

- [1] On the 13th of May 2005, Connors J, in the High Court at Lautoka gave an Interim Judgment in favour of the Respondents on a claim by them against the Appellants for damages for distress, anguish and pain, loss of the pleasures and amenities of life, and finances.
- [2] The Judge found that the Respondents from about 1997 to 2005 had been reporting to the Police and other relevant Government Authorities the activities of various landowners on Nananu-i-Ra using their residential properties for commercial purposes.
- [3] The complaints by the Respondents resulted in them being victims of numerous attacks of various kinds allegedly at the hands of or at the instigation of the owners of other residential properties in the area being used illegally for commercial purposes.
- [4] The Judge said that it would appear from the material annexed to the various affidavits filed in the proceedings that the Central Board of Health and other Departments considered the allegations of the illegal operators seriously. He said that it also appeared from the material annexed to the affidavits that the Police did not treat the matter with the same seriousness. He said that the investigations appeared to have ignored material of a public nature such as Internet Advertisements, and Advertisements in Air Pacific publications. Apparently various occupants of houses in the area were interviewed at certain times by the Police but the Respondent Mr. Wehrenberg testified that there had been tip-offs prior to these interviews taking place.
- [5] The Judge said that an example of such unsatisfactory investigation concerned an alleged arson attack on the respondents' home. He said it was significant that a Detective Sekaia Suluka failed to attach to his affidavit a letter from the Director of Public Prosecutions dated 16th August 2002 to the Divisional Crime Officer, Western, Ravi Narayan. This letter said in part that Assistant Commissioners Bulamainivalu

and Driver had both recommended a further investigation into the attack but this was not done.

- [6] The Judge mentioned various other incidents involving the respondents and other residents of Nananu-i-Ra which significantly exacerbated the situation between the respondents and these residents. One of these was incorrect advice by the Police as to the respondents' Title boundary. The Judge found that these actions by the Police severely prejudiced the respondents. Likewise, the situation was not helped by the refusal of the relevant officers to execute the agreement made at a meeting facilitated by the Human Rights Commission, although he said, that this reflected an agreement reached at a conciliation meeting held on 26th March 2002. It is unnecessary to mention any more of these complaints which no doubt will be aired again in the Full Court on the hearing of this Appeal.
- [7] The matter first came before me on the 21st of April 2010 when I gave certain directions as to the filing and serving of affidavits and delivery of written submissions on a summons issued by the respondents on the 26th of January 2010 seeking an order that additional documents be included in the Court Record for the hearing of this Appeal. These were mentioned in the Respondent's Summons on the 7th of December 2009 and were as follows:
1. Motion of Fred Wehrenberg dated 26th September 2005.
 2. Affidavits sworn by Fred Wehrenberg on 21st November 2003, 21st August 2005, 26th September 2005 and 26th April 2006.
 3. Pre-Trial Conference (PTC) Minutes by Amikas Curiae dated 16th June 2004.
 4. Submission by the Human Rights Commission (Amikas Curiae) dated 12th April 2005.
 5. Exhibits P3, P4 and P5 tendered in the High Court.

- [8] The Summons also sought the exclusion of a list of reported offences covering 92 pages of the record and the Judge's notes of the action in the High Court.
- [9] The appellants do not oppose the documents sought to be excluded by the respondents but do oppose the other documents mentioned above. The appellants say that these documents are either irrelevant to the appeal, or duplicitous in nature, or simply were not part of the bundle of Exhibits in the High Court.
- [10] They agree that only documents that were part of the proceedings in the High Court can form part of the Court Record on an Appeal.

THE LAW

- [11] Rule 18 of the Court of Appeal Rules governs the question to be answered in the respondent's summons. Under this rule the Chief Registrar of the High Court has the responsibility of endeavouring to exclude from the record all documents that are not relevant to the subject matter of an appeal and generally, to reduce the bulk of the record as far as practicable taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents.
- [12] Experience in this Court over the years convinces me that far too many documents are included in the Court Record and that on an average appeal at most only 50% of the documents in the Court Record are referred to in the submissions of the parties. In England such has been the volume of documents in the Court Record that now a limit of 150 pages has been placed on the record. I can foresee the day when such a limit will have to be placed on the record in this Court.
- [13] In the present case so far, the record consists of three volumes totaling 1136 pages. I have little reason to doubt that only a small portion of these documents will ever be referred to by the parties or the Court when the appeal concludes.

[14] The guiding principle must always be relevance to the issues.

THE PRESENT APPLICATION

[15] I indicated during argument that I rejected the inclusion of the first document listed by the respondents in their summons, the motion of Fred Wehrenberg dated 26th September 2005. This is patently irrelevant. I am of the same opinion concerning the affidavits of Fred Wehrenberg dated 21st August 2005, 26th September, 2005 and 26th April 2006, the pre-trial conference minutes dated 16th June 2006 and the submission of the Fiji Human Rights Commission dated 12th April 2005. These documents were obviously relied on by the Trial Judge and I see no point in including them in the Court Record.

[16] However, although my first inclination was to exclude the affidavit of the first respondent dated the 21st of November 2003, on reflection I consider this should be included.

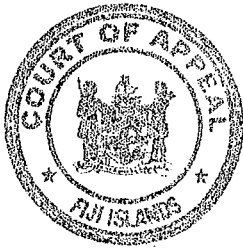
[17] This affidavit was mentioned by Connors, J on page 5 of his Interim Judgment of the 13th of May 2005 but does not mention the number of complaints that were made by the respondents about Police conduct since the relevant date 4th December 2002 until the 2nd of November 2003. I have calculated these complaints at approximately 672 and I believe the Court may be assisted by looking at this Affidavit. The complaints range from common assault, arson, damage to property, criminal investigation to larceny of trees and were never denied by the Police.


[18] Connors, J attached much importance to this Affidavit.

[19] The only other documents which might be included were photographs being exhibits P3, P4 and P5 showing damage to the respondent's property. I refuse to include them in the Record subject to the rider that if the Full Court wishes to see them, it can easily request their production on the hearing.

[20] I therefore order that only the affidavit sworn by Fred Wehrenberg on the 21st of November 2003 be added to the Record. Costs will be in the Cause.

Dated at Suva this 21st day of July 2010.




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JOHN E. BYRNE, Acting President