

**IN THE EMPLOYMENT RELATIONS COURT AT SUVA**  
**APPELLATE JURISDICTION**

**CASE NUMBER:** ERCA 06 of 2019

**BETWEEN:** **LAND TRANSPORT AUTHORITY**  
**APPELLANT**

**AND:** **RAJESH NARAYAN**  
**RESPONDENT**

*Appearances:* Ms. E. Dauvere for the Appellant.  
Mr. D. Nair and Mr. Volavola for the Respondent.

*Date/Place of Judgment:* Wednesday 13 March 2024 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**RULING**

A. **Catchwords:**

*Employment Law – Leave to Appeal – in considering whether leave to appeal should be granted, the merits of the grounds of appeal considered – a party cannot raise new matters that was not argued before the court to consider leave on those grounds.*

B. **Cases:**

1. *Vinod Raj Goundar v The Minister of Health [2008] CA No. ABU 0075 of 2006s.*

C. **Legislation:**

1. *Employment Relations Act 2007 (“ERA”): s. 244.*

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**Cause**

1. On 29<sup>th</sup> of August 2019, I had refused the employer’s application for leave to appeal out of time the decision of the Tribunal in Employment Grievance Case No. 3 of 2010 issued on 7 June 2018. The employer has filed an application before me seeking leave to appeal my decision.
2. The substantive decision against which leave to appeal out of time was sought was for the employer to reinstate the employee preferably to a position similar to what he was holding prior to the termination.

The employer was also ordered to reimburse the employee with 2 years of lost wages as a result of the grievance and further 6 months wages as compensation for humiliation, loss of dignity and injury to the feelings of the worker.

***Proposed Grounds of Appeal***

3. The employer raises that its proposed grounds of appeal has merits and leave ought to be granted for the employer to have a determination in the Court of Appeal. The proposed grounds of appeal are identified in the summons to seek leave to appeal as follows:

1. ***That the Court erred in making a finding on the correct date on which the matter was heard, , whether the employer was properly advised of the hearing dates and properly represented during the hearing by an authorized person, there being no evidence that one Josua Tuibua was ever authorized to appear for the employer as he was not even a qualified legal practitioner;***
2. ***That the Court erred in not holding that the employer cannot be bound by the decision when it was never a party to the cause and when its letter of 22 September 2014 did not explicitly accept to it being a party; and***
3. ***That the judgment by the Tribunal was delivered very late thus prejudicing the employer.***

***Analysis***

4. The application for leave to appeal is brought pursuant to s.244 of the Employment Relations Act 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 to appeal is refused by the Employment Court apply to the Court of Appeal for leave to appeal”*.
5. In determining the application for leave to appeal, I will consider whether the proposed grounds of appeal present any merits. The first ground of appeal contends that in my finding refusing extension of time, I had stated that the matter was heard in the tribunal on 16 April 2010. It is now argued that the matter was not heard on this date but other dates.
6. When the application for extension of time was argued before me, the employer’s position was that a hearing date was not fixed in the matter and the employer never attended the hearing. It now says that

the matter was heard on different dates. I find the employer's change of stance preposterous. The issue that was before me for consideration was whether the employer was given the opportunity to be heard in the proceedings.

7. That position was made clear in my judgment of 29 August 2019 by paragraphs 6, 7, 13, and 14 as follows:

*"[6] It is the position of the LTA that when the employee served his application for compliance on the employer on 28 September 2018, it noticed that in the judgment of the ERT, the Land Transport Authority was not the respondent but the National Road Safety Council was. This prompted the employer to conduct the search of the ERT file. The search was delayed from October until November 2018 as the original file was missing from the ERT Registry.*

*[7] It is the Employer's position that when it searched the file, it was revealed that no hearing date was ever fixed in the matter and that there was no record of the employer attending the hearing. There is also no record of the hearing being conducted in the ERT....*

*[13] In determining the application for leave, I will first deal with the issue of breach of natural justice as alleged by the employer. To my mind this is the issue that concerns the proceedings the most since it is fundamental to the principles of natural justice and one which goes to the root of the proceedings, that before a party is condemned or orders made against it, he or she must be given a right to be heard. The precise issue is whether the employer was provided with an opportunity to present its case before the ERT.*

*[14] If any such opportunity was provided and not utilized, the blame should be laid at the door of the employer. The allegation by the employer prompted me to call for the original file of the ERT as no court records were requested by either party filing the application".*

8. It was due to the allegation that the employer was denied a right to the hearing that I had called for the original file to ascertain the correctness of the allegation. I can only rely on the official records to come to a concrete finding. Paragraphs 15, 16, 17, 18, 19, and 20 of my judgment clearly makes a finding that the employer participated in the hearing after being notified of the hearing date. I also ascertained from the records that the hearing took place on 16 April 2010 and that one Mr. Tuibua appeared for the employer.

9. That finding of fact was reflected from the original file. I cannot accept any other contention raised from any other records. Whether Mr. Tuibua was the authorized person to appear is not the issue before me. It is an internal matter and was never raised for consideration when the application for extension of time was being addressed. I must add for the sake of clarity that in employment cases, most representatives are not qualified lawyers.
10. The other issue that arises from the appeal is whether LTA is bound by the judgment when it was not a party to the cause. Paragraph 32, 33 and 34 of my judgment clearly indicates that LTA was aware of the proceedings. It had written a letter on 22 September 2014 to the worker agreeing to abide by the decision of the Tribunal. It therefore accepted as being a party to the cause. Why else would it say that it will abide by the decision when it was not a party to the cause?
11. The letter does not have to explicitly state that it accepts being a party to the cause. The intention is implied from that letter. I do not find that there is any basis to challenge the decision on the grounds that it was not a party to the cause. The opportunity to do that was before the tribunal when the judgment was pending for delivery. The employer could have put a conditional appearance in the tribunal and raised all these issues. The employer did not utilize that opportunity.
12. The final ground complains about the delay in the judgment of the Tribunal. That is a fact but the findings cannot be flawed by just pleading delay. No prejudice was ever raised or argued before me in the application for extension of time.
13. I must reflect that I had asked the parties to address me on whether my decision to refuse extension of time was an interlocutory decision and requires leave to appeal.
14. My attention was drawn to the case of *Vinod Raj Goundar v The Minister of Health [2008] CA No. ABU 0075 of 2006s* which suggests that the application which was initially before me seeking leave to appeal out of time was an interlocutory one and thus there is a need for leave to appeal the decision which I now refuse on the basis that all the grounds are unmeritorious.

#### ***Final Orders***

15. In the final analysis, I do not find any merits in the proposed grounds of appeal and I therefore dismiss the application for leave to appeal my decision.

16. The employer shall pay costs of \$1,500.00 to the worker within 14 days.



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*Hon. Madam Justice Anjala Wati*

13.03.2024  
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To:

1. Land Transport Authority, Legal Department for the Appellant.
2. Mr. D. Nair for the Respondent.
3. File: Suva ERCA 06 of 2019.

