

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

**CIVIL APPEAL NO.ABU0051 OF 2006S**  
(High Court Winding Up Action No.36/04L)

**BETWEEN:**

**VIMALS CONSTRUCTION AND JOINERY WORKS LIMITED**  
**(IN LIQUIDATION)**

**First Appellant**

**AND:**

**VIMAL PRAKASH** (f/n Dharam Raj)

**Second Appellant**

**AND:**

**VINOD PATEL AND COMPANY**  
**(LAUTOKA) LIMITED**

**Respondent**

**Counsel:**

S. Maharaj for the Appellants  
Ms N. Khan for the Respondent

**Date of Decision:** Tuesday, 22 August 2006, Suva

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**DECISION**

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- [1] On 22 May 2006 the High Court at Lautoka delivered three separate but related rulings in the matter of the First Appellant and the Companies Act (Cap.247).
- [2] On 5 June 2006 the Appellants filed notice and grounds of appeal (an amended notice and grounds were filed on 16 August 2006). There are seven grounds of appeal.

[3] On 9 June 2006, pursuant to Rule 17 of the Court of Appeal Rules a summons for security for costs was taken out by the Appellants. It was returnable on 29 June 2006.

[4] On 12 June 2006 the Respondent filed notice of the present application which seeks:

- (1) To have ground 1 of the grounds of appeal struck out "on the grounds that the ground of appeal has no merits, is frivolous and vexatious and an abuse of the process of the Court."
- (2) To have grounds 2 to 7 of the grounds of appeal struck out "on the grounds that the same are an abuse of the process of the Court and are frivolous and vexatious and otherwise bound to fail and the Appellants have no right of appeal from the same."
- (3) [In the alternative] that the Appellants be ordered to pay \$25,000 "as well as all the costs awarded in the High Court as security for costs of this appeal."

The application was stated to have been made pursuant to sections 20(1) and 35(2) of the Court of Appeal (Amendment) Act 13 of 1998.

[5] On 29 June 2006 the Rule 17 summons came before the Deputy Registrar. It was adjourned to 13 July on the Respondent's application. On 13 July the Deputy Registrar fixed security at \$800. He declined an application by the Respondent to adjourn the summons further to allow the present application to be heard.

[6] Before I heard Ms Khan in support of the merits of her application, Mr Maharaj raised a preliminary legal issue. In his submission this being a civil matter, section

35(2) of the Court of Appeal Act has no application. While section 20(1) is applicable, it does not confer upon a single justice the power to strike out an appeal summarily on the grounds that it is frivolous, vexatious, or an abuse of the process of the Court or that it is bound to fail. Mr Maharaj submitted that only the full Court has the power to dismiss an appeal in such circumstances.

- [7] After discussion Ms Khan accepted that s.35(2) had no application. She however, relied on s.20(1) of the Act as amended by the 1998 Act and in particular on s.20(1)(h) which reads as follows:

“A Judge of the Court may exercise the following powers of the Court –


(h) to dismiss an appeal on the application of the Appellant.”

- [8] The difficulty facing this submission is that it is the Respondent which is seeking to have the appeal dismissed, not the Appellant. Ms Khan however suggested that the section should be held to apply to the Respondent also since the Respondent was the applicant for the dismissal. In my view that submission does not bear examination.
- [9] Ms Khan also suggested that only the first ground of appeal had been filed within time. The other grounds related to rulings in respect of which the appeal period had expired. Mr Maharaj rejected this submission and reaffirmed that the grounds of appeal all related to one or other of the three rulings delivered together on 22 May. In my view, even if Ms Khan is correct, her submission is one which must be made to the full Court at the hearing of the appeal and not beforehand to a single justice.
- [10] In my opinion the preliminary legal objection raised by Mr Maharaj was well taken. I upheld it and dismissed the first two orders sought.

[11] The remaining (alternative) application effectively seeks to increase the Deputy Registrar's assessed sum of \$800 to \$25,000. Ms Khan also suggested that the Deputy Registrar erred in not adjourning the application before him as was requested. In my view an application to increase an assessment made by the Deputy Registrar or to have his assessment set aside on the ground that he should have acceded to a request to adjourn should be brought before the Court by way of an appeal from the Deputy Registrar (clearly stating the way in which the Deputy Registrar was said to have erred) under the provisions of Rule 10 of the Court of Appeal Rules.

[12] For the above reasons the Respondent's notice of motion dated 11 July 2006 was dismissed. After hearing counsel, I awarded the First Appellant's costs which were assessed at \$500.



  
**M.D. Scott**  
**Resident Justice of Appeal**

**Solicitors:**

**Suresh Maharaj and Associates, Lautoka for the Appellants**  
**Yash Law, Lautoka for the Respondent**