

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

CIVIL APPEAL NO. ABU0044/1999
(High Court Civil Action No. HBC0109.98L)

BETWEEN: SAMI NADAN
f/n Sidhaiya *Appellant*

AND: 1. WAIRUKU LAND PURCHASE
CO-OPERATIVE SOCIETY LIMITED
2. KRISHNA
f/n Aiyana Permal
3. VELLAIDAN NAIR
f/n Ram Kutty *Respondents*

Coram: The Rt Hon Sir Maurice Casey, Presiding Judge
The Hon Justice Gordon Ward, Justice of Appeal
The Hon Justice John E. Byrne, Judge of Appeal

Hearing: 24 November 2000

Counsel: Mr S. Ram for the Appellant
Mr D.S. Naidu for the Respondents

Date of Judgment: 1 December 2000

JUDGMENT OF THE COURT

The appellant is a member of the first-named respondent, a co-operative society owning land at Wairuku through which it intends to make a road giving its members improved access to grazing land. A survey plan has been completed and registered. The appellant occupies and farms an area of about 10 acres under an agreement with the society, and other members

have similar agreements. Their purpose is to buy the areas they occupy, the prescribed payments on their shares in the society being accumulated towards the price. He complains that the road will pass through the most valuable part of his farm and seriously affect his cane crop. Further, he claims that his son, who represents him, was not allowed to vote at meetings of the society.

After issuing a writ in the High Court at Lautoka in April 1999 seeking injunctions and damages, the appellant obtained ex parte interlocutory orders restraining the society from proceeding with the road and the subdivision of his land, and from refusing to allow his son to participate and vote at its meeting. On 9 July 1999 these orders were dissolved by Madraiwiwi J at a hearing in which there were affidavits by the appellant's son and from the society. He appeals against that decision.

His Lordship applied the test laid down by the House of Lords in American Cyanamid Co v Ethicon Ltd [1975] AC 396; [1975] 1 All ER 504 and concluded that there was no serious question to be tried. He also found that that the society was justified in refusing to allow the appellant to vote by proxy at its meetings, and that he had not exhausted his remedies under s115 of the Co-operatives Act 1996 which provides facilities for the resolution of disputes with members. In his grounds of appeal the appellant challenged these findings but has now abandoned that relating to proxy voting.

Uncontradicted evidence in the affidavits disclosed that the appellant was present at a meeting of the society held on 23 January 1988 and the minutes recorded unanimous

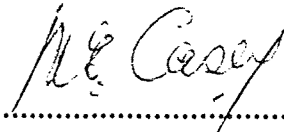
support for the proposed road, the boundaries of which had been described there. Although two members had originally raised objections, there is no record of any disagreement by the appellant. It was also deposed on behalf of the society that he had been shown the pegged boundary and access in the presence of the surveyor and other committee members and had thereupon signed a document dated 8 December 1994 in which he acknowledged his agreement with the boundary marks. His Lordship relied on this uncontradicted evidence of the appellant's agreement with the proposal in concluding there was no serious question to be tried.

In spite of Mr Ram's valiant efforts to throw doubt on the validity of the meeting and to suggest that his client was unduly pressed by the committee members to agree to the road, we are satisfied that on the evidence before him, His Lordship could have reached no other conclusion. The fragility of the appellant's position was high-lighted by the fact that much of the land affected by the road is a reserve which he is farming without authority. It would appear that something less than one acre of the property to which he is lawfully entitled will be prejudiced, a fact which lends strength to the view that this is a case in which damages would be the appropriate remedy, even if the appellant had established that there was a serious question to be tried.

His Lordship's comments about the failure to refer the dispute for resolution under s115 of the Co-operatives Act 1996 are not directly relevant, but we agree with Mr Ram's submission that the section is permissive only, and that a member is free to take Court action if he or she chooses.

Result

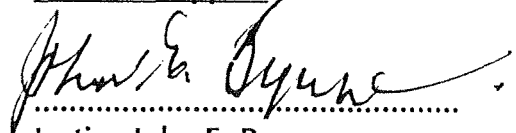
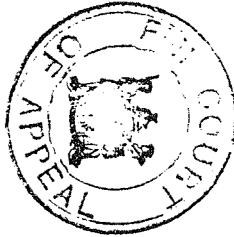
The appeal is dismissed with costs of \$750 to the first-named respondent together with disbursements to be fixed by the Registrar if the parties cannot agree.



.....
Sir Maurice Casey
Presiding Judge



.....
Justice Gordon Ward
Justice of Appeal



.....
Justice John E. Byrne
Judge of Appeal

Solicitors:

Samuel K. Ram Esquire, Ba for the Appellant
Messrs Pillay Naidu & Associates, Nadi for the Respondents