

**IN THE HIGH COURT OF FIJI.  
(WESTERN DIVISION) AT LAUTOKA.  
EXERCISING CIVIL APPELLATE JURISDICTION.**

**H.C. CIVIL APPEAL NO HBM No. 33 of 2024  
M.C. NADI- CIVIL ACTION NO. 25 of 2023.**

**BETWEEN** : **PRABHA HOLDINGS (FIJI) PTE LTD**, a Limited Liability Company,  
having its registered Office at 133 Kennedy Avenue, Nadi, Viti Levu.  
**PLAINTIFF-APPELLANT**

**AND** : **SANDEEP CHAND LAL** trading as **HAMPTONS INTERIORS** having its  
Principal Place of Business at 59, Kennedy Avenue, Nadi, Viti Levu.  
**DEFENDANT- RESPONDENT**

**BEFORE** : Hon. Mr. A.M. Mohamed Mackie-J

**APPEARENCECES** : Mr. V. Chandra - for the Plaintiff-Appellant.  
Respondent absent and no representation.

**HEARING** : By way of Written Submissions as opted on 4<sup>th</sup> August 2025.

**W. SUBMISSIONS** : Filed by the Appellant on 19<sup>th</sup> August 2025.  
No written submissions filed by the Respondent.

**JUDGMENT** : Delivered on 25<sup>th</sup> November 2025.

**JUDGMENT**

**A. INTRODUCTION:**

1. This is a NOTICE OF MOTION filed by the Plaintiff-Appellant (“The appellant”) before this Court on 10<sup>th</sup> December 2024, seeking for the following reliefs;
  1. **THAT** time be enlarged to allow the Appellant/ Plaintiff to file Notice of Intention to Appeal and Grounds of Appeal out of time against the Decision of the Nadi Magistrates Court in Civil Action Number 25 of 2023 dated 31st October 2024.
  2. **THAT** in the alternative this Honorable Court determine the Grounds of Appeal that have been filed within time by using its inherent powers granted under Order 3 Rule 9 of the Magistrate’s Court rules to do so without the need to file a Notice of Intention to Appeal.
  3. **THAT** costs of this application be costs in cause.
  4. Any further relief or orders that this court deems just, fair and necessary.

2. Solicitors for the appellant, on 27<sup>th</sup> January 2025, filed an affidavit of, purported, Service reporting that the said notice of motion was served on the Defendant/Respondent (“the respondent”) on 9<sup>th</sup> January 2025 by pasting it on the gate.
3. They also filed another affidavit of, purported, service on 19<sup>th</sup> February 2025, reporting that the said notice of motion was served by post on 13<sup>th</sup> January 2025.
4. When the matter came up on 21<sup>st</sup> February 2025, being the first call date, as the respondent was neither present nor represented, this court, having found from M.C. case record that the respondent had left Fiji despite the issual of a stop departure Order by the Magistrate’s Court, and no leave had been granted to serve by post as per the H.C Case record, direction was given by this Court for the appellant’s solicitors to seek leave to serve the notice of motion on the respondent by way of substitute service.
5. Accordingly, on 28<sup>th</sup> February 2025, an ex parte notice of motion was filed before me seeking leave to serve via email to his usual two (2) email address given in the motion. Thereafter, an affidavit of service confirming the service was filed on 7<sup>th</sup> April 2025.
6. Subsequently, though the matter was called on 20<sup>th</sup> May 2025, 24<sup>th</sup> June 2025 and 4<sup>th</sup> August 2025, as the respondent was neither present nor represented and the appellant’s Counsel had opted to have the matter disposed by way of written submissions, this Court by directing the appellant’s solicitors to dispatch the scanned version of the copy-record and the appellant’s written submissions to the respondent to his email addresses and fixed the matter for judgment.
7. The appellant’s Solicitors, having emailed the same unto the respondent, have on 23<sup>rd</sup> June 2025 and 22<sup>nd</sup> of August 2025 filed two separate affidavits of service.
8. It is to be noted that when senior Counsel for the appellant, Mr. V. Chandra, appeared before me on 11<sup>th</sup> March 2025, this Court had intimated that the **notice of motion for enlargement of time to file notice of intention to appeal and grounds of appeal out of time**, and the **substantive appeal** will be heard together.

**B. BACKGROUND:**

9. The main allegation by the appellant against the respondent before the Court bellow was that the respondent had breached the written contract entered into for General Maintenance and Interior Re-Layout on the appellant’s property and, as a result, the appellant had to incur additional expenses to complete the job and suffered loss, damages and costs.
10. The leaned Magistrate, after taking formal proof evidence by way of affidavit, supported by annexures thereto, by her impugned Ruling dated and pronounced on 31<sup>st</sup> October 2024, granted the following reliefs in favor of the appellant and against the respondent;

1. *Judgment in the sum of \$13,633.54 plus endorsed costs of \$ 112.70;*

2. *Post judgment interest at the rate of 5% per annum from the date of judgment to the date of payment;*
  3. *Costs against the Defendant summarily assessed in a sum of \$500.*
11. It is against the said Judgment, the appellant has preferred the application in hand seeking for the extension of time to file notice of Intention of appeal and grounds of appeal, as they had, admittedly, failed to file them within the prescribed time period.

**C. APPLICATION FOR EXTENSION OF TIME.**

12. Seeking the reliefs sought in the notice of motion, the deponent SHEELVIN KISHORE, who is the property Manager of the appellant Company, in his affidavit in support thereof, states, inter *alia*, THAT;
5. *"I have been advised and verily believe the same to be true that the Notice of Intention to Appeal should have been filed and served within 7 days from the date of judgment, which was due on 7<sup>th</sup> November 2024 and the Grounds of appeal was to be filed within 30 days from the Judgment on the 30<sup>th</sup> of November 2024. From the prescribed time limited for giving Notice of Intention of Appeal there has been a lapse of around 22 days.*
  6. *I have been advised and verily believe the same to be true that up on receipt of the judgment, my Solicitors began assessing the judgment. The main reason for the delay is due to the complexity and volume of claim involved which took some time to assess and for my lawyers to identify the grounds of appeal.*
  7. *The secondary reason for the delay was a slight oversight in the calculation of the days by the litigation partner at Millbrook Hills Law Partners, Vikrant Chandra. I have been advised by my Solicitors that Mr. Chandra handles and endorses appeal matters. He was out of the country for his grandmother's 80<sup>th</sup> birthday and returned on 29<sup>th</sup> October 2024 to Fiji, Diwali was on the 1<sup>st</sup> November 2024, a day after the ruling was pronounced.*
  8. *With all outstanding administrative and pending legal matters, the miscalculation caused due to Diwali and the travel timing for Mr. Chandra, we were late in filing the intention to appeal.*
  9. *... that the delay caused in not prejudicial at all to the Respondent as he has not defended the action in the Magistrate's Court and the leave granted will not in any way whatsoever harm the Respondent....*
  10. *.....we now have arguable grounds of appeal, which has a chance of reasonable success...."*

**D. SEQUENCE OF EVENTS:**

13. On 31<sup>st</sup> October 2024, the lower Court delivered judgment in favour of the appellant granting a sum of **\$13,633.54**, plus endorsed costs of \$ **112.70**, interest at 5% per annum from the date of Judgment till the date of payment in full, and costs in a sum of **\$500.00**. When the judgment was pronounced, the appellant was represented by his counsel (Ms. Devi).

14. Understandably, as the respondent was absent and unrepresented, neither the notice of intention to appeal was verbally given in the Court on 31<sup>st</sup> October 2024 nor a written notice of such intention to appeal was filed and served within 7 days from the date of Judgment, for which the prescribed time period expired on 7<sup>th</sup> November 2024.
15. However, the grounds of appeal, which should have been filed and served within 30 days from the date of impugned Judgment on 31<sup>st</sup> October 2024, ie on or before the 30<sup>th</sup> of November 2024, was also not filed. Thus, the prescribed time period expired.
16. The Appellant also did not have the impugned judgment sealed and served on the respondent for him to go before the Court below, if he wished, to make an application to have the formal proof judgment set aside.
17. Having failed to do so, the appellant on 10<sup>th</sup> December 2024 filed the current application before this Court seeking for leave to comply with the above procedural requirements and/ or alternatively for this Court to determine the appeal on the grounds of appeal adduced.
18. An application being made seeking leave for the service of this notice of motion on the respondent via email, this court on 11<sup>th</sup> March 2025 granted the leave. Though, the same was reportedly served, the respondent did not respond.

**E. DETERMINATION:**

19. A party aggrieved with a decision of the Magistrate's Court is required by Order XXXVII R1 of the Magistrates Court Rules to file and serve, within seven days after the day on which the decision sought to be appealed against was pronounced, a notice in writing of his intention to appeal". The proviso states that such notice may be given verbally, in the presence of the opposite party. In this case respondent was not present in Court and the matter had proceeded Ex-parte. Thus, giving such a notice in open court was impracticable. However, under normal circumstances, the compliance with 7days rule in case of notice of intention to appeal, and 30 days rule in case of the grounds of appeal cannot be compromised.
20. In ***Crest Chicken Ltd v Central Enterprises Ltd, (2005) FJHC 87*** Pathik J held that the provisions of Order XXXVII, R 1 are mandatory. There is no provision for extension of time to give notice of intention to Appeal.
21. Hon. Wati J in ***Fiji Posts and Telecommunications Ltd, (HBA 003 of 2000L)*** held that Or11, R 2 of the Magistrates Court Rules titled "Enlargement or Abridgement of Time" enables an application to be made for extension of time to file notice of intention, provided the applicant had made an attempt to obtain the consent of the other party.

Hon. Wati J stated that in the absence of a specific provision, the Court can rely on the general provision, to consider the application for extension of time.

22. The reasoning in that judgment appeals to me, in the light of Or11, r 9, which provides that a court shall have power "to enlarge or abridge the time appointed by these Rules.." ***However, a party applying for an extension of time has to provide a satisfactory explanation for his delay***".
23. With the above observation in relation to the notice of intention to appeal, I move on to the next application. This is for the extension of time to file grounds of appeal. Order XXXVII, R 3 states that the appellant shall file "within one month" the grounds of appeal in the court below. The ensuing rule 4 states that the time period may be extended by the court below or the High Court.
24. On this point, Pathik J in ***Crest Chicken Ltd v Central Enterprises Ltd,(supra)*** referred to ***Tevita Fa & Associates and Tradewinds Marine Ltd and Oceanic Developers (Fiji) Ltd, (Civ App No. 40/94 FCA)*** where Thompson J A said:
- "Time-limits are set with the intention that they should be observed and even lateness of only a few days requires a satisfactory explanation before an extension of time can properly be granted. In this case, as stated above the applicant has given no explanation at all."*
25. In ***AG v Sharma, (ABU 0041.93S)*** the FCA highlighted the following five factors to be considered, in an application for leave to appeal out of time, namely;(i) The reason for the failure to comply, (ii)The length of the delay, (iii)Is there a question that justifies serious consideration, (iv)If there has been a substantial delay, do any of the grounds urged have merit that would probably succeed, and (v) The degree of prejudice to the respondent in enlarging time. The judgment of the Court stated that it was not necessary to deal with each of these factors "willy-nilly".
26. The first factor to be considered is whether the Appellant has satisfactorily explained his failure in filing the notice of intention to appeal and/ or grounds of appeal. In the present case, the lower court delivered judgment on 31<sup>st</sup> October 2024. The time period of 7 days to give notice of intention to appeal expired on 07<sup>th</sup> November 2024. I have perused the Magistrates Court file and found that the appellant was represented by a Counsel when the judgment was delivered.
27. The appellant did not complain that the Copy of the judgment was not issued in time or of any other delay caused by the registry. No any other reason was adduced for the failure other than what was averred in the affidavit in support, which are unpersuasive. The 7 days period to file notice of intention to appeal expired on 7<sup>th</sup> November 2024 and the 30 days period to file the grounds of appeal expired on 30<sup>th</sup> November 2024. The appellant filed his application before this Court to extend time only on 10<sup>th</sup> December 2024.
28. In my judgment, the appellant has failed to explain satisfactorily, the failure on both instances. The reasons adduced in the affidavit in support, which was sworn not by the Counsel, who was said to be in charge of the appeal matters, did not contain any material ground that could be accepted to justify the failure and the delay of around 11 days. The impugned Judgment was delivered on Thursday 31<sup>st</sup> October 2024 and the next day being

the Friday 1<sup>st</sup> November 2024 happened to be Diwali day. Leaving the subsequent 2 days, being the week end, they had 4 days remaining till 7<sup>th</sup> November 2024. But they failed. Even they are pardoned for the failure in relation to the notice of intention to appeal, no valid reason adduced for not filing the grounds of appeal on or before 30<sup>th</sup> November 2024.

29. The Judgment was delivered, not during Mr. V. Chandra's absence from Fiji. He was in Fiji on 30<sup>th</sup> October 2024 after returning on 29<sup>th</sup> November 2024. They had enough time to file the notice of intention to appeal and the grounds of appeal and have it promptly served via email. There were two email addresses of the respondent.
30. The Fiji Court of Appeal in plethora of decided authorities have repeatedly made the following observations with regard to law on extension of time.

*[4] It is well settled now that this Court has an unfettered discretion in deciding whether or not to grant the leave out of time [2]. However, the appellate courts always consider five non-exhaustive factors to ensure a principled approach to the exercise of the judicial discretion in an application for enlargement of time namely (i) the reason for the failure to file within time (ii) the length of the delay (iii) whether there is a ground of merit justifying the appellate court's consideration (iv) where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? and (v) if time is enlarged, will the respondent be unfairly prejudiced?[3] Nevertheless, these matters should be considered in the context of whether it would be just in all the circumstances to grant or refuse the application and the onus is on the appellant to show that in all the circumstances it would be just to grant the application[4]. In order to determine the justice of any particular case the court should have regard to the whole history of the matter, including the conduct of the parties [5]. In deciding whether justice demands that leave should be given, care must also be taken to ensure that the rights and interests of the respondent are considered equally with those of the applicant [6].*

*[5] Since the reason for the delay is an important factor to be taken into account, it is essential that the reason is properly explained - preferably on affidavit - so that the court is not having to speculate about why the time limit was not complied with. And when the court is considering the reason for the delay, the court should take into account whether the failure to observe the time limit was deliberate or not. It will be more difficult to justify the former, and the court may be readier to extend time if it was always intended to comply with the time limit but the non-compliance arose as a result of a mistake of some kind.[7]*

*[6] The length of the delay is determined by calculating the length of time between the last day on which the appellant was required to have filed and served its application for leave to appeal and the date on which it filed and served the application for the enlargement of time.[8] The length of the delay in the case of the appellant is a little over 02 weeks. 40 days have been considered 'a significant period of delay' [9]. Delay of 11 days [10] and 47 days [11] also have defeated applications for enlargement of time. Even 04 days delay requires a satisfactory explanation [12]. However, in some other instances, delay of 05 months and 02 years respectively had not prevented the enlargement of time although delay was long and reasons were unsatisfactory but there were merits in the appeal.[13]*

*[7] Rules of court must, prima facie, be obeyed and in order to justify a court in extending the time during which some step in procedure is required to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.[14]*

*[8] The delay is substantial and the appellant has not explained the reasons for the delay at all. Granting of enlargement of time is likely to cause prejudice to the respondents as two courts have held in their favor and there is a need to see a finality to the matters in dispute. However, the most crucial question is whether the appellant's intended appeal has enough merits as to warrant the grant of enlargement of time. But to decide that, the court has to examine the proposed grounds of appeal.*

31. I do not find the appellant's evidence and submissions to be convincing. The fact that his counsel was away from Fiji for a birthday and the following Diwali events need not have necessarily deprived the appellant from making the timely move.

**Grounds of Appeal:**

32. I turn to consider the proposed grounds of appeal, which I shall not reproduce here in order to avoid verbosity.
33. My exercise here is not the adjudication of an application for setting aside of a default judgment or deciding on an appeal by the respondent (defendant) in this action. The appeal hereof is by the appellant (the Plaintiff) complaining that the reliefs granted to him by the Magistrate are inadequate or insufficient. Thus, I will briefly consider the, purported, grounds of appeal.
34. As far as ground 1 is concerned, the appellant's grievance is that the Magistrate erred and failed to consider that the appellant did suffer loss **as consequence of the poor work carried out by the defendant**, which allegedly delayed the completion by 3 months, thereby giving rise to loss to the appellant. It is to be observed that the appellant's affidavit evidence did not utter even a word about the poor workmanship by the respondent. Instead, what was averred in paragraph 14 of the affidavit was about the **incomplete** work by the respondent, which was attended by the subsequent contractor.

Further, the appellant's claim of \$4,000.00 per month totaling to \$12,000.00 on the alleged loss of 3 months' income, was, admittedly, without any evidence. When the claim on this in paragraph 17 was not substantiated by evidence, the Magistrate could not have given such relief on an assumption. Thus, this ground has no merit.

35. In relation to ground of appeal number 2, I find that the appellant is finding fault with the Magistrate for not awarding damages on account of alleged negligence. What I mainly find as cause of action in the appellant's SOC is the incomplete work by the respondent. There is no sufficient pleadings or particulars of any negligence on the part of the respondent. The affidavit also does not reveal any evidence in that regard. Thus, this ground of appeal also bound to fail.

36. The fact that the respondent did not contest the proceedings before the Court below need not necessarily be a ground to award indemnity costs as submitted in the ground number 3. Had the respondent opted to contest the proceedings in the absence of any defence, it could probably have been considered in favor of the appellant to order indemnity costs. This ground too should fail.
37. The alleged failure on the part of the Magistrate to order cost in a sum of \$575.00 on account of the demand notice, as averred in 4<sup>th</sup> ground of appeal, need not be a serious issue in view of facts and circumstances hereof and the reliefs already granted.
38. The ground number 5 does not have merits at all as there is no evidence that the appellant was found liable by the Small Claim Tribunal on account of the alleged dues to the plaintiff thereof (Aluminum & Joinery works) from the appellant.
39. Under ground 6, the appellant alleges that the Magistrate erred in failing to account for certain receipts. I find those amounts are not supported by proper documentary evidence. The rest of the purported grounds of appeal have already been addressed.
40. In my judgment, there are no merits in the grounds of appeal. The prospects of success are minimal. I decline the application for extension of time to file notice of Intention to appeal and grounds of appeal. However. This appeal against the judgment of the lower court dated and pronounced on 31<sup>st</sup> October of 2024 cannot succeed.

**F. FINAL ORDERS:**

1. The Notice of Motion for the extension of time to file Notice of Intention to Appeal and Grounds of Appeal fails.
2. The Notice of Motion filed by the Appellant on 10<sup>th</sup> December 2024 is hereby dismissed.
3. No Order for costs and the Appellant shall bear its own costs.

  
A.M. Mohamed Mackie  
Judge



**At the High Court of Lautoka on this 25<sup>th</sup> day of November 2025.**

**SOLICITORS:**

**For the Appellant  
For the Respondent**

**Messrs. Millbrook Hills Law Partners- Barristers & Solicitors  
Respondent absent and no representation.**