

IN THE SUPREME COURT OF FIJI
[CIVIL APPELLATE JURISDICTION]

CIVIL PETITION No: CBV 0007 of 2019
[On Appeal from Court of Appeal No: ABU 0062 of 2017]

BETWEEN : **ESALA MAU RAIDRUTA**

Petitioner

AND : **1. AUTOWORLD TRADING (FIJI) LTD**
2. RAVINDRA LAL

Respondents

Coram : **Hon. Mr. Justice Kamal Kumar, President of the Supreme Court**
Hon. Mr. Justice Anthony Gates, Judge of the Supreme Court
Hon. Mr. Justice Madan B. Lokur, Judge of the Supreme Court

Counsel : **Mr. V. Filipe for the Petitioner**
Mr. S. Singh for the Respondents

Date of Hearing : **11 August 2022**

Date of Judgment : **26 August 2022**

JUDGMENT

Kumar, P

1. I agree with the reasons of and conclusion reached by His Lordship Justice Lokur.

Gates, J

2. I agree with the approach of my brother Lokur J to the unusual circumstances of this case. I agree with the orders proposed.

Lokur, J

3. This petition for special leave to appeal arises out of a judgment and order dated 08 March 2019 passed the Court of Appeal in ABU62 of 2017.

Background facts

4. The petitioner took delivery of a 14-seater Toyota Hiace van from respondent No. 1 Autoworld Trading (Fiji) Limited (hereafter Autoworld) sometime in May 2007 against payment of \$27,000. For obtaining delivery of the vehicle, the petitioner Esala Mau Raidruta (hereafter Esala) says that he took a loan from ANZ Bank and also withdrew an amount from his FNPF account.
5. During negotiations and discussions between Esala and Autoworld, it was indicated by Esala that he would be using the vehicle for commercial purposes, namely, as a mini bus to service the Nausori-Korovou route. Autoworld, through its representatives had assured Esala that the vehicle was ideal as a hired or chartered mini bus and suitable for his business.
6. According to Esala, sometime in June 2007 he noticed that the right mud flap of the vehicle had developed a hole. He brought this to the notice of Autoworld and requested them to repair the damage, but received no response to his request.
7. Then again, in July 2007 Esala noticed that the paint in the bottom, right panel of the vehicle developed some bubbles. Later, the bubbles seem to have burst and holes

appeared on the panel. Esala brought this to the notice of Autoworld and requested it to carry out repairs, but again to no avail.

8. Repeated requests were said to have been made by Esala to Autoworld to repair the damage to the vehicle but Autoworld seemed to have taken no interest in the complaints and requests of Esala. It appears that eventually after some correspondence in this regard, Autoworld informed Esala that it had no time to fix and repair his vehicle.
9. These events and the non-responsiveness of Autoworld led Esala to initiate a Writ and Statement of Claim on 12 November 2008 before the Magistrate and against Autoworld and Ravindra Lal (one of the directors of Autoworld). The proceedings were registered as Magistrate Court Action No. 389 of 2008. The principal prayer made by Esala was for judgment in the sum of \$27,000.
10. The Action was accepted by the Magistrate and judgment delivered on 29 December 2016 and it was ordered:

*“1. The Defendants shall pay the sum of \$27,000.00 together with interest of 3% from the date of issuance of the Writ; and
2. Parties to bear their own costs.”*

11. Feeling aggrieved by the decision of the Magistrate, Autoworld issued Civil Action No. HBA Appeal No. 11 of 2017 through an Originating Summons dated 18 April 2017. The relief prayed for in the Originating Summons was:

“i. The time for filing of a Notice of Intention to Appeal against the decision of the Magistrate, Mr. Ropate Green delivered on 29 December 2016 in Suva Magistrates Court Civil Action No. 389 of 2008 be extended and the Appellants/Applicants be granted leave to file the Notice of Intention to Appeal out of time.

ii. *The time for filing of the Notice and Grounds of appeal from the decision of the Magistrate, Mr. Ropate Green delivered on 29 December 2016 in Suva Magistrates Court Civil Action No. 389 of 2008 be extended and the Appellants/Applicants be granted leave to file the Notice and Grounds of Appeal out of time.*

iii. *The Judgment of the Magistrate, Mr. Ropate Green delivered on 29 December 2016 in Suva Magistrates Court Civil Action No. 389 of 2008 be stayed until the hearing and determination of this Application.*

iv. *Such further and/or other orders as the Honourable Court deems just and necessary.*

v. *The costs of this application be costs in the cause."*

12. The Originating Summons was dismissed by the High Court by a judgment and order dated 2 June 2017 on the ground, *inter alia*, that there was an unexplained inordinate delay and no satisfactory ground was made out to grant extension of time to proceed in the matter. At this stage, it is necessary to refer to Order XXXVII Rule 1 of the Magistrates' Court Rules which provides as follows:

"1. Every appellant shall within seven days after the day on which the decision appealed against was given, give to the respondent and to the court by which such decision was given ... notice in writing of his intention to appeal.

Provided that such notice may be given verbally to the court in the presence of the opposing party immediately after judgment is pronounced."

13. The High Court considered the reasons for delay (which had occurred twice) but found them unsatisfactory and unacceptable and noted that there was no explanation for 27 days delay. The High Court then concluded that the "*application needs to be dismissed for repeated lapse on the part of the Applicant and failure to establish 'more than a reasonable chance of succeeding in appeal'. Such unexplained repeated delay can be explained as inordinate. Accordingly the application for extension to file grounds of appeal and stay are also struck off."*

14. Autoworld then appealed to the Court of Appeal by way of Civil Appeal No. ABU62 of 2017. By a judgment and order dated 8 March 2019 the Court of Appeal allowed the appeal filed by Autoworld. While doing so, the Court of Appeal observed that the High Court was right in considering the delay as inordinate. But, it also observed that the learned High Court Judge “*should have lent his mind to the merits of the case as well.*”

15. The Court of Appeal ordered as follows:

“1. Judgment of the High Court dated 2 June 2017 is set aside.

2. The order of the learned Magistrate dated 29 December 2016 is set aside.

3. The first Appellant is ordered to pay \$5,000.00 to the Respondent.

4. Parties to bear their own costs.”

16. Esala is now before this Court through a petition for special leave to appeal filed on 17 April 2019.

Sole ground canvassed in appeal

17. The sole ground canvassed by learned counsel for Esala is that the issue before the Court of Appeal was limited to the question whether the High Court rightly declined enlargement of time to file the grounds of appeal. It is submitted that the correctness of the order of the Magistrate was not in issue and therefore, in delving into the merits of the case and setting aside the order of the Magistrate, the Court of Appeal exceeded its jurisdiction.

Discussion

18. Strictly speaking, learned counsel is right, but at the same time it is the obligation of this Court to take a pragmatic view of the issues at stake and consider whether justice has been done in the matter or whether any real grievance subsists in the mind of any litigant.

19. What did the Court of Appeal decide? It observed that the High Court was right in considering the delay as inordinate. But, it also observed that the learned High Court judge “*should have lent his mind to the merits of the case as well.*” In this context, the Court of Appeal observed that the learned High Court Judge “*... had not adverted his attention to the condition of the vehicle or the transactions germane to the case.*”

20. The Court of Appeal had the option of either remitting the matter back to the High Court to consider the merits of the case for the purpose of enlargement of time or to itself consider the entire issue in perspective. The Court of Appeal considered it appropriate to discuss the factual matrix and noted, *inter alia*, that:

“As any judicious user of a vehicle is expected to know, general wear and tear of a vehicle, especially a passenger transport vehicle regularly operating on a public road, is inevitable. Such wear and tear includes running repairs such as punctured mud flaps. Even the bubble complained about had appeared only on the bottom panel of the vehicle, which naturally happens with exposure to the elements, especially to mud or gravel. None of these can be considered defects per se in a vehicle which adversely impacts the roadworthiness of it.”

21. The Court of Appeal also noted the vehicle was in use by Esala from May 2007 to May 2011. “*Had it not been road-worthy, it would not have been possible for the respondent to use it continuously for a period of four years.*”

22. Under the circumstances, the Court of Appeal held that despite the inordinate delay, the merits of the case warranted the application for extension of time to appeal being allowed.

23. In this background, the Court of Appeal then proceeded to do substantial justice to both parties rather than delay resolution of the dispute and have the litigation drag on for no good reason.

24. In doing so the Court of Appeal noted that, as far as Esala is concerned, the Magistrate awarded the total price of the vehicle (\$27,000) to him without requiring return of the vehicle and in addition awarded interest at 3% per annum on the total purchase price of the vehicle. Such a view of the Magistrate is clearly unsupportable and amounted to unjust enrichment of Esala.
25. As far as Autoworld are concerned, the Court of Appeal noted that they had disregarded the complaints of Esala about the defects, though trivial, and so Autoworld should pay \$5,000 to Esala instead of \$27,000. The rights and interests of both parties were, therefore, addressed dispassionately.
26. Accordingly, the Court of Appeal concluded that the Magistrate's order dated 29 December 2016 and the High Court order dated 2 June 2017 both deserved to be set aside and were in fact set aside. The Court of Appeal proceeded to decide the appeal in the manner indicated above.

Jurisdiction of the Supreme Court

27. Section 7 of the Supreme Court Act, 1998 gives wide powers to the Supreme Court to pass appropriate orders depending upon the facts and circumstances of the case. To the extent relevant (for civil matters), the section provides:

“Jurisdiction of the Supreme Court with respect to leave to appeal

7 (1) In exercising its jurisdiction under section 98 of the Constitution of the Republic of Fiji with respect to leave to appeal in any civil or criminal matter, the Supreme Court may, having regard to the circumstances of the case –

Refuse to grant leave to appeal;

Grant leave and dismiss the appeal or instead of dismissing the appeal make such orders as the circumstances of the case require; or


Grant leave and allow the appeal and make such other orders as the circumstances of the case require.

28. This Court has considered the approach of the Court of Appeal in the background of the submissions made by learned counsel for Esala and the conspectus of facts and circumstances to determine whether any injustice has been caused to Esala in any manner. Having done so, this Court is of the opinion that the judgment and order of the Court of Appeal is just, fair and reasonable. It equitably addresses the concerns of both parties and does not place a premium on the acts of omission or alleged laxity of either party. The primary responsibility of the courts is to ensure that justice is done to the parties before it and as far as the present case is concerned, the Court of Appeal achieved that purpose.
29. This Court is also of the opinion that quite independent of the decision of the Court of Appeal, this Court is empowered under section 7(1) (b) of the Supreme Court Act to “*make such orders as the circumstances of the case require.*” In the process of making appropriate orders, this Court would also have done substantial justice to the parties by passing similar orders as the Court of Appeal.
30. While jurisdictional errors must not be taken lightly, it must be noted that it is provided in section 7 of the Supreme Court Act 1998 and well settled by a catena of decisions that in a civil matter, the Supreme Court must not grant special leave to appeal unless a case raises: (a) a far-reaching question of law; (b) a matter of great general or public importance; (c) a matter that is otherwise of substantial general interest to the administration of civil justice.
31. Given the peculiar facts of this case, the unconventional order of the Magistrate and the pragmatic approach of the Court of Appeal, this Court is of the opinion that none of the factors requiring grant of special leave to appeal arise in the present case. The judgment and order of the Court of Appeal calls for no interference and does not raise any substantial ground for consideration by this Court.

32. It is worth mentioning that during the oral hearing of the case, learned counsel for Autoworld submitted that Autoworld had paid \$27,000 with 3% interest to Esala and brought to our notice that Autoworld has accepted the award of \$5,000 against it by the Court of Appeal and has not challenged it. Esala got the entire relief that he had prayed for before the Magistrate, and he certainly could not and cannot expect more. The litigation, virtually over a mud flap and a few bubbles in the paint, has been alive for almost 14 years and keeping it on a ventilator for some more time does not serve any public interest. Instead, substantial justice having been done, the litigation deserves a quiet burial. All these factors have been taken into consideration by this Court in declining special leave to appeal.

Order of the Court:

1. *The petition for special leave to appeal is dismissed.*
2. *There will be no order as to costs.*



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Hon. Mr. Justice Kamal Kumar
President of the Supreme Court



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Hon. Mr. Justice Anthony Gates
Judge of the Supreme Court



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Hon. Mr. Justice Madan B. Lokur
Judge of the Supreme Court