

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

CIVIL APPEAL NO. ABU0022 of 2021
[Suva High Court No: HBE 28 of 2020]

BETWEEN : **INSTANT HOLDINGS T/A INSTANT HIRE SERVICES**

Appellant

AND : **SANJAY SINGH VERMA**

Respondent

Coram : **(Dr) Almeida Guneratne, P**

Counsel : **Mr V. Kumar for the Appellant**
Mr K. Singh for the Respondent

Date of Hearing : **28th October, 2022**

Date of Ruling : **9th November, 2022**

RULING

The Principal Issue involved in the case

- [1] The principal issue involved in this matter is, where the Appellant has failed to comply with the Chief Registrar's order to pay/deposit security for costs of the appeal filed against

a High Court judgment, even after extensions of time had been granted by the Chief Registrar, finally declining to grant any further extensions, whether the Appellant is entitled to seek further extension through the intervention of this Court under Section 20(1)(b) of the Court of Appeal Act (the Act).

- [2] At the outset, the Respondent submitted in his written submissions that, the wrong provisions have been cited by the Appellant in invoking this Court's powers if it were to exercise its discretion to respond to the Appellant's application for extension of time.

Courts are institutions of justice and not academies of law

- [3] This is a principle I have often subscribed to. Technical objections ought not to be upheld as a matter of course. A Court of justice should be mindful of the larger concern to do justice, which is to resolve conflicting interests and disputes between contesting parties.

Compliance with procedural requirements *viz a viz* the right to vindicate substantive rights

- [4] These twin aspects of the law are no doubt complementary.
- [5] The Appellant speaks of his "*constitutional right*" to prosecute his appeal. But, it must be borne in mind that, the Appellant is no longer possessed of "*that right*" because of the failure to comply with the order of the Chief Registrar to pay security for costs as mandated under Rule 17 of the Act.
- [6] Having failed thus, the Appellant's "*right*" is to seek the indulgence of this Court in seeking an extension of time to pay the security for costs of the appeal.
- [7] It is to be kept in mind at this juncture that, the powers vested in the Chief Registrar of this Court under Rule 17 of the Act are not merely administrative but quasi-judicial.

Classification of functions

[8] That (as articulated at paragraph[7] above) is the resultant effect had on the entire global jurisprudence ever since the English decision in **R v Electricity Commissioners** [1924] 1KB 171 and in the seminal decision of the House of Lords in **Ridge v. Baldwin** [1964] AC 40.

[9] Consequently, on the principles emanating in those decisions, I could not see any basis to fault the Chief Registrar's decision, nevertheless, the power to make an order I found vested in me (as a single Judge) under Section 20(1)(b) of "*the Act*" as being an independent jurisdiction, in regard to which I shall now proceed to discuss and make a determination on the written and oral submissions made by parties (in the light of the authoritative precedents cited by them).

Tentative Reflections on the matter for determination

[10] I shall not consume paper and time on the criteria of length and reasons for the delay and go straight to, what I consider to be the decisive criterion – that is, whether there is, at least an arguable case or (prospects of success in appeal if this application was to be allowed). I shall also refer to the prejudice criterion (relatively assessed) and express my views thereon.

The Grounds of Appeal urged

[11] The Appellant has urged as many as 14 grounds in the Notice of Appeal.

[12] Taking the said grounds cumulatively, they fall into two broad categories *viz*:

- (i) the factual content – *re*: whether the trial judge fell into error in regard to whether there was a debt due – (disputed) in which regard Ground 10 of Appeal has been urged.

(ii) the consequential legal issue

re: whether, the trial Judge erred in failing to consider and apply the common law test for setting aside a statutory demand (Ground 11).

[13] Having considered the said grounds in the light of the written submissions filed by parties and the oral submissions made, I proceed to assess the same.

Discussion

[14] Mr Kumar for the Appellant argued that, the Chief Registrar (CR) having granted two extensions to pay the security for costs and declined to grant a further extension, the CR was within the statutory powers vested in him within the framework of Rule 17 of the Court of Appeal Act. However, learned Counsel submitted as to when that extension ended, “*a confusion*” had visited the Appellant’s lawyers.

[15] Mr Singh for the Respondent in counter submitted that, such “*confusions*” cannot be allowed to overcome the statutorily mandated rules.

[16] I am in agreement with Mr Singh’s said submission. In fact, in some of my earlier rulings, I have held that a party seeking to vindicate his substantive rights, must comply with rules of procedure, in as much as, rules are the handmaid of the substantive law.

[17] Apart from all that, the supporting affidavit the Appellant has annexed, apparently in an attempt to explain “*the confusion*” (referred to above), I was not able to condone. Thus, the matter boiled down to a case where there has been a lapse on the part of the Appellant’s lawyers.

[18] In that regard, writing for this Court as a single Judge I had held in the case of **Fiji Industries Limited v National Union of Factory and Commercial Workers** that, lapses on the part of lawyers (for the reasons stated in my said Ruling) must visit a party

litigant. However, the Supreme Court granted special leave to appeal against my said Ruling (per the principal Judgment penned by His Lordship, Justice Keith (vide) CBV0008 of 2016) but, eventually on account of the Appeal being dismissed, the said issue remained an open issue.

[19] It is that issue which was left open that, the President of the Supreme Court (Chief Justice, Kamal Kumar) in a recent Ruling of the Supreme Court has emphatically ruled on and laid down that party litigants should not be punished for the lapses on the part of their lawyers. (vide: **Hussain v. Prasad** [2022] FJSC 7; CBV 15 of 2020 (3 March 2022)).

The recognition and the consequential application of the English Common Law doctrine of *Stare Decisis*.

[20] That doctrine finds constitutional expression in Section 98(6) of the Constitution of Fiji.

[21] Accordingly, I hold myself bound by the said Supreme Court decision in **Hussein v. Prasad** (supra).

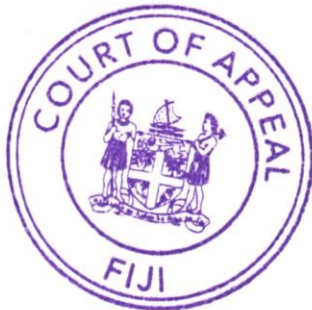
Determination

[22] On the basis of the twin considerations re: (i) on the aspect of the grounds of appeal urged and referred to in paragraph [12] of this Ruling, I hold that, the said grounds are viable grounds to urge in appeal; (ii) on the aspect of “*the lawyers negligence*” I hold myself bound by the Supreme Court Ruling in **Hussein v. Prasad** (supra).

[23] I allow the Appellant’s application (conditionally) for extension of time to pay and deposit the security for costs in the prosecution of the pending appeal and proceed to make my Orders as follows.

Orders of Court

- 1) *Extension of time to pay security of costs for the prosecution of the Appellant's appeal is granted till 30th November, 2022.*
- 2) *Should the Appellant fail to comply with Order 1 above, the Registrar is directed to enter in the Record that the Appeal is "deemed to have been abandoned" for non-compliance, and submit the file to this Court to sanction the same.*
- 3) *The said indulgence granted to the Appellant as per Order 1 above is also subject to the Appellant paying costs of this application in a sum of \$1,500.00 to the Respondent on or before 30th November, 2022. The failure to do so also would result in the Appellant's appeal being rejected for non-compliance.*



Almeida Guneratne

**HON JUSTICE ALMEIDA GUNERATNE
PRESIDENT, COURT OF APPEAL**