

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

CIVIL APPEAL NO. ABU0002 OF 2004S
(High Court Civil Action No. 23 of 1992S)

BETWEEN:

NATIVE LAND TRUST BOARD

Appellant

AND:

TIMOCI NAGAGA NAULIVOU

Respondent

In Chambers: Justice Tompkins, JA

Hearing: Thursday, 18th March 2004, Suva

Counsel: Mr G. Leung for the Appellant/Respondent
Mr K. Vuataki for the Respondent/Applicant

Date of Decision: Thursday, 18th March 2004

DECISION OF TOMPKINS JA

[1] The respondent has applied for leave to adduce further evidence on the issue described in the affidavit in support of the application. This evidence relates directly to the respondent's cross appeal. It also could have relevance to the appellant's appeal.

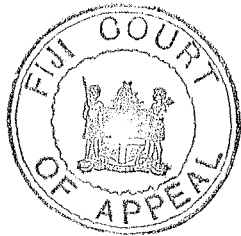
[2] Counsel for the appellant responsibly accepts that the factual issue raised was not determined by the Judge in the High Court. If the evidence were accepted, it could affect the results of the appeal and cross appeal. For that reason he does not object to the application subject to the further matters to which I now refer.

[3] The evidence is to be filed in the Court in the form of an affidavit within seven days of today. The appellant is entitled, if it chooses, to file affidavits in reply, such affidavits to be filed within a further 14 days.

[4] The parties are entitled under the rules to give notice to any deponent to be available for cross-examination. In the event of either party exercising that right it will be for the Court to decide whether to allow that cross-examination in this Court or to refer the factual issues back to the High Court for determination.

[5] I make these further observations. There has already being excessive delay, caused at least in part by the 18 months that elapsed between the hearing and the delivery of the judgment in the High Court. The further delay that would result from a reference back is to be avoided if possible. Further, it would appear to me that as the events to which the evidence relates occurred in the 1890's, the issue is not so much one off credibility as the weight to be attached to what is inevitably hearsay evidence. It may be that that issue can be determined in this Court as effectively as in the High Court.

[6] Costs will be in the cause



A handwritten signature in cursive script, appearing to read "JA Tompkins".

Tompkins,JA

c.c.

**Howards, Suva for the Appellant
Vuataki, Esq, Suva for the Respondent**