

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

CIVIL APPEAL NO. ABU 59 of 2018
High Court No. HBC 86 of 2012

BETWEEN : **ITAUKEI LAND TRUST BOARD**

Appellant

AND : **SALESHNI GEETA RAM**

Respondent

Coram : **Almeida Guneratne, JA**

Counsel : **Ms L Komaitai for the Appellant**
Respondent in person

Date of Hearing : **14 May, 2020**

Date of Ruling : **29 May, 2020**

RULING

- [1] This is an application for leave to appeal out of time and extension of time to appeal the judgment of the High Court in HBC 86/2012 dated 16 June, 2016.
- [2] Having perused the established precedents in applications of that nature in regard to the applicable or relevant criteria as to whether such an application is to be allowed or not, the decisive criterion is whether there is a reasonable chance of success for an Appellant to succeed or not (which I regard as a higher threshold) or whether there is an arguable case (which I regard as a lower test).
- [3] For my part, sitting as a Single Judge of this Court I prefer to adopt the lower test taking into consideration the criterion of “prejudice” to parties in granting leave to appeal in which regard I straight away took note of what counsel for the Appellant submitted in saying that, if leave to appeal is allowed the Respondent will not be prejudiced for she would still remain in possession and should leave to appeal be refused she will still be granted a lease to the subject land. As Appellant’s Counsel submitted, on the other side of the coin, if leave is refused the appellant will be prejudiced as there is a tenant, (by the name of Ashok Balgovind) who as Counsel submitted, as being the rightful owner or holder of the lease whom Counsel submitted had effected improvements on the land in question thus entitling him for a “renewed lease” or as a “New Lease” which in turn weighed with me in looking at the Grounds of Appeal urged as against what the learned Judge held at paragraphs 6.8 to 6.11 and 7.0 in his Judgment.
- [4] No doubt, those were determinations of facts which an appellate Court should be slow to interfere with.
- [5] However, my task sitting as a single Judge of this Court was to see, as I indicated earlier, as to whether there is an “arguable case” which is the test I prefer to adopt given the disputed factual aspects of the Respondent’s connection with the said Ashok Balgovind taken together with other facts on the Respondent’s side and the concept of “Public Trust” which Counsel for the Appellant submitted that lies on the Appellant as a “Statutory

functionary” in which context she relied on the provisions of NLTB (now iTLTB Act (Cap. 67) and the Regulations of 1984 made thereunder particularly Regulations 18 and 19, whether on the basis of “a renewed lease” or “a new lease”, the duty lying on the Appellant to make a decision as to who was the correct party that was obliged to make that decision.

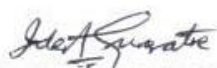
Determination

- [6] For the aforesaid reasons I am inclined to grant leave to appeal against the judgment of the High Court dated 16 June 2016 for the full Court to go into in appeal.
- [7] Upon receipt of notice of this Ruling I make further Order that the Appellant do take all steps as required by law.
- [8] I direct the Registrar of this Court to have this matter mentioned on a call over date before a Single Judge of this Court to make consequential orders and give directives as requisite by law.
- [9] I make no order as to Costs and Costs shall be in the cause on the determination of this Appeal by the full Court.

Orders of the Court

1. Leave to appeal and extension of time to appeal the impugned judgment of the High Court is allowed.
2. There shall be no costs of this application.




Almeida Guneratne
JUSTICE OF APPEAL