

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 0051 of 2012
(High Court No. HBC 036 of 2007)

BETWEEN : NATIVE LAND TRUST BOARD
Appellant

AND : VILIAME SOGARI
1st Respondent

2. SHIU RAJAMMA
2nd Respondent

3. REGISTRAR OF TITLES
3rd Respondent

4. ATTORNEY GENERAL OF FIJI
4th Respondent

Coram : Calanchini, P
Lecamwasam, JA
Wati, JA

Counsel : Ms. L. Komaitai for the Appellant
Ms. N. Vere for the 1st Respondent
Ms. J. Pickering for the 3rd and 4th Respondent

Date of Hearing : 08 November 2017

Date of Ruling : 30 November 2017

RULING

Calanchini, P

[1] I have read the draft Ruling of Lecamwasam JA and agree that clarification is not necessary nor appropriate.

Lecamwasam, JA

[2] The Court of Appeal delivered its judgment in this appeal on 26th February 2016 and made the following orders which I quote in verbatim:-

- (i) *Appeal is allowed;*
- (ii) *Damages awarded in the court below are reduced by \$220,175.00 = \$282,652.36*
- (iii) *Parties to bear their own costs."*

[3] Thereafter the first respondent filed summons and applied for the following orders:-

- “1. *The Appellant to pay the interest of 4% per annum to the 1st Respondent on the sum of \$282,652.36 ordered by the Court of Appeal on 30th March 2016.*
- 2. *The interest of 4% to be paid is effective from the 13th day of July 2007, the date when the Writ of Summons was filed until the date of payment as ordered by the Honourable Trial Judge at Labasa High Court, Civil Action No. HBC 36 of 2007.”*

[4] This application arises in consequence of the judgment of the High Court having included an order for the payment of interest “on special damages and general damages at 4% per annum from the date of filing of the action until the date of payment.”

[5] Having perused the judgment of the Court of Appeal, I am convinced that this court has not dealt with the issue of payment of interest in any manner whatsoever. It is also noteworthy to mention that the award of interest was not challenged by the Appellant at any stage before the Court of Appeal either by way of submissions or in the grounds of appeal.

[6] The judgment of the Court of Appeal did not disturb the findings of the learned High Court Judge, except in the reduction of the quantum as specified in paragraph 19 of the judgment of the Court of Appeal. As we have not disturbed the findings of the learned High Court Judge in relation to the interest, the judgment of the High Court will prevail in so far as it has not been overruled by the Court of Appeal. Therefore on the strength of the High Court judgment, pre-judgment interest will have to be paid from the date of filing of the action.

[7] As regard the post judgment interest, any party is bound by section 4 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 which provides:

“Judgment debts to carry interest

4.-(1) Every Judgment Debt shall carry interest at the rate of four cents per centum per annum from time of entering up the Judgment until the same shall be satisfied, and such interest may be levied under a Writ of Execution on such Judgment”.

[8] As the appellant is statute bound by section 4 (1) of the Act further clarification is unnecessary. Hence the said provision mandates the appellant to pay post-judgment “interest” whether or not the judgment of the Court of Appeal has dealt with the matter of “interest”.

[9] In view of the above position, a clarification becomes redundant hence I do not intend to make any order.

[10] Parties to bear their own costs.

Wati, JA

[11] I agree.



W. Calanchini

.....
Hon. Mr. Justice W. Calanchini
PRESIDENT, COURT OF APPEAL

S. Lecamwasam

.....
Hon. Mr. Justice S. Lecamwasam
JUSTICE OF APPEAL

A. Wati

.....
Hon. Madam Justice A. Wati
JUSTICE OF APPEAL