

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

CIVIL APPEAL NO. ABU 0038 OF 2006
(High Court Civil Action No. HBC 21 of 2006S)

BETWEEN : MANI LAL

Appellant

AND:

UMA SHANKAR, JITEND KUMAR,
and ANAND RAM SHARMA all Trustees of the
SANATAN DHARMA MAHAMANDAL-VUNIMONO
a religious organization and controlling authority of
Vunimono High School an Educational Institute

Respondents

Coram: Hickie, JA

Hearing: 3 October 2008, Suva

Counsel: Appellant in person
J. Raikadroka for the Respondents

Date of Judgment: 28 January 2009

J U D G M E N T

THE APPLICATION

[1] This is a Summons for Reinstatement of an Appeal by MANI LAL in relation to an Order by Byrne J in the Call Over List of civil appeals at 2.15 pm on 1 May 2008 when there being no appearance on behalf of either party, the appeal was struck out.

- [2] A Notice of Intention to Act in Person was filed by the Appellant on 17 July 2008 exactly 11 weeks after the Order of Byrne J of 1 May 2008. The Summons was mentioned on 6 August and 3 September 2008 when orders were made as to filing of further documentation and the matters set down for hearing on 3 October 2008.
- [3] As Singh J noted in his judgment in the High Court in relation to this matter on 21 April 2006, this case was apparently "one of a series of cases" involving a religious organisation (SANTAN DHARAM MAHAMANDAL) or its officials. In this case, Singh J held that a meeting held on 2 September 2005 was a validly called emergency Executive Committee Meeting of the organisation and the decision of that meeting to suspend the Appellant was proper.
- [4] Apparently the matter was called on 4 April 2008 when it was agreed that matters were to be resolved through mediation perhaps why no person appeared for either party on 1 May 2008 when the matter struck out.
- [5] The Appellant submits that he should not be penalised because of his then lawyer's failure to appear on 1 May 2008 at the Call Over. In addition, he submits that pursuant to section 20(1)(k) of the *Court of Appeal (Amendment) Act 1998*, a single judge of the Court of Appeal can reinstate this Appeal. The section reads:

"Powers of a single judge of appeal

20.-(1) A judge of the Court may exercise the following powers of the Court-

- (a) to give leave to appeal;*
- (b) to extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;*
- (c) to give leave to amend a notice of appeal or respondent's notice;*
- (d) to give directions as to service;*
- (e) to stay execution or make an interim order to prevent prejudice to the claims of any party pending an appeal;*
- (f) to give judgment by consent or make an order by consent;*

(g) to dismiss an appeal for want of prosecution or for other causes specified in the rules;

(h) to dismiss an appeal on the application of the appellant;

(j) to deal with costs and other matters incidental to matters in any of the above paragraphs;

(k) generally, to hear any application, make any order or give any direction that is incidental to an appeal or intended appeal."

- [6] Counsel for the Respondents has submitted that this is an incorrect reading of the section and that once an appeal has been struck out it lapses or comes to an end. In this regard, he cited the judgment of the Fiji Court of Appeal in *Trade Air Engineering (West) Ltd v Taga* (Unreported, Fiji Court of Appeal, 9 March 2007, Ward P, Barker JA and Scott JA; Paclii: [2007] FJCA 9, <http://www.paclii.org/fj/cases/FJCA/2007/9.html>) wherein the Court stated:

"Generally, a party's only remedy following the striking out of its action is appeal."

- [7] Counsel for the Respondents further submitted that the onus is on the Appellant to see that an Appeal is proceeded with properly.
- [8] Having been "struck out", it would seem that the only logical step is for the Appellant to seek leave of the Full Court of Appeal to reinstate the Appeal as required by Section 20 of the *Court of Appeal Act* [Cap 12] which states:

"20. The powers of the Court under this Part-

(a) to give leave to appeal;

(b) to extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;

(c) to give leave to amend a notice of appeal or respondent's notice;

(d) to give directions as to service;

(e) to admit a person to appeal in forma pauperis;

(f) to stay execution or make any interim order to prevent prejudice to the claims of any party pending an appeal;

(g) generally, to hear any application, make any order, or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal,


may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions; but, if the judge refuses an application to exercise any such power or if any party is aggrieved by the exercise of such power, the applicant or party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals under this Act."

ORDERS

[9] Accordingly, the Court makes the following Orders:

1. That the Appellant must seek for Leave to Appeal from the Full Court of Appeal.
2. That the costs of this Application be costs in the cause of the Application for Leave to Appeal.





Hickie, JA

Solicitors:
Raikadroka Law, Suva, for the Respondents