

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 48 of 1977

Between:

NAURU PACIFIC LINES

Appellants  
(Original Defendants)

- and -

JACK KALINER

Respondent  
(Original Plaintiff)

P.I. Knight for the Appellants  
K. Chauhan for the Respondent

Date of Hearing: 9th March, 1978  
Delivery of Judgment: 9th March, 1978

JUDGMENT OF COURT

Gould V.P. (Orally)

This is an appeal from the order of a Judge of the Supreme Court refusing to set aside a judgment by default in a civil action.

We have considered the decision of the learned Judge in the light of the

material before him and have concluded that in the circumstances he was justified, in view of the delay by the appellants and the rather shadowy nature of the defence upon which the appellant proposed to rely, in making the order he did.

We have had a further affidavit put before us on the appeal, however, and having heard argument upon it *de bene esse* we have decided to admit it. Having considered the matter anew we are of opinion that a sufficient possible defence has been shown and that in spite of the delays abovementioned the appellants ought not to be precluded from putting it forward, subject to payment of costs by the appellants. We would also make our order subject to a condition, to which Mr. Knight for the appellants has agreed, that he as solicitor for the appellants be deemed to have accepted service of the writ and statement of claim without prejudice to his right to object in the action to the jurisdiction of the Fiji Court if he thinks fit.

On this condition we allow the appeal and remit the case to the Supreme Court for an order setting aside the judgment by default. The order for costs against the appellants made by the learned Judge will not be disturbed and the appellants will pay \$75 towards the respondents' costs on this appeal: the appellants to file their defence within 21

days from the date of this order.

(Sgd.) T.J. Gould  
VICE-PRESIDENT

(Sgd.) Charles C. Marsack  
JUDGE OF APPEAL

(Sgd.) T. Henry  
JUDGE OF APPEAL