 2nd Appellant was also aggrieved at some remarks being made in the judgment against the office in not bringing an application on behalf of the wife and for the delay that was caused by the office of the PS giving rise to the employer to argue the issue of time limitation.
7. In the appeal decision, my final orders were as follows:
 - *“I find that the claim by the widow is not time barred and that she had a right to institute the claim within 6 years and that the date of her filing the claim should be counted from 26 September 2012.*
 - *I dismiss the employer’s appeal and order that the substantive claim be heard. A hearing date ought to be fixed within 21 days given the time span from the date of the death.*
 - *The Registrar of the ERT must notify the parties in writing of the calling date of this matter in the ERT, that is, the widow and the employer. The PS is no longer a party to the cause as per my orders in para. 74 below.*
 - *I discharge the Permanent Secretary for Employment, Productivity & Industrial Relations as a party to the claim by the widow.*
 - *I find that it is proper that costs be awarded to the widow for the appeal by the employer. There shall be an order for costs in the sum of \$3000 against the employer in favour of the widow and the said sum shall be paid within 14 days to the widow personally”.*

8. The appellant has brought the application for leave to appeal under s. 244 of the ERA which states that *“a party who is dissatisfied with an interlocutory order of the Employment Court may, within 14 days, apply to that Court for leave to appeal to the Court of Appeal or if leave is refused by the Employment Court apply to the Court of Appeal for leave to appeal”.*
9. I cannot fathom why the employer is seeking leave to appeal my decision. I heard the appeal from the Tribunal’s decision and my orders on appeal are final orders. I did not grant any interlocutory orders. The appeal was from an interlocutory decision of the Tribunal but that does not make the appeal before me an interlocutory one. The appeal before me was a substantive proceeding in which I gave final orders.
10. The application for leave to appeal my decision on the appeal is misconceived. There is no need to file an application for leave to appeal. I had indicated this to the appellant when I was first confronted with the application for leave to appeal but the appellant insisted to proceed with its application.
11. I wish to add that the appellant cannot rely on s. 244 of the ERA. I have exercised my appellate jurisdiction in this case and not an original jurisdiction. Since I exercised my appellate jurisdiction and gave a decision on the substantive appeal, the Court of Appeal 1949 Act will apply. I cannot find any requirement for leave in the Court of Appeal Act 1949.
12. S. 3(4) of the Court of Appeal Act 1949 states that *“subject to section 99(4) of the Constitution of the Republic of Fiji, appeals lie to the court on a question of law only from final judgments of the High Court given in the exercise of the appellate jurisdiction of the High Court”.*
13. The Employment Relations Court is a division of the High Court under s. 219 of the ERA. Any appeals from the Employment Relations Court from its appellate jurisdiction lies as of right to the Court of Appeal on questions of law. There is no requirement for leave to appeal.
14. In *Labaibure v. Land Transport Authority [2017] FJCA 131; ABU0127. 2016 (20 October 2017) Lord President Justice Calanchini* clearly indicated that appeals from Employment Relations Court exercising appellate jurisdiction is under s. 3(4) of the Court of Appeal Act

and will be confined to questions of law. Neither 3 (4) of the Court of Appeal Act nor His Lordship indicated that there was a need for leave to appeal the final decision of the Employment Court exercising appellate jurisdiction.

15. On the issue of extension of time to file the appeal, I find that there is no reason for the delay in filing the appeal. It was not difficult to discern that I had exercised my appellate jurisdiction and any decision on the substantive appeal is not an interlocutory decision. It is a final decision and that there is no requirement for leave. I repeat that I had already put the appellant to warning in 2020 to carefully look into the question of whether there is a need for leave to appeal at all. The appellant refused to take heed of the warning and chose to delay the matter without realizing the effect it has on the widow who is waiting for some finality in this case.
16. If the appellant had appealed the decision in 2019, there would have been some finality to the issues raised and the matter in the Tribunal could have been finalized. It is this application for leave to appeal which has unnecessarily caused the delay and the appellate is to be responsible for it. There is no justifiable reasons why an extension of time should be granted. It is 3 years 6 months since I gave the appeal decision. There is a substantial delay in filing the appeal.
17. The wife of the widow is suffering without a relief. Her husband died in 2007 and her claim under the Workmen's Compensation Act Cap. 94 has still not been finalized. It is now 16 years and that kind of delay suffered by any litigant is not acceptable. I had also made my observations about the delay in this case and ordered an expedited hearing within 21 days. I had also refused stay of the proceedings on 17 February 2020 given the delay. I therefore decline the stay application on the same basis I did on 17 February 2020.
18. In the final analysis, I find that I do not have jurisdiction to consider the question of leave to appeal my decision on appeal from the Tribunal. I therefore strike out the summons seeking leave to appeal.
19. I further dismiss the application for extension of time to appeal and stay of the proceedings in the Tribunal. I further order the Registrar of the Tribunal to list the matter before the Tribunal for an expeditious hearing.

20. I also order costs against the employer in the sum of \$1,500 to be paid within 14 days.



Anjala Wati

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Hon. Madam Justice Anjala Wati

Judge

28. 04.2023

To:

1. **AK Lawyers for the Appellant.**
2. **Brijma Wati - 1st Respondent.**
3. **File: ERCC 10 of 2016.**