

IN THE COURT OF APPEAL, FIJI  
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0068 OF 2014  
[High Court Civil Action No. 168 OF 2012]

BETWEEN : PREM ISHWAR CHAND

*Appellant*

AND : FIFA HOLDINGS LIMITED

*Respondent*

Coram : Lecamwasam, JA  
Dr. Almeida Guneratne, JA  
Prematilaka, JA

Counsel : Mr. J. Sharma for the Appellant  
Ms. L. Tabuakuro for the Respondent

Date of Hearing : 09 November 2016

Date of Judgment : 29 November 2016

**JUDGMENT**

**Lecamwasam, JA**

[1] I agree with the conclusions and reasoning given by Prematilaka JA.

**Dr. Almeida Guneratne, JA**

[2] I have read the judgment in draft of my brother Prematilaka, JA. I agree with the reasoning and conclusions of Prematilaka, JA.

**Prematilaka, JA**

- [3] The Appellant (original Defendant) issued a Winding up Notice dated 29 June 2012 against the Respondent (original Plaintiff) under section 221 of the Companies Act (Chapter 247). In the said Notice, the Appellant claimed that the Respondent had owed it a sum of \$25,000.00 on account of the sale of a 20 tonne Rock Breaker and demanded that the Respondent pays a total sum of \$25,850.00 (consisting of the said debt and the Solicitor's cost of \$850.00) within 21 days and the failure to do so would entitle the Appellant to present a Petition to wind up the Respondent Company on the ground that the Respondent is unable to pay its debts and/or that it is just and equitable that the Company should be wound up.
- [4] Since then several correspondence had taken place between the solicitors for both parties upon the service of the said Winding Up Notice. With the matter having not been resolved, the Respondent under Order 29 Rule 1(2) and the inherent jurisdiction of the High Court had applied to Lautoka High Court by way of an Ex-parte Notice of Motion dated 27 July 2012 supported by an Affidavit containing several documents seeking an injunction restraining the Appellant from presenting or proceeding with the Winding Up Petition or advertising the same against the Respondent. The Respondent had also filed Writ of Summons dated 30 July 2012 against the Appellant seeking *inter alia* a judgment in the sum of \$21,252.98 and damages for the breach of contract along with interest.
- [5] On 01 August 2012, a Judge of the High Court had *ex-parte* granted the interim injunction as prayed for limited to a period of 45 days subject to the undertaking for damages by the Respondent, which had been later extended on 04 September till further order of court.
- [6] Thereafter, the Appellant had filed an Affidavit in Reply dated 30 September 2012 along with several documents praying that the Respondent's Application (for the injunction) be dismissed.

- [7] In the meantime the Respondent had filed a Statement of Claim dated 13 August 2012 seeking an Injunction against the Appellant couched on the same lines as in the Ex-parte Notice of Motion. The Appellant had filed a Statement of Defence dated 12 October 2012 praying for the dismissal of the Respondent's claim. The Respondent had thereafter filed an amended Statement of Claim dated 24 October 2012 claiming *inter alia* a judgment in the sum of \$21,252.98 and damages for the breach of contract but the injunction prayed for in the Statement of Claim had been omitted. The Appellant had been granted time to file an Amended Statement of Defence but so far no Amended Statement of Claim had been filed.
- [8] Both parties had thereafter filed their respective Lists of Documents in March and April 2015. They had filed verifying affidavits too. I am surprised that the main case has not proceeded beyond this point to date. Neither the court nor the parties seems to have shown a great deal of enthusiasm to do so. I cannot see any reason as to why that had to be the case, given also that the Amended Statement of Claim did not have the Injunction as a substantive relief.
- [9] However, prior to that the *inter-parte* inquiry into the injunction had commenced before the Hon. Master on 13 and 22 February 2013. Counsel for both parties seems to have made lengthy oral submissions. The gist of their arguments appears to be that while the Appellant had contended that it had a legal right to proceed with the Winding Up proceedings on the failure of the Respondent to pay the 'debt', the Respondent had argued that there was a dispute as to the alleged 'debt' and the Winding Up proceedings was an abuse of court process. Both arguments had been founded mostly upon the documents presented by both parties coupled with some alleged oral agreements and representations.
- [10] Upon the conclusion of the oral hearing, the Ruling had been adjourned for 01 March 2013. However, unfortunately the Ruling had been eventually delivered only on 09 September 2014, i.e. 1 ½ years after the conclusion of the inquiry. The Appellant had tendered a Notice of Appeal dated 29 September 2014 against the said Ruling to the Court of Appeal urging several grounds of appeal.



- [11] However, at the hearing before this Court it was pointed out to both Counsel that there could be a jurisdictional issue with regard to the Appeal being heard by the Court of Appeal as the hearing into the injunction had commenced and been concluded before the Hon. Master of the High Court. However, when the impugned Ruling was delivered the Hon. Master had signed it as a Judge of the High Court. Both Counsel agreed to assist the Court with definite information as to whether and if so, when the Hon. Master had been elevated as a Judge of the High Court. But, we have not received from them any information in this regard.
- [12] Given that my brother judges agreed that this was a matter affecting the jurisdiction to hear and determine the present appeal by this Court, I called for the information from the Registry to ascertain in which capacity the Hon. Master acted at the times relevant to this matter. The High Court Registry had since confirmed in writing that the Hon. Master had then been appointed as a Master of the High Court on 03 August 2009 and appointed as a Judge of the High Court on 12 August 2013.
- [13] This information is consistent with the copy transcript of Lautoka High Court available in the Appeal Brief. The copy transcript clearly shows that the inquiry has been taken up and concluded 13 and 22 February 2013 on before the Hon. Master. His signing the Ruling on 09 September 2014 as a Judge is consistent with his having been appointed as a Judge of the High Court on 12 August 2013. Thus, the clear position now is that the *inter parte* inquiry into the injunction had been concluded before the Hon. Master of the High Court though when the Ruling was delivered he was a Judge of the High Court.
- [14] The question whether the Court of Appeal has the jurisdiction to hear and determine the present appeal arises from section 21B (2) of the High Court Act and Order 59 Rule 8 (1) (under Part II) of the High Court Rules, 1988.
- [15] Section 21B (2) of the High Court Act states as follows
- “A person who is dissatisfied with a judgment of a Master may appeal, as prescribed by the Rules of Court, to the Court constituted by a single judge, but nothing in this section prevents the Chief Justice from constituting a Full Court to hear the appeal if the Chief Justice considers appropriate.”*

[16] It may be noted that the 'Court' in section 21B (2) is the High Court established by the Constitution and the 'Full Court' means the Court constituted by not less than 3 judges sitting together (*vide* Interpretation under Part I of the High Court Act).

[17] The Rules of Court referred to in section 21B (2) is found in The High Court Rules. Rule 8(1) under Part II of Order 59 under the heading 'Appeal from Master' is as follows

*"An appeal shall lie from a final order or judgment of the Master to a single judge of the High Court."*

Rule 8(2) states

*"No appeal shall lie from an interlocutory order or judgment of the Master to a single judge of the High Court without the leave of a single judge of the High Court which may be granted or refused upon the papers filed."*

[18] The question is when a Judge of the High Court delivers a Ruling in a matter which he heard and concluded as a Master where would an appeal lie to. Is it the High Court or the Court of Appeal? If the answer is that it is the High Court, then this Court has no jurisdiction to hear and determine this appeal.

[19] Hon. President of the Court of Appeal, Calanchini, J had the occasion to consider this question in ***i-Taukei Land Trust Board v. Shanti Lal and Apisai and Bansi*** Civil Appeal No. ABU 6 of 2015 decided on 14 May 2015: [2015] FJCA 54 where he observed *inter alia* as follows

*"The right to appeal a decision of the Master of the High Court is regulated by Order 59 Part II of the High Court Rules. Under Order 59 Rule 8 an appeal from a final order or judgment of the Master lies to a single judge of the High Court. There is no doubt that had it not been for the later appointment of the Master as a puisne judge, the Appellant's appeal against the assessment of damages should have been to a single judge of the High Court and not to the Court of Appeal. Therefore the only issue is whether the appointment of the Master as a puisne judge subsequent to the hearing of the parties but prior to the delivery of the decision alters the position as set out in Order 59 Rule 8. In the event that the assessment of damages remains a decision of the Master although delivered after his appointment as a judge, then the Court of Appeal has no jurisdiction under section 12 of the Court of Appeal Act to hear the appeal. Furthermore, in any subsequent appeal to the Court of Appeal from the High Court appeal decision,*



*the Appellant is restricted to grounds of appeal, if any, that raise questions of law only. If the position is altered and the assessment of damages decision is now regarded as a decision of a judge of the High Court, then the Appellant will have lost a right to an intermediate appeal.”(emphasis mine)*

*“The subsequent decision setting out the assessment of damages should therefore be regarded as a decision of the Master, even though he had been appointed a judge by the time he belatedly delivered the decision.”*

*“Were it not for the existence of Part II of Order 59 an appeal from the Master's decision, as with a judge's decision may have been to the Court of Appeal.”*

*“However both section 21 B (2) of the High Court Act Cap 13 and Order 59 Part II of the High Court Rules clearly give a right of appeal from a Master's decision to a single judge of the High Court. In my view that right cannot be lost after the hearing of a matter before the Master simply because the Master has, after the hearing but before judgment, been appointed a judge. In the event that the Master had been appointed to the Court of Appeal, it could surely not be suggested that his decision would have been that of a justice of appeal after having heard the assessment of damages as the Master.”*

[20] The Hon. President Calanchini J continued as follows

*“Finally, it seems to me that the situation has arisen in this case as result of the delay in handing down the decision. The parties were heard in May 2012. The Master was appointed a puisne judge in August 2013. In the normal course of events the decision would have been delivered before August 2013. It would be manifestly unfair for one or other of the parties to lose an intermediate right of appeal on account of the delay (for whatever reason) by the judicial officer in delivering his assessment of damages decision. This is a case where the maxim “*actus curiae neminem gravabit*” (the act of the court shall prejudice no one) can be applied.” (emphasis mine)*

*“For all of the above reasons I have concluded that this Court has no jurisdiction under section 12 of the Court of Appeal Act to hear an appeal from the decision of the Master. In view of the novel issue raised by the application there will be no order as to costs.”*

[21] In the instant Appeal before this Court, the hearing in the High Court had been concluded on 22 February 2013 and the Hon. Master had been appointed as a Judge of the High Court on 12 August 2013, i.e. after nearly 06 months. The Ruling was delivered on 09 September 2014.

[22] I am inclined to adopt the reasoning given by the Hon. President Calanchini J. and unfortunately, as a result this Court is not in a position to consider the merits of the appeal. This Court has no option but to dismiss the appeal for want of jurisdiction and the Appellant has every right to agitate the merits of the impugned Ruling according to law before the correct forum.

[23] Therefore, I conclude that this Court has no jurisdiction under section 12 of the Court of Appeal Act to hear this appeal from the impugned Ruling of the Master.

[24] Apart from the reasons set out in *i-Taukei Land Trust Board v. Shanti Lal and Apisai and Bansi*, I think there are other reasons also to support the above conclusion. I would now advert to them.

[25] Historically, Administration of Justice Decree, 2009 (the Decree) which came into force on 10 April 2009 *inter alia* by section 2 established the Court of Appeal and the High Court. The President under section 3 of the said Decree was vested with power in his discretion to make the initial appointments of Judges of the High Court, Justices of Court of Appeal, Judges of the Supreme Court, Masters of the High Court etc.

[26] Section 5 of the Administration of Justice Decree, 2009 described the jurisdiction of the Courts as follows

‘5.- (1) *Each of the High Court, the Court of Appeal and the Supreme Court has the jurisdiction, including the inherent jurisdiction, conferred on it by this Decree or by any other law.*

(2) *No Court shall be vested with jurisdiction save as is or may be conferred on it by this Decree or any other law.’*

[27] Section 6 of the said Decree set out the jurisdiction of the High Court in the following terms

‘6.- (1) *The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Decree or any other law.*



(2) *The High Court has jurisdiction, subject to the conferral by written law of rights of appeal and to such requirements as may be prescribed by law, to hear and determine appeals from all judgments of subordinate courts.*

(3) *The High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the subordinate court.'*

[28] Section 7 of the said Decree set out the jurisdiction of the Court of Appeal as follows.

'7.- (1) *The Court of Appeal has jurisdiction, subject to this Decree and to such requirements as prescribed by law, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by law.*

(2) *Appeals lie to the Court of Appeal, as of right or with leave, from other judgments of the High Court in accordance with such requirements as prescribed by law.'*

[29] Administration of Justice Decree, 2009 was repealed by section 164 of the Constitution (Part C) of the Republic of Fiji that came into force on 07 September 2013 but the courts established under the said Decree continued to exist by virtue of section 174(1) of the Constitution. Section 100 of the Constitution describes the composition of The High Court and it includes the Masters and the Chief Register of the High Court in addition to the Chief Justice and other Judges of the High Court. Section 100 (2) & (3) of the Constitution respectively state on the jurisdiction of Masters and the High Court as follows, while describing appellate powers of the High Court under section 100(5).

*'The jurisdiction and powers of the Masters of the High Court and the Chief Registrar of the High Court shall be prescribed by written law.'* [Section 100(2)]

*'The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution or any written law.'* [Section 100(3)]



- [30] Thus, the Constitution has treated the jurisdiction and powers of the Masters and the High Court separately. It is also clear that the jurisdiction and powers of the Masters of the High Court were not defined in the Constitution but were to be prescribed by written law.
- [31] Section 3 of the High Court Act states that the High Court has all powers and jurisdictions as are or may be vested in the Court under or by virtue of the Constitution, the High Court Act or any law for the time being in force. Section 18 of the High Court Act *inter alia* states that it has jurisdiction conferred on it by the Decree and any other written law. In addition the High Court also has been conferred the admiralty jurisdiction and the power and authority of the Supreme Court as set out in sections 18 (2) and (3).
- [32] Therefore, the jurisdiction of the High Courts is to be found in the Administration of Justice Decree 2009, the Constitution, the High Court Act and any other written law.
- [33] The written law referred to in section 100(2) of the Constitution is the High Court Act. Section 21A of the High Court Act states, that provision may be made by the Rules of Court for the jurisdiction of the High Court to be exercisable by a Master as the Rules may specify. Section 21B (1) and (2) of the High Court Act state respectively as follows

*“For the purpose of the exercise of jurisdiction conferred on the master by the Rules of Court, this Act has effect, subject to this section, as if the Court consisted of the judges and the Masters.”*

*“A person who is dissatisfied with a judgment of a Master may appeal, as prescribed by the Rules of Court, to the Court constituted by a single judge, but nothing in this section prevents the Chief Justice from constituting a Full Court to hear the appeal if the Chief Justice considers appropriate.”*

- [34] However, Section 21B (1) and (2) of the High Court Act do not set out what the powers and jurisdiction of the Masters are. Section 21E vests the power to administer oath on the Master and states that the other powers and duties are as assigned by or under the High Court Act. Yet, no such powers and duties have been specified in the High Court Act itself.

[35] Therefore, in terms of sections 21A and 21B (1) of the High Court Act one has to examine the High Court Rules to ascertain the powers and jurisdiction of the Masters. They are The High Court Rules, 1998 made by the Chief Justice by virtue of powers vested in His Lordship by section 25 of the High Court Act which *inter alia* makes it lawful for the Chief Justice to make rules of Court to carry the High Court Act into effect.

[36] Order 1 Rule 2(1) defines ‘the Court’ to mean the High Court or any Judge thereof and where appropriate the Master or the Registrar, provided this definition shall not affect Order 59 which defines and regulates the authority and the jurisdiction of the Master and Registrar. Judge is defined in section 2 of the High Court Act to mean a judge of the High Court including the Chief Justice. In other words for the purpose of Rule 59 a Master cannot and should not be taken to mean a Judge of the High Court or the High Court and the distinction between a Judge and Master must still be maintained. For other purposes where appropriate the High Court may mean a Master. Thus, a Master’s decision in the exercise of powers under Order 59 Rule 2 is not that of the High Court or a Judge of the High Court. It remains a decision of the Master. Therefore section 12 of the Court of Appeal Act cannot be invoked against such a decision.

[37] This becomes clearer when one considers the effect of Order 59 Rule 4 which states *inter alia* “*The Master may refer to a judge any matter which the Master thinks should properly be decided by a judge .....*”

[38] Rule 2 under Part I of Order 59 under the heading ‘Jurisdiction of the Master’ is as follows

*“The Master shall have and exercise all power, authority and jurisdiction which may be exercised by a judge in relation to the following causes and matters -  
.....”*

[39] Rule 3 under Part I of Order 59 under the heading ‘Jurisdiction of judge not affected’ is as follows

*‘Conferring of power, authority and jurisdiction on the Master under this Order shall not prevent a judge from exercising any such power, authority and jurisdiction.’*



- [40] Therefore, it is abundantly clear that all what Order 59 Rule 2 has done is to confer some areas of jurisdiction normally exercised by Judges of the High Court on the Master. This, by no stretch of imagination, could be said to equate the Masters with the Judges of the High Court or put them on par with the Judges of the High Court simply because they exercise limited areas of power, authority and jurisdiction set out in Order 59 Rule 2 ordinarily conferred on a Judge of the High Court. This distinction has been maintained throughout in all legislations including the Constitution as discussed above. Nothing in Order 59 Rule 2 suggests that the Masters should be included within the definition of the High Court or treated as a Judge of the High Court, for the purpose of Rule 59.
- [41] Thus, it is quite logical for the Chief Justice to have promulgated Order 59 Rule 8(1) and (2) to the effect that “*An Appeal shall lie from a final order or judgment of the Master to a single judge of the High Court.*” And “*No appeal shall lie from an interlocutory order or judgment of the Master to a single judge of the High Court without the leave of a single judge of the High Court which may be granted or refused upon the papers filed.*”
- [42] This was essential as section 12 (1) (a) of the Court of Appeal Act permits an appeal to the Court of Appeal from any decision of the High Court. As I pointed out above when a Master exercises any power, authority and jurisdiction under Order 59 Rule 2, he or she does not do so as a judge of the High Court but as a Master and therefore, cannot be equated to the High Court. The very definition of ‘the Court’ in Order 1 Rule 2 (1) of the High Court Rules requires that Masters be not treated as ‘the Court’ when they exercise jurisdiction under Order 59.
- [43] Against the decision of a Master, a party could invoke the jurisdiction of the Court of Appeal only under section 12 (1) (c) of the Court of Appeal Act where an appeal would lie to it on any ground of appeal involving a question of law only when the High Court has exercised its appellate jurisdiction under Order 59 Rule 8. Thus, it would be the second appeal and not the first appeal that would lie to the Court of Appeal. Therefore, the second appeal is limited only where there is a question of law.

- [44] I would like to look at this jurisdictional issue from yet another point of view. Assuming for the sake of argument that a Master's decision in the exercise of powers under Order 59 Rule 2 is that of the High Court and therefore the aggrieved party also has a direct appeal to the Court of Appeal under section 12 (1) of the Court of Appeal Act, it necessarily means that there are two institutions with parallel jurisdiction: A single judge of the High Court and the Court of Appeal. Did the Chief Justice intend to create such a situation? I do not think so because it would confuse the litigants, lawyers and even judges of the High Court not knowing where the appellate jurisdiction lies against a decision of the Master in the exercise of powers under Order 59 Rule 2.
- [45] On the other hand, why did the Chief Justice have to confer appellate jurisdiction on a single judge of the High Court against a decision of the Master in the exercise of powers under Order 59 Rule 2 if such jurisdiction had already been vested in the Court of Appeal under section 12 (1) (a) of the Court of Appeal Act? Order 59 Rule 8 cannot be assumed to have been promulgated in ignorance of the section 12 (1)(a). I am of the view that Order 59 Rule 8 had been consciously made with a view to fill a lacuna in the appellate procedure against the decisions of the Master in the exercise of powers under Order 59 Rule 2, being fully aware of the existence of section 12 of the Court of Appeal Act.
- [46] Looking at this issue in yet another way, if the Court of Appeal has appellate jurisdiction under section 12(1) of the Court of Appeal Act in respect of the decision of the Master in the exercise of powers under Order 59 Rule 2 one has to logically treat section 21B (2) of the High Court Act and Order 59 Rule 8 as being redundant. I do not think that the legislature promulgates laws in vein. Subordinate legislation is also not made in vein. Therefore, such a construction is not warranted at all.
- [47] Therefore, the appeal should stand dismissed. However, I order no costs for the reason that by the time the decision of ***i-Taukei Land Trust Board v. Shanti Lal and Apisai and Bansi*** by the Hon. President of the Court of Appeal was delivered on 14 May 2015, the Notice of Appeal had already been filed on 30 September 2014 and therefore, the question of jurisdiction to hear an appeal by the Court of Appeal in a situation such as this had not been settled.



The Orders of the Court

1. Appeal is dismissed.
2. No order as to costs.

*S. Lecamwasam*

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Hon. Mr. Justice S. Lecamwasam  
JUSTICE OF APPEAL



*Dr. Almeida Guneratne*

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Hon. Justice Dr. Almeida Guneratne  
JUSTICE OF APPEAL

*C. Prematilaka*

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Hon. Mr. Justice C. Prematilaka  
JUSTICE OF APPEAL