

IN THE FIJI COURT OF APPEAL

## CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0048 OF 1996SOn appeal from the decision of High Court  
of Fiji (SUVA) in Civil Action No. 408 of 1996SBETWEEN:S.B. HOLDINGS LIMITEDAppellant/Applicant  
(Original Plaintiff)

and

1. MOHAMMED TAHIR HUSSAIN  
(f/n Gulam Hussain)
2. LIAKAT HUSSAIN (f/n Mohammed Tahir Hussain)
3. LABASA BLUE METAL LIMITED
4. MOHAMMED ABDUL (f/n Shiek Mohammed Hanif)
5. SEREMAIA RAMOCE NO.1
6. SEREMAIA RAMOCE NO.2
7. DOBUI RAILALA
8. LAISIASA WAQAMOCE

Respondents  
(Original Defendants)

Mr H. Nagin for the Appellant/Applicant  
 Mr M. Raza & Mr A. Sen for the 4th & 5th Respondents  
 1st & 8th Respondents in Person  
 3rd Respondent Company represented by its Director  
 Mohammed Abdul (4th Respondent)

Date and Place of Hearing: 12th November, 1996, Suva  
Delivery of Decision: 28th November, 1996

DECISION

(Chamber Application from an Interim Injunction)

The Appellant/Applicant is seeking an interim injunction pending determination of its appeal against refusal by Scott J. to grant one in the Court below.

The Appellant/Applicant filed a writ in the High Court on 30/8/96 seeking (inter alia) a permanent injunction against the present Respondents. At the same time it sought an interlocutory injunction against the Respondents (the Original Defendants) from interfering with their gravel extracting operations in an area covered by a licence granted to it by the Lands Department pending determination of the substantive Action. Scott J. dismissed the application for interlocutory injunction on 4/9/96 but reserved liberty to the Appellant/Applicant to reapply on 3 days notice. The Appellant/Applicant did reapply but the proposed date of hearing was not acceptable to the Appellant/Applicant because of the alleged urgency of the matter; it then filed a Notice of Appeal in this Court on 13/9/96. It also simultaneously filed the present application before me seeking an injunction until the determination of the appeal, restraining the Respondents -

- (a) from interfering with the Appellant/Applicant's operations and
- (b) from extracting gravel from its licensed area.

The dispute between the parties relates to extraction of gravel etc from Korotari River in Labasa under licences granted by the Lands Department. The Respondents claim that

the area from which they are extracting gravel is covered by a licence granted to the 5th Respondent. The Director of Lands disputes this assertion and the Divisional Surveyor has in fact cancelled the 5th Respondent's licence by letter dated 13/9/96. The 5th Respondent is now seeking Judicial Review of the Lands Department's decision. The Respondents also claim that the licence granted to the Appellant/Applicant was granted wrongfully.

Both parties agree that the ultimate resolution of the problem lies in the High Court's adjudication on the substantive matter pending before it. However, Mr Nagin submits that his client should be given an interim injunction pending appeal and that the Chief Registrar be directed to arrange an expedited hearing of the substantive Action in the Court below.

I do not think granting of an interim injunction pending appeal would have the desired effect. First of all the High Court will be unlikely to expedite hearing of the writ if an interim injunction were in force pending appeal. Secondly, to grant interim injunction pending appeal would be to encourage appeals against interlocutory decisions. In the particular circumstances of this case fragmentation of litigation is not desirable. Furthermore no date has been assigned for the hearing of the appeal. In fact there is no likelihood of the appeal being heard until February or May 1997.

There are now two factions in the Fijian claim with customary rights - one supporting S.B. Holdings Limited (the Appellant/Applicant) and the other supporting Labasa Blue Metal Limited which operates under licence granted to the 5th Respondent. Tension is running high, fights have already erupted in the area and the Commissioner Northern is trying to diffuse a volatile situation.

Respondents appearing or represented before me have assured me that they have stopped extracting gravel and are not interfering with the Appellant/Applicant's operations.

Counsel for the Appellant/Applicant claims that interference is still continuing.

From the material before the High Court and also before me it is quite clear that there is need to hear evidence whether there is in fact any interference by any or all the Respondents with the Appellant/Applicant's gravel extraction business and whether the licences covered the same area or different areas. Of course the more desirable course would be for the parties, the Lands Department and the leaders of the opposing mataqalis to get together and resolve the dispute perhaps under the chairmanship of the Commissioner Northern.

In the circumstances having considered the affidavits properly filed and bearing in mind the submissions made I

refuse the application to extend the interim injunction until the determination of the appeal and I direct the Chief Registrar to arrange, after due consultations, for a priority hearing of Civil Action No. 408 of 1996 upon completion of formality relating to pleadings. The interim injunction is dissolved and each party is to bear its own costs in respect of the proceedings before me.



Sir Moti Tikaram  
President, Fiji Court of Appeal