

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

**Civil Appeal No. HB 04 of 2017 (on  
appeal from the Magistrates Court in  
Civil Action No. 389 of 2008)**

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**BETWEEN** : **AUTO WORLD TRADING (FIJI) LIMITED** a limited liability  
company having its registered office in Suva in the Republic of Fiji  
Islands and **MR. RAVIN LAL** Managing Director, Autoworld Trading  
(Fiji) Limited, Viria Road, Vatuwaqa, Suva, Businessman.

**APPELLANTS**  
**(Original Defendants)**

**AND** : **ESALA MAU RAIDRUTA** trading as **KULA MATAGI** of GPO Box  
214, Suva, Businessman.

**RESPONDENT**  
**(Original Plaintiff)**

**Counsel** : **Mr. S. Chandra for the Applicant**  
**Mr. V. Filipe for the Respondent**

**Date of Hearing** : **16<sup>th</sup> March, 2017**

**Date of Judgment** : **21<sup>st</sup> March, 2017**

**JUDGMENT**

**INTRODUCTION**

1. Auto World Trading (Fiji) Limited (the Applicant) had filed the Summons dated 13<sup>th</sup> February, 2017, seeking to 'Extend time to seek Leave to Appeal out of time and stay of proceedings'. The said Summons indicated that it was made in pursuance with Order 55 and original jurisdiction of the court.

## **FACTS**

2. The Applicant had filed this 'Summons to Extend Time to Seek Leave to Appeal Out of Time and Stay of Proceedings' against a Ruling by a learned Magistrate. This Summons is supported by an affidavit.
3. Though time was granted no affidavit in opposition was filed. On the day fixed for hearing the counsel for the Respondent sought further time to file an affidavit and also adjournment of the hearing, which was refused, by the court. So the facts contained in the affidavit in support are unopposed.
4. The Applicant was Defendant in an action filed in the Magistrate's Court and after hearing the Ruling was delivered on 29<sup>th</sup> December, 2016. The Applicant failed to file Notice of Intention to Appeal and Grounds of Appeal within the stipulated time. The reason given in the Affidavit in support of the present Summons is that that they were unaware of the Ruling.
5. The Ruling was pronounced in the Open Court and why the Applicant was unaware of the Ruling has not been explained. Did they receive the notice? If they did not how did they come about the Ruling? And when and how they came about the Ruling is not included as sworn facts of the affidavit.
6. There is a letter annexed to the affidavit in support which was written by the solicitors for the Applicant to the client. There are no certified copies of the proceedings of the court below to support the facts stated in the said letter marked 'A' to the affidavit.

## **ANALYSIS**

7. At the oral hearing the learned counsel could not point out any provision in the law in support of his Summons. Order 55 of the High Court Rules does not deal with extension of time.
8. Once a Ruling is delivered the Appellate procedure is contained in the Magistrates' Courts Act (Cap14) and Magistrates' Courts Rules.



9. The first step for an Appeal against Magistrate's Ruling is to give Notice of Intention to Appeal, which can be given orally when the decision is pronounced in the presence of opposing party or in writing within 7 days of the pronouncement of the said decision. (See Order xxxvii rule 1).
10. According to the affidavit in support it is safe to assume that there was no Notice of Intention to Appeal. Without a Notice of Intention to Appeal, there cannot be an Appeal and this is a requirement that cannot be overlooked or substituted by an alleged 'Leave to Appeal'.
11. There is no provision either in the High Court Rules of 1988 or in the Magistrates' Courts Act or Magistrates' Courts Rules that requires Leave to Appeal from a decision of the Magistrate. So the need to seek extension of time to file Leave to Appeal, does not arise.
12. The counsel for the Respondent stated that there was no application for extension of time for Notice of Intention to Appeal hence this application needs to be struck off. He also stated Fiji High Court decision in Jan's Rental v P. Nand etal (unreported)(decided on 27.01.2016) can be distinguished as it was not an extension of time for 'Leave to Appeal'.
13. I agree with the said submission for the Respondent. This Summons needs to be struck off in limine as there is no requirement to seek Leave to Appeal against a Magistrate's Ruling, in terms of Magistrates' Courts Rules, hence an extension of time for 'Leave to Appeal' would not arise.
14. The Summons dated 13<sup>th</sup> February, 2017 seeking extension of time to seek Leave to Appeal out of time against the learned Magistrate's Ruling delivered on 29<sup>th</sup> December, 2016 is struck off. The cost of this application is summarily assessed at \$1,000. It must be paid within 21 days.

**FINAL ORDERS**

- a. The Summons dated 13<sup>th</sup> February, 2017 seeking extension of time for leave to appeal is struck off.
- b. The cost of this application is summarily assessed at \$1,000, to be paid within 21 days.

**Dated at Suva this 21<sup>st</sup> day of March, 2017**



*Deepthi Amaratunga*  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**