

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 43 OF 1990

(Civil Action No. 1173 of 1984)

BETWEEN:

SURESH SUSHIL CHANDRA CHARAN
ANURADHA CHARAN

Appellants

and

SUVA CITY COUNCIL

Respondent

*Mr Suresh Sushil Chandra Charan and
Anuradha Charan - Appellants in person
Ms Tamara Jayatilleke for the Respondent*

Date of Hearing: 10th February, 1993

Date of Decision: 17th February, 1993

Decision in respect of motion filed by the
Appellants subsequent to delivery of
Court's judgment

On 18th August, 1992 this Court delivered its judgment in Civil Appeal No. 43 of 1990 and made the following order -

" The order of the Court is therefore that the appeal be allowed on ground 1 of the Amended Notice and Additional Grounds of Appeal to the extent hereafter indicated and that all other grounds of appeal be dismissed. The matter is remitted to the High Court for hearing and determination of the issue referred to herein as total invalidity and to assess damages in the event that liability for damages is established.

Appellants costs of appeal to be their costs in the proceedings."

The Court consisted of the President Mr Justice Michael Helsham, Sir Moti Tikaram and Mr Justice Arnold Amet.

On 15.11.92 the Chief Registrar made certain Orders as to costs. Presumably he made these Orders in chamber proceedings arising out of Civil Action No. 1173 of 1984 which in turn gave rise to two Appeals to this Court namely Civil Appeal No. 3 of 1988 and No. 43 of 1990. The Appellants are dissatisfied with his Orders.

Before our Order of 18th August, 1992 could be complied with the Appellants filed a motion in this Court on 6th November, 1992 seeking a number of Orders. On 21st December, 1992 the Appellants amended their motion so that the following Orders were now sought:

1. *That there being no order for set off or cross-appeal, either in FCA 3 of 1988 or in FCA 43 of 1990, against the award of costs to the Appellants by Mr Justice Sheehan in his decision of 1.9.87 in the High Court Action No. 1173/84, the Respondent do pay the costs so awarded without any set off, together with interest at the commercial bank rate of 13.5 per centum from day of judgment until satisfied as special damages;*
2. *That in view of the decision of the Court of Appeal dated 18.8.92, and as prayed in the Amended Notice of Appeal dated 11.2.92, the award of costs by Byrne J. on 22.7.90 and Jayaratne J. on 15.3.91, together with all award of incidental costs arising from the said orders of Byrne J. and Jayaratne J, including that of single judge of this Honourable Court dated 23.4.91, be vacated with costs to the Appellants, together with interest at the commercial bank rate of 13.5 per centum from the dates of the orders as special damages;*
3. *That the award of costs to the Appellants by the Court of Appeal dated 18.8.92 be varied in so much from the costs "in proceedings" to the costs of the Appellants to be taxed if not agreed, together with interest at the commercial bank rate of 13.5 per centum from the date of order of the court below until satisfied as special damages;*

- 4. *That the Appellants do have leave and if leave granted to re-argue their appeal for an order that this Honourable Court do draw inference from the evidence in the court record to find liabilities of the Respondents for the illegal distress and order for the damages to be assessed by the Chief Registrar; and*
- 5. *That the Respondent pay the costs of this application. '*

At the outset it was made clear to the parties that it was not possible to constitute a Court of the original 3 Judges as Mr Justice Amet of Papua New Guinea could not attend due to unavoidable and unforeseen circumstances. The parties consented to this application being heard by the remaining 2 Judges, a procedure made possible by Section 19 of the Court of Appeal Act.

The nature of the Appellants' application clearly shows that not only are they dissatisfied with the Chief Registrar's orders but also with this Court's judgment delivered on 18th August, 1992.

Mr Charan who led the arguments in support of the motion agreed with this Court that the proper remedy available to the Appellants against the Chief Registrar's Orders was to appeal to a High Court Judge (see Order 58 of the Rules of the Supreme Court 1988).

He also agreed that a proper remedy for a party aggrieved with the Court of Appeal's judgment was to appeal to the Supreme Court subject to leave where leave was necessary. The Appellants adopted neither of these courses but chose to come to this Court by way of motion to have the appeal reheard so that this Court

could set aside its own decision and Orders and make additional Orders as to costs and interest.

Asked where this Court would derive authority or jurisdiction to deal with the motion on the merits the only answer Mr Charan had was that, in his submission, this Court's decision and Orders of 18th August, 1992 were of an interlocutory nature, i.e. the Court of Appeal had not finally disposed of the matter and hence was still in control of the proceedings.

He cited 3 cases in an endeavour to support his submission that this Court had not finally disposed of the Appeal No. 43 of 1992. None of these cases were in point or of any value.

Mrs Anuradha Charan had nothing to add to the argument.

Ms Tamara Jayatilleke opposed the motion and submitted that the application was misconceived. She asked for costs.

In our view the judgment of this Court was not an interlocutory one as it had finally disposed of the appeal having dealt with all the issues raised in the grounds of appeal. The judgment was therefore final.

There is no suggestion in this case that the 'Slip Rule' (O.20 r.10) was applicable and should be invoked pursuant to Section 13 of the Court of Appeal Act. Clearly such a suggestion was not available in this instance.

We see no reason why this Application should be entertained.
It is, therefore, dismissed with costs to the Respondent.

Michael Helsham

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Mr Justice Michael Helsham
President, Fiji Court of Appeal

Moti Tikaram

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Sir Moti Tikaram
Justice of Appeal