

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

CIVIL APPEAL NO. ABU0040 OF 1998S
(High Court Civil Action No. 142 of 1989L)

BETWEEN:

BAL KRISHNA PILLAY

Appellant

AND:

COLONIAL MUTUAL LIFE ASSURANCE
SOCIETY LIMITED

Respondent

Coram:

The Rt. Hon. Sir Maurice Casey, Justice of Appeal
The Hon. Mr Justice Ian Thompson, Justice of Appeal
The Hon. Mr Justice Ian Sheppard, Justice of Appeal

Hearing:

Tuesday, 2 May 2000, Suva

Counsel:

Mr. D. Naidu for the Appellant
Mr. B. N. Sweetman for the Respondent

Date of Dismissal:

Tuesday, 2 May 2000

REASONS FOR DISMISSAL OF APPEAL

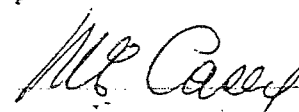
On 2 May 2000 the Court dismissed the appeal for want of prosecution. We undertook to state our reasons in writing and now do so.

When the appeal was called on for hearing on 2 May 2000, the date set for it, Mr Dorsami Naidu, who was on the record as the appellant's solicitor, appeared and sought leave to withdraw. He informed the Court that he was no longer able to represent the appellant and that two weeks earlier he had informed the appellant of that and had told him that he must either attend himself on 2 May for the hearing or arrange for another legal practitioner to attend as his representative. The appellant was not in Court or in the vicinity of the Court and was not represented. He, therefore, failed to prosecute his appeal and the Court dismissed it for that reason.

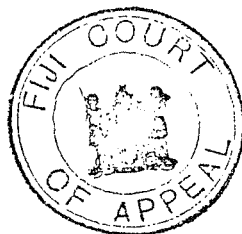
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We should add that the facts of this appeal reflect a long history of neglect and delay by the appellant in his prosecution of this litigation. The learned primary judge dismissed the action for want of prosecution. It was against that decision that this appeal was brought. But it would appear that the appellant has been no more diligent in prosecuting his appeal than he was in prosecuting his case at first instance. In the light of the history of the matter, it would have been quite unfair to the respondent to allow the litigation to remain on foot any longer. Dismissal was the only reasonable course for the court to take.

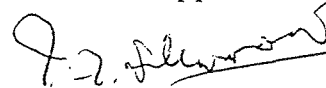
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 Sir Maurice Casey
 Justice of Appeal




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 Mr Justice Ian Thompson
 Justice of Appeal



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 Mr Justice Ian Sheppard
 Justice of Appeal

Solicitors:

Messrs. Pillai, Naidu and Associates, Nadi for the Appellant
 Messrs. Munro Leys and Company, Suva for the Respondent