

IN THE COURT OF APPEAL, FIJI
[APPELLATE JURISDICTION]

Civil Appeal No. ABU 054 of 2019
(HBC No. 313 of 2018)

BETWEEN : **RAJENDRA CHAUDHRY**
Appellant

AND : **ATTORNEY GENERAL OF FIJI**
Respondent

Coram : Almeida Guncratne, JA

Counsel : Mr. A. K. Singh for the Appellant
Ms. O. Solimailagi with Ms. M. Ali for the Respondent

Date of Hearing : 23 March 2020

Date of Ruling : 27 March 2020

RULING

Matter for Determination

- [1] This is an application for leave to appeal against an order made by the Chief Registrar dated 2 July 2019 fixing security for costs for the Appellant to prosecute his Appeal against a judgment of the High Court of Suva.
- [2] By His Order as Chief Registrar, the said security for costs was fixed at \$15,000.00 which the Appellant has put in issue.

- [3] Although several grounds have been urged in the Appellant's summons, at the hearing, learned counsel for the Appellant confined himself to the argument that, the said amount of \$15,000 is grossly excessive, unreasonable and unfair, in breach of Section 15(11) of the Constitution and has not been ordered in similar civil cases at all. He re-iterated the position taken by him in the several affidavits filed and the written submissions dated 6 September, 2019 and 4 October, 2019. As against that, learned Counsel for the Respondent at the hearing supported and supplemented the matters stated in the affidavits and her written submissions dated 25 September, 2019.

Consideration of submissions made by Counsel in the Light of the Law, precedents and principles on Security for Costs in an appeal

- [4] The applicable law is contained within the framework of Rule 17 of the Court of Appeal Act.
- [5] My attention was drawn to the case of **New Zealand Pacific Training Centre/Melbourne Place Limited v. Taj Manufacturers and Contractors Limited** (ABU 0025 of 2010). That case acknowledged that the jurisdiction to fix security for costs lies with the Registrar but on account of the fact the Registrar had failed to fix the same, the Court (Marshall, JA sitting as a single Judge) directed the Registrar to fix the costs in the sum of \$1,500.00.
- [6] The principle I endeavor to extract from that case is that, this Court has the jurisdiction to review a decision of the Registrar relating to the security for costs of appeal. However, the question arises as to whether, a decision of the Registrar in fixing a sum (in this case \$15,000.00), is also reviewable by this Court.
- [7] This raises a question of jurisdiction and does not appear to have been decided to date by an authoritative ruling/decision in the Courts of Fiji.

- [8] The next question is, if this Court is taken to have such jurisdiction, on what criteria or guidelines could the Court lay down in reviewing a decision of the Registrar in regard to the quantum of such costs ordered by him in the absence of legislative provisions in that regard.
- [9] Consequently is then the exercise of jurisdiction by the Registrar to be regarded as a Jurisdiction that vests him with an absolute discretion? Could such a concept be accepted in the context of public law, the Registrar being a statutory functionary?
- [10] Apart from those aspects, in regard to the submissions made by the respective Counsel in the context of Section 15(11) of the Constitution, could the Registrar's order be construed as an act or decision amounting to a denial of access to justice within the meaning of that section wherein there is no material shown on the record where the Appellant had sought an inquiry to challenge the said amount fixed by the Registrar as being excessive and unreasonable when the Appellant filed his motion dated 11 June, 2019.
- [11] A further question that arises for consideration is as to what extent the precedents cited by counsel (viz: the High Court of Fiji decision in Mohammed v Nisha eta al (HBC 251 of 2012) and the ruling in Tolstoy Miloslavsky v The United Kingdom of the European Court of Human Rights (vide: [1995] 20 EHRR 442) would have relevance to considerations for this Court in the context of Rule 17 of the Fiji Court of Appeal Act.
- [12] I also noted the attractive argument advanced by learned Counsel for the Respondent that, the reference to "any fee" in Section 15(11) of the Constitution must be regarded as being not the same as "security for costs" which is legislatively decreed in Rule 17 of the Court of Appeal Act.
- [13] In that context, following on what I have articulated at paragraph [10] above, could this Court bring into the framework of Rule 17 of the Court of Appeal Act, the English concept of "where the Statute law is silent the Common Law will supply that omission?".

[14] Before parting with this Ruling, I also had occasion to look at the judicial thinking in the Fiji Court of Appeal in Satish Chand v Labasa Town Council [2006] ABU 118/05.

Like the shuttle in the loom

[15] Indeed, the rival contentions advanced by the respective counsel impacted on me like a shuttle in the loom which carried the trappings of the matter carrying the potential to be decided either way.

[16] But then, that would be a matter for the Full Court to decide and determine on the matters I have sought to capture and formulate in paragraphs [7] to [14] above of this Ruling.

Conclusion and Orders

[17] Consequently, I conclude and proceed to make my orders as follows:

1. The Application of the Appellant for leave to appeal on the issue in question, that is, whether, the quantum ordered as security for costs to prosecute the main appeal is excessive is allowed.
2. I make no order as to costs.



Almeida Guneratne

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Almeida Guneratne
JUSTICE OF APPEAL