

IN THE COURT OF APPEAL, FIJI
[APPELLATE JURISDICTION]

Civil Appeal No. ABU 0097 of 2019
(CAT Appeal No. 02 of 2019)

BETWEEN : **BHAN PRATAP CHAND**
Appellant

AND : **DURGA PRASA GAUTAM**
1st Respondent

AND : **DIRECTOR OF LANDS**
2nd Respondent

Coram : Almeida Guneratne, JA

Counsel : Mr. V. Maharaj for Appellant
Mr. A. Sen for 1st Respondent
: Mr. A. Prakash for 2nd Respondent

Date of Hearing : 17 June, 2020

Date of Order : 23 June, 2020

ORDER

- [1] When this matter was taken for hearing on 17 June, 2020, Mr. Maharaj who appeared for the Appellant moved to have the appeal withdrawn.
- [2] Both Mr. Sen and Mr. Prakash (counsel for the 1st and 2nd Respondents respectively) moved for Costs.

[3] On Mr. Maharaj being asked whether he would agree to the payment of some reasonable costs, he was heard to say that he had no instructions in that regard. That effectively prevented me from exercising discretion in awarding some “nominal costs” being the approach I pursued in The Ministry of Education, Heritage and Ors v. Fiji Teachers Union (ABU 092/2018; 27 March, 2020).

[4] Consequently, the quantum of costs to be awarded being left to me to be decided on, I called upon both Mr. Sen and Mr. Prakash to make their submissions thereon.

Submissions made by Mr. Sen on behalf of the 1st Respondent

[5] Mr. Sen submitted that;

(a) He had taken exception to the Jurisdiction of this Court to entertain this matter being an appeal purporting to be such against a Judgment of the Central Agricultural Tribunal whereas the proper remedy (if any) the Appellant ought to have pursued was by way of Judicial review;

(b) In order to vindicate his position he has had to travel from Labasa (including the hearing date fixed for today) on some days and today he had come ready to make submissions;

(c) He was not even put on notice that there was going to be an application for withdrawal of the matter fixed for hearing for “today” (17 June).

[6] Mr. Prakash submitted that he too had come ready to oppose the Appellant’s listed application for “today” (17 June).

[7] At this point, I pause to note the relative circumstances the respondents and their Counsel have had to face, a matter that would be reflected in the final awards for costs I intend to make.

Principles applicable to the award of costs in an application for withdrawal of an Appeal

[8] I enunciated those principles in the following terms in **The Ministry of Education** case (supra).

[9] Therein I said:

“[6] The overriding principle as to the award of costs is that such award should follow the event. In this instance, “the event” is the withdrawal of the appeal. It is not the usual event of a party succeeding or failing in any proceeding.

[7] The other important principle is that the award of costs is a matter for the exercise of the Court’s discretion. The next principle is that the exercise of that discretion must be reasonable and just in the circumstances of the case having regard to the conduct of the parties”.

[10] I reiterate those principles in the context of Section 20(1) (j) of the Court of Appeal Act.

[11] I also looked at the judgment of Her Ladyship Justice Jameel in **Dhan Lakshmi v Gounder & Kumar** (ABU 0066/2018) 28 February 2020- full court).

Application of the said principles to the circumstances of this Case

[12] Apart from the submissions made by Mr. Sen and Mr. Prakash which I have recounted above, I also took note of the following having perused the Record:

- (a) After the Appellant had paid security for costs of his Appeal on 10 December, 2019, the objection to the Jurisdiction of this Court had been taken at least on 27 January, 2020 (per observation made by Justice Chandra on that date as revealed from the Record).

- (b) While that objection was hanging fire, on 23rd March, 2020 the Appellant was absent and unrepresented.
- (c) Thereafter, on subsequent dates, appearances had been entered on behalf of the Appellant which had led me (after being possessed of the proceedings) to give dates for consequential steps to be taken prior to the hearing.
- (d) Finally, it is on the date fixed for hearing that the Appellant moved to withdraw the matter.
- (e) All that constitutes procrastination on the part of the Appellant.

Procrastination is not only the thief of time but it can also lead to an order for awarding more than mere nominal costs

[13] That is the theme I intend to adopt in my orders to follow.

A Prescription of Caution to Parties in litigation and the Need for Overall Instructions to be Given to and Received by Counsel

[14] I wish to add at this point that, whenever a party seeks to withdraw a proceeding in Court of whatever nature, Counsel must receive and come with overall instructions to respond to a Court's call. If that had been done in the present case, the Appellant (I dare say) might have escaped with having to pay some nominal costs as in the case of the Ministry of Education, Heritage & Arts (supra).

[15] Consequently, I proceed to make my Orders as follows:

Orders of the Court

1. The Appellant's application to withdraw the Application (Appeal) before this Court is allowed.
2. The Appeal (Application) is dismissed.
3. The Appellant shall pay within 28 days of this Order a sum of:-
 - (a) \$2,500.00 to the 1st Respondent
 - (b) \$1,000.00 to the 2nd Respondent.
4. The Respondents may advise themselves to recover the said sums according to law.
5. The proceedings in this case are terminated and the Registrar of this Court is directed to take this matter off the Cause List.



A handwritten signature in blue ink, which appears to read "Almeida Guneratne".

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Almeida Guneratne
Justice of Appeal