

IN THE COURT OF APPEAL AT SUVA
CIVIL JURISDICTION

Civil appeal No. ABU70 of 2006
High Court Civil Action No. HBC
512 of 2004

BETWEEN: **NIVIS MOTOR AND MACHINERY COMPANY LIMITED**

Appellant

AND **: ATTORNEY GENERAL OF FIJI**

Respondent

V Kapadia : for applicant/appellant
L Daunivalu : for respondent

Hearing: : 20 October 2006
Ruling: : 23 October 2006

R U L I N G

[1] This is an appeal against a finding of Singh J, delivered and sealed on 4 July 2006 that the respondent acquire 455 square metres of land to improve traffic access to the Nabua roundabout outside the respondent's property. On 22 August 2006, the learned judge further ordered a stay of execution pending appeal.

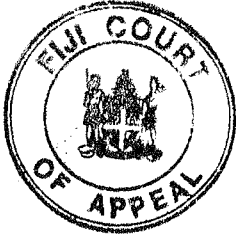
[2] The notice of appeal was filed on 10 July 2006 and, by a letter received in the registry on 27 September 2006, the respondent requested that the appeal be heard in the November sitting of the Court because "the subject of the appeal carries significant implications for the general public".

- [3] As the call over for the November session of the Court had already been held, the case was listed for chambers on 29 September 2006. At that hearing, counsel appearing for the appellant told the court that the record was not ready but she was agreeable to the case being listed in the November session and an abridged timetable for submissions being fixed. The Court ordered that the appellant should file the record as soon as possible and should file submissions in 21 days in any event. The respondent's submissions were then to be filed within 21 days thereafter. In view of the limited time before the session started, the Court stated the case would not be listed until the second half of the session and counsel agreed.
- [4] The appeal was set for hearing on Monday 21 November 2006 and the parties were advised by notice dated 6 October 2006.
- [5] On 10 October 2006, Mr Nagin for the appellants wrote asking "that you do not assign a date in the November session but do so in the March session" and asking that the time to file the appellant's submissions also be extended.
- [6] Mr Kapadia has explained to the Court, as did the letter of 10 October, that the appellant company had asked that Mr BC Patel should be instructed to represent it. Unfortunately, Mr Patel had already made arrangements to travel to the United Kingdom in November so he will not be available. Mr Kapadia further said that the problem with Mr Patel had been known before the chambers appearance on 29 September and, when counsel agreed to the case being listed in November, it was a misunderstanding.
- [7] Mr Duanivalu, for the respondent, opposes the application. He points out that the appeal does not involve any issues of exceptional difficulty and, as Mr Nagin had conducted the case in the High Court, he should have no problem attending to it in November. Mr Patel also appeared in the High Court but only for the application for a stay. Mr Duanivalu points out that the whole case has been

continuing a very long time and as long as it was unresolved, the motoring public was subjected to very considerable inconvenience.

- [8] The judgment of Singh J points out that the Nabua roundabout has remained incomplete since 1997 and, ever since, the delays to traffic as a result of congestion at the approach to the roundabout from the Nausori side have been considerable. When he granted the stay, he accepted there were arguable grounds of appeal and also pointed out that section 6 (incorrectly identified as section 5 in the earlier judgment) of the State Acquisition of Lands Act has not been considered at appellate level in Fiji.
- [9] The principal thrust of the appeal is that the judge did not properly consider the alternative plans for the roundabout put forward by the parties. The submissions on that will, Mr Kapadia suggests, take some time to prepare.
- [10] I accept that there are arguable grounds of appeal but I do not consider the chance of success is great, especially in the challenge to the learned judge's findings of fact about the relative merits of the proposals for the solution of the traffic problem.
- [11] However, the principal issue which causes me concern is that this date was fixed by the Court on the strength of counsel's agreement that the case should be heard in the November session. A timetable was then fixed which required immediate action by the appellants to prepare and file submissions. No submissions have yet been filed.
- [12] Once the list has been published, this Court will allow adjournment of appeals only for good reason. Where they have been listed with the agreement of counsel, it will be difficult to establish sufficient reason. I appreciate the wish of the appellant to have Mr Patel but I am satisfied that alternative counsel can and should be found. The application is refused and the case is to proceed on 13 November 2006.

- [13] It appears that the record is missing some exhibits from the lower court. I direct that they must be filed within seven days. I also extend the time for the appellant to file its submission for a further seven days and order the respondent to file its submissions in response by 3.30 on Friday 10 November 2006.



A handwritten signature in cursive script, appearing to read "Gordon Ward".

Gordon Ward
PRESIDENT
FIJI COURT OF APPEAL