



IN THE COURT OF APPEAL OF NAURU
AT YAREN
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL No.
4/2019
SUPREME COURT No.
85/2016**

BETWEEN

BRIAR ROSE ALONA

AND

APPELLANT

UNIQUE NARAYAN

RESPONDENT

BEFORE:

**Justice Dr. Bandaranayake,
Acting President
Justice R. Wimalasena
Justice C. Makail**

DATE OF HEARING: **26/08/2022**

DATE OF JUDGMENT: **26/08/2022**

CITATION: **Alona v Narayan**

KEYWORDS:

Amended notice of appeal, non compliance of the provisions of the Court of Appeal Act and the Rules, non appearance of counsel, deemed abandoned, struck out for non compliance, practitioners duties, costs

LEGISLATION:

Nauru Court of Appeal Act, 2018, Nauru Court of Appeal Rules, 2018, Nauru Legal Practitioners Act, 2019

APPEARANCES:

COUNSEL FOR **APPELLANT**: **No appearance**

COUNSEL FOR
RESPONDENT:

E. Soriano

RULING

- 1.** This is a civil appeal that has been pending before the Court of Appeal since March 2021.
- 2.** The appeal had come before the Court on more than 17 occasions and on 28/07/2022, the learned counsel for the respondent informed the Court that the appellant was granted time to amend the appeal, but that he has not received it even by that date.
- 3.** The counsel for the appellant informed the Court that he had not filed the amended notice of appeal and moved for further time to file the amended notice of appeal. After considering the application and submissions made by

the learned counsel for the appellant, the Court granted time to file the amended notice of appeal by 08/08/2022. The Court further directed that this matter be mentioned on 10/08/2022, to ascertain whether the amended notice of appeal had been filed.

4. On 10/08/2022, the appellant was absent and unrepresented. The Court however, decided to mention this matter again on 12/08/2022 and the Registry was directed to notice the appellant.
5. On 12/08/2022, learned Counsel for the appellant informed Court that he has filed the amended notice of appeal. However, the learned Counsel for the respondent informed Court that he has not been served with a copy. At that stage, learned counsel for the appellant undertook to serve a copy of the amended notice of appeal to the learned counsel for the respondent. Based on the submissions made, the Court granted time for both learned counsel to file the list of authorities and chronology of events before 26/08/2022.
6. Further the Court made an order that this appeal was to be mentioned on 26/08/2022, to fix a date for hearing.
7. When this appeal was taken up on 26/08/2022, the appellant was absent and unrepresented. When queried, the Registrar of the Court of Appeal informed the Court that no documents had been filed. Further, it was brought to the attention of the Court that the Registrar of the Court of Appeal, acting under and in terms of section 14 of the Nauru Court of Appeal Act, 2018, had informed both learned counsel on 23/08/2022, that the relevant documents should be filed before 26/08/2022, as the Court would fix this appeal for hearing within the course of this term. In response to this, learned counsel for the respondent had informed the Registrar of the Court of Appeal on the same

day, viz., 23/08/2022, that since he has not received the appeal submissions in line with the amended grounds of appeal from the learned counsel for the appellant, he would not be able to comply with the Orders given by the Court.

8. The Nauru Court of Appeal Rules, 2018, provides for the orderly,expeditious and inexpensive disposal of applications and appeals and enables the parties to an application or appeal to prepare and present their cases and responses to the other parties, comprehensively and in a fair manner.
9. It is imperative to note that the Rules should be complied with, unless waived by the Court.
- 10.Part 6 of the Nauru Court of Appeal Rules, 2018 refers to the filing of Appeal Record Book,Chronology and written submissions. Rule 44 deals comprehensively with the compiling of the Appeal Record Book for civil appeals.
- 11.Rule 44 (10) categorically states that a failure by the appellant or respondent to comply with this Rule shall be deemed as an abandonment of the notice of appeal or respondent's notice, respectively unless the Court grants leave to the respective party to proceed with the notice of appeal or respondent's notice.
- 12.Section 26 of the Nauru Court of Appeal Act, which refers to the power of the Court to strike out appeals for non-compliance,states that the Court shall not entertain any appeals made under Part 6 of the Act, that deals with civil

proceedings, unless the appellant has fulfilled the conditions prescribed by the Nauru Court of Appeal Act 2018 or the Rules of the Court.

13. On a consideration of all the aforementioned facts and circumstances in this appeal, it is abundantly clear that the learned counsel for the appellant has not taken steps to comply with the relevant provisions stipulated in the Nauru Court of Appeal Act 2018 and the Nauru Court of Appeal Rules 2018.

14. It is also to be noted that non appearance in the Court would amount to a clear indication of lack of interest to pursue this appeal.

15. In the circumstances, the Court decides that this appeal is deemed to be abandoned and struck out for non compliance.

16. A counsel has a paramount duty to adhere to the highest standards regarding his professional duties and conduct, both towards his client and to the Court. As an officer of the Court, a counsel would always have to keep in mind to give due regard to the Orders made by the Court, directions given by the Court as well as not to waste the Court's time.

17. These cardinal principles have been clearly expressed in Schedule 2 of the Nauru Legal Practitioners Act 2019, which refers to Legal Practitioners (Professional Conduct) Rules. Part 3 of such Rules deals with the Legal Practitioner and the Court, where it states that,

"a practitioner must observe and maintain the respect due to the Courts (13(1)) and . . . must attend to such sittings of the Courts unless he or she has obtained prior leave of the Court to be absent or instructs another practitioner to appear on his or her behalf (13(2)(c))".

Further it is clearly stated in the said Rules that a practitioner must exert every effort and consider it his or her duty to assist in the speedy and efficient administration of justice.

18. On a consideration of the totality of all the circumstances, the Court imposes a cost of \$500 to be paid by the counsel for the appellant. This amount to be paid within one (1) month from 26/08/2022 at the Registry.

19. We shall place on record our appreciation of the assistance given by the learned counsel for the respondent in this matter.

Shirani A. Bandaranayake
Justice Dr. Shirani A. Bandaranayake,
Acting President of the Court of Appeal

Justice Rangajeeva Wimalasena

I agree



Justice Colin Makail

I agree

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Justice of the Court of Appeal

A handwritten signature in black ink, consisting of several loops and a horizontal stroke.

Justice of the Court of Appeal