

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No.: HBC 42 of 2018

**BETWEEN** : **MEREDANI RUVEKULA ULUIVITI** of Vatuwaqa, Suva  
**PLAINTIFF**

**AND** : **WATER AUTHORITY OF FIJI**, Level 4, Manohan Building, Ratu  
Mara Road, Suva  
**1<sup>st</sup> DEFENDANT**

**AND** : **PERMANENT SECRETARY FOR EMPLOYMENT,**  
**PRODUCTIVITY & INDUSTRIAL RELATIONS**, 4<sup>th</sup> Floor, Civil  
House, Suva  
**2<sup>ND</sup> DEFENDANT**

Appearance : Ms. S. Kunatuba for Plaintiff

Date of Hearing : 2<sup>nd</sup> March, 2018

Date of Judgment : 26<sup>th</sup> March, 2018

**JUDGMENT**

**INTRODUCTION**

1. This is an ex parte application seeking extension of time in terms of Sections 16 and 17 of the Limitation Act 1971. The Plaintiff is the widow of the deceased and intended claim is for payment of Workmen's Compensation Act and or for the value of the balance of employment contract and general damages for future loss of income from her late husband.

**FACTS**

2. The motion seeking extension of time and grounds for the extension are contained in the affidavit in support filed by a solicitor employed by the law firm of the Plaintiff.
3. The Plaintiff's husband died on 24<sup>th</sup> September, 2014 while on a tour of duty for the Water Authority of Fiji and the probate of the estate for the deceased was obtained 12<sup>th</sup> July, 2017.

4. The Plaintiff had submitted necessary documents to her law firm and having perused them they had come to a conclusion that she has a good chance for a claim arising from the death of her husband while on duty.
5. According to the affidavit in support the deponent of the affidavit had requested some additional documentations for the preparation of the writ of summons and for that the Plaintiff had requested more time (See paragraph 8 of the affidavit in support). No details of such documents are found.
6. The affidavit in support from paragraphs 9-14 state the facts that solicitor was very busy during this time due to her engagement of matters in other courts.
7. The reason given in paragraph 15 for the delay was "client's inability to get her documentation" to the solicitor in time, but failed to state what those documents were, and the delay was approximately 4 ½ months.

#### ANALYSIS

8. There is no general discretion to grant extension of time under Limitation Act 1971. Extension of limitation period is granted in terms of the said Act.
9. Section 17 of the Limitation Act 1971, deals with the application for leave of the court and Section 17(3) states as follows

*(3) where such an application is made after the commencement of a relevant action, the court may grant leave in respect of any cause of action which the application relates to, but only if on evidence adduced by or on behalf of the plaintiff, it appears to the court that if the like evidence were adduced in that action, the evidence would in the absence of any evidence to the contrary, be sufficient-*

*(a) To establish that cause of action, apart from any defence under section 4(1); and*

*(b) To fulfill the requirements of section 16(3) in relation to that cause of action.*

*And it also appears to the court that until after the commencement of that action, it was outside the knowledge (actual or constructive) of the*

*plaintiff that the matters constituting that cause of action had occurred on such a date as, apart from the last preceding section, to afford a defence under section 4(1). (emphasis added)*

10. So, the Plaintiff under Section 17(3) of the Limitation Act 1971 needs to fulfill two requirements and they are required to adduce evidence to establish cause of action and also requirements under section 16(3) of the Limitation Act.
11. Section 16(3) of the Limitation Act 1971 states as follows
  - (3) The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the **material facts relating to that cause of action** were or included **facts of a decisive character** which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date on which -*
    - (a) Either was after the end of the 3 year period relating to that cause of action or was not earlier than 12 months before the end of that period; and*
    - (b) In either case, was a date not earlier than 12 months before the date on which the action was brought.*
12. The definition of **material facts relating to that cause of action** and **facts of a decisive character** are contained in Sections 19 and 20 of, respectively in Limitation Act 1971.
13. The affidavit in support does not contain any evidence as to the Plaintiff not having knowledge of any material fact stated in Section 19 and, or any fact of decisive character contained in Section 20 of the Limitation Act 1971.
14. Even though this application is made *ex parte* the court is obliged to consider law relating to extension of time for limitation period as stated in Sections 16 and 17 of Limitation Act 1971, before granting an extension.
15. From the evidence presented to the court by way of affidavit in support the Plaintiff had failed to establish the requirements contained in Section 16(3) of the Limitation Act 1971.

16. Apart from that there is no evidence in support of Section 17(3) of the Limitation Act 1971, contained in the affidavit in support and also two annexed documents to the said affidavit.
17. There is no evidence contained in the affidavit in support to establish, there is a cause of action for the plaintiff, in terms of Section 17(3)(a) of Limitation Act 1971. Even if this hurdle is overcome Section 16(3) of Limitation Act 1971 is a mandatory requirement and Plaintiff had failed to fulfill it.
18. Court of Appeal decision in Fiji Electric Authority v Ganilau (decided on 14<sup>th</sup> May, 1999)(unreported) is authoritative on this issue.

### CONCLUSION

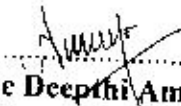
19. The extension of limitation in terms of Sections 17 and 16 of the Limitation Act can be granted only when the requirements under said provisions are fulfilled. If not no extension can be granted though the application is made *ex parte*. There is no general discretion granted to the court in terms of the said provisions of law to extend the time period for limitation. So, the *ex parte* application for extension of time period is struck off. No order as to the costs.

### FINAL ORDERS

- a. The Originating Summons for extension of time is struck off.
- b. No costs.

Dated at Suva this 26<sup>th</sup> day of March, 2018



  
Justice Deepthi Amaratunga  
High Court, Suva