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

Civil Appeal No. ABU 065 of 2018 & ABU 071 of 2018
High Court Civil Action No. HBC 349 of 2015

BETWEEN	:	**PUBLIC RENTAL BOARD**
		Appellant
AND	:	**RAWLINSON JENKINS LTD**
		Respondent
AND		
BETWEEN	:	**RAWLINSON JENKINS LTD**
		Appellant
AND	:	**PUBLIC RENTAL BOARD**
		Respondent

Coram	:	**Almeida Guneratne, AP**
	:	**Basnayake, JA**
	:	**Lecamwasam, JA**
Counsel	:	**Ms. S. Devan for the Appellant in ABU 065.2018 and for Respondent in ABU 071.2018**
	:	**Mr. V. Singh for the Respondent in ABU 065.2018 and for Appellant in ABU 071.2018**
Date of Hearing	:	**03 May 2021**
Date of Judgment	:	**28 May 2021**

JUDGMENT

Guneratne, AP

[1] Having had the advantage of reading in draft Justice Lecamwasam's Judgment, I agree with the reasoning and conclusions reached by him in his Judgment but would add a few comments in supplementing the same.

[2] At the initial stage of the Contract no doubt there was a distinction drawn in the contemplation of parties between the contracted budget for the works and the scope of the work. Yet, as the project continued there was additional work done which the Appellant had acquiesced in without demur. As established by the evidence this is the bottom line. It follows then that the project (work initially undertaken) could not have been completed to fruition had that additional work not been done. This is where the legal principles of quantum meruit, unjust enrichment and Restitution are brought into reckoning. What then are those legal principles?

[3] The term *"quantum meruit"* or *"quantum valebat"* are used in distinct senses at Common Law. In the context of the facts of the present case, it would apply to reasonable remuneration for what has been done which is in the nature of a quasi-contractual term. Again to disregard the several situations that the said term could be brought into play and focus on the situation that applies to the instant case, it is where a plaintiff was compelled to do and which in fact the plaintiff did, for the reasons flowing from what I have reflected on in paragraph [2] above.

[4] The additional work done was not therefore work just voluntarily done. The Plaintiff was compelled to do it. The Appellant acquiesced in it thereby implying an extended contractual term to pay *"quantum meruit"* for that additional work. (Vide: Falcke v. Scottish Imperial Co. [1886] 34 CH.D 234, CA; Brooks Wharf and Bull Wharf Ltd v Goodman Bros. [1937] 1K.B. 534 at 543, 545.

[5] Moreover, if it were to be argued that, it is not possible to imply quasi-contractual liability to pay *"quantum meruit"* in the absence of an express request by the defendant,

as I have already noted, the Appellant (defendant) acquiesced in the additional work, otherwise the contract would not have materialized and could not have been completed.

[6] As a principle of Law, I express the view that, it is precisely in such a situation that the "quantum meruit" principle must apply.

Basnayake, JA

[7] I agree with the reasons, conclusions and orders made by Hon. Justice Lecamwasam.

Lecamwasam, JA

[8] These are two appeals filed by the Appellants in respect of the same subject matter emanating from the judgment of the learned High Court Judge at Suva dated 28th June 2018. The facts in brief are clearly stated by the Learned Judge in his judgment. I can do no better than quote in verbatim the relevant passages from the learned High Court Judge's judgment, which read thus:-

> 1. *The Plaintiff instituted these proceedings to recover $121,186.52 for the additional work done for the defendant.*
> 2. *The Plaintiff's case is that it submitted the construction cost consultancy service fees to the defendant for housing projects at Raiwai and Raiwaqa. The Plaintiff's quotation was based on the construction budget of $20,000,000.00 and the amount quoted by the plaintiff was $278,596.00 (Vat exclusive fees). The plaintiff tendered a revised quotation on a construction budget of $11,000,000.00 which was $196,000.00 (Vat exclusive fees) which was accepted by the defendant. Upon the acceptance of the second quotation, the parties entered into a cost consultancy agreement on 28th November, 2011. Due to change in the scope of work, the construction budget of the Raiwai project increased from $ 11,000,000.00 to $18,358,416.46 and the plaintiff is seeking an additional amount of $121,186.52.*

3. *The defendant's position is that the agreed fees were $225,400.00 (Vat inclusive price) and that the process was to be followed when variations, if any, were to be made:*

   (a) *The defendant would make a request for a quote for additional works to be done by the plaintiff;*

   (b) *The plaintiff would then provide the quote for the additional work to the defendant; and*

   (c) *If the quote provided by the plaintiff was agreeable, the defendant would then need to provide a written instruction to the plaintiff to commence the additional work.*

4. *At the pre-trial conference , the parties had admitted the following facts:-*

   1. *The plaintiff at all relevant times in the business of providing the services of quantity surveyors.*

   2. *The defendant is a body corporate constituted under the provisions of the Housing Act as amended by the Housing (Amended) Decree 1989 and having its head office at 132 Grantham Road, Suva to provide affordable rental housing to low income earners.*

   3. *On or about 13th October, 2011 the plaintiff submitted a construction cost consultancy service fees quotation to the defendant for housing projects being undertaken by the defendant at Raiwai and Raiwaqa.*

   4. *The plaintiff's quotation was based on a construction budget of $20,000,000.00 and was inter alia as follows:-*

      (a) *Total lump sum VAT exclusive fee - $278,596.00*

      (b) *If variations exceeded 10% of the net cost then excess would be charged at 2.25% of the cost of measured omissions plus 2.25% of the cost of measured additions.*

   5. *On or about 2nd November, 2011 the plaintiff sent a revised quotation to the Defendant on a construction budget of $11,000,000.00 which was inter alia as follows:-*

(a) Total lump sum Vat inclusive fee - $196,000.00

(b) If there is a significant change in the scope of work and the construction budget is exceeded by 10% the plaintiff reserved the right to amend its fees accordingly.

6. *On or about 21st November 2011 the defendant accepted the plaintiff's quotation.*
7. *The plaintiff and the defendant then entered into a cost consultant agreement dated 28th November, 2011.*
8. *The plaintiff's quotation on 2nd November 2011, the defendant's acceptance letter of 21st November, 2011 and the cost consultant agreement dated 28th November, 2011 comprised the contract between the parties.*
9. *The construction budget between the defendant and China Railway First Group Co.Ltd (the Builder) increased from $11,000,000.00 to $18,358,416.46.*

[9] The Appellant in Case No. ABU 065 of 2018 filed the following grounds of appeal:-

1. *The learned Trial Judge erred in law and / or misdirected himself in law and in fact in holding that the respondent had proven its claim on balance of probabilities when :*

(i) The respondent failed to plead in its statement of claim any specific particulars of work carried out at the request of the appellant;

(ii) The respondent failed to tender any evidence to show that it had carried out any works for the appellant as claimed in its invoice No. 2619/F2085;

(iii) The respondent had not produced evidence pertaining to items 1.0, 2.0, 4.0, and 5.0, as per its invoice No.2619/F2085.

2. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that the Respondent was entitled to recover a sum of $121,186.52 from the Appellant by way of 'Quantum Meruit' when:*

    (i) *There was a valid and subsisting contract between the parties by way of a Cost Consultancy Agreement dated 28 November 2011 and Respondent's letter dated 2 November 2011 which governed Respondent's entitlement to any additional fee claim.*

    (ii) *The scale of fees for additional fees was prescribed and fixed by the contract.*

    (iii) *The contract between the parties had not been discharged or had become ineffective or unenforceable.*

3. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in failing to consider that the Court could not make inferences on the Respondents entitlement to reasonable payment outside the ambit of the contract.*
4. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in failing to properly consider the principles of 'quantum meruit' as expounded in the case of Benedetti v Sawiris & Ors [2013] UKSC 50.*
5. *The Learned Trial Judged erred and/or misdirected himself in law and in fact in holding that the Respondent was entitled on a claim for Unjust Enrichment/Restitution when the Respondent had failed to plead or rely on the doctrine of Unjust Enrichment /Restitution.*
6. *The Learned Trial Judge erred in law by misconstruing the evidence and holding that the Respondent had carried out additional work when this fact was denied by the Appellant and no evidence was tendered by the Respondent establishing this as a fact.*

7. *The Learned Trial Judge erred in law and in fact in misconstruing the evidence and holding that the Appellant conceded that additional work was performed by the Respondent when:*

   (i) *The Appellant had denied by paragraph 9 of its statement of Defence that additional works to the value of $121,186.52 had been requested and carried out by the Respondent.*

   (ii) *The Appellant had only given instructions for additional work to the value of $10, 470.75 which was paid to the Respondent.*

8. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that the Appellant had been enriched at the expense of the Respondent.*
9. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that the Appellant had no defence to the Respondent's claim when the learned Trial Judge in fact disallowed the Respondent's claim for additional fee under the contract.*
10. *The Learned Trial Judge erred and/or misdirected himself in law in failing to consider the closing submissions of the Appellant when the submissions had been filed and received by the High Court Registry.*
11. *The Learned Trial Judge's decision is wrong and erroneous and tantamount to a wrongful exercise of discretion having regard to all the facts and circumstances of the case and evidence on the whole.*

ABU 0071/2018

Grounds of the Appellant's Appeal are as follows:

1. *The Learned Trial Judge erred in fact and in law by finding that the Appellant did not succeed in its claim in contract when it failed to satisfy that there was a significant change in the scope of work when the only information provided to the Appellant when it*

provided its quotation dated 2 November 2011 was the construction budget of $11m and no scope of works was provided by the Respondent to the Appellant.

2. *The Learned Trial Judge erred in fact and in law by not to take into account that there was no scope of works provided to the Appellant by the Respondent at the time the Appellant had entered into the contract with the Respondent which comprised the following documents:*

    (a) The Appellant's quotation of 2 November 2011,
    (b) The Respondent's acceptance letter of 21 November 2011, and
    (c) The Cost Consultant Agreement dated 28 November 2011.

3. *The Learned Trial Judge erred in fact and in law in failing to take into account that as a result of the Respondent not finalizing its scope of works the construction cost between the builder, China Railway First Group Company Limited, and the Respondent increased to $18,358,413.46 despite there being a contract between the Respondent and China Railway First Group Company Limited and the Respondent had accepted and paid the additional sum to the builder.*

4. *The Learned Trial Judge erred in fact and in law by failing to take into account that the Appellant had been given a construction budget of $11,000,000.00 by the Respondent in or about November 2011 while the builder, China Railway First Group Company Limited, had already informed the Respondent that the construction cost would be approximately $17,500,000.00 on 5 September 2011.*

5. *The Learned Trial Judge erred in fact and in law by failing to consider the Appellant's claim for pre-judgment interest and failing to award pre-judgment interest to the Appellant.*

6. *The Learned Trial Judge erred in fact and in law by awarding the Appellant the sum of $4,000.00 as costs when a much higher sum or an award for indemnity costs should have been made.*

[10] As both parties have filed separate appeals, to avoid confusion I will refer to the parties as Plaintiff and Defendant instead of Appellants or Respondents. The crux of the dispute in this case revolves around the claim made by the Plaintiff for the recovery of $121,186.52 for the additional work the Plaintiff had alleged to have completed. It is common ground that the Plaintiff and Defendant entered into a Cost Consultancy Agreement. As per such Agreement, relying on the construction budget of $20,000,000.00, the Plaintiff quoted a fee of $278,596.00 (Vat Exclusive Fees). However, as the Defendant had abandoned the idea of carrying out the project at one of the two locations identified i.e. at Raiwaqa, the construction budget came down to $11,000,000.00. The Plaintiff had then tendered a fresh quotation for $196,000.00 (Vat exclusive fees) based on the revised construction budget, which was accepted by the Defendant. Upon such acceptance, parties entered into a Cost Consultancy Agreement dated 28th November 2011. However, the main contractor subsequently increased the construction budget from $11,000,000.00 to $18,358,416.46 after which, the plaintiff claimed a payment of $121,186.52 for the additional work done.

[11] The Defendant took up the position that the agreed amount was $225,400.20 (Vat inclusive fees) as per Cost Consultant Agreement – Raiwai Housing Project, entered into between the parties on 28th November 2011. As per the payment mode given in the above agreement under 4 (a) Full Payment, it is stated that the Employer shall pay to the Representative Two Hundred Twenty Five Thousand Four Hundred dollars ($225,400.00) VAT inclusive on a progressive basis according to the payment drawdown schedule. In short, Defendants position is that the amount payable to the Plaintiff is an agreed fixed amount of $225.400.00 and nothing more.

[12] However, it is apparent that this amount of $225,400.00 was fixed when the construction budget was $11,000,000.00. The dispute at hand arose after the budget was increased to $18,358,416.46. Therefore, the amounts agreed upon based on a construction budget of $11M cannot hold good for an increased budget of $18M, which naturally begs an increase. Although there was no provision for an increased fee, it is reasonable to hold that increased budget means increased work as admitted by the witness for the defendant, Mr. Daurewa.

[13] On a plain reading of the clause containing the payment method, it is clear that plaintiff has no right to claim any more than the fixed fees agreed upon as per agreement. However, Clause 7 of the Cost Consultant Agreement is important in this respect. It reads as follows:-

> *"7. **Delay***
>
> *This is a lump sum contract subject to Rawlinson Jenkins Ltd letter dated 2nd November 2011".*

[14] The letter dated 2nd November 2011 is marked P2. In light of the above clause, it becomes necessary to advert to the above letter P2, which contains the following sentence:-

> *"Should there be a significant change in the scope of works and the construction budget is exceeded by 10% we reserve the right to amend our fee accordingly."*

[15] Therefore, the Plaintiff has asked for a revised fee on the strength of the above provision i.e. clause 7 of the Agreement which both parties have agreed to in terms of the Agreement. However, two elements will have to be satisfied for the Plaintiff to avail itself of clause 7, that is: (i) change in the scope of works (ii) change in the construction budget. As far as the construction budget is concerned, there is no dispute as to the fact that it had increased from $11,000,000.00 to $18,358,416.46. This increase is much more than the 10% envisaged in P2, which permits the Plaintiff to amend the fees. However, the Defendant argues that, even though there is an increase in the construction budget, the

scope of works remains the same which therefore does not entitle the Plaintiff to claim a revised fee as per clause 7 and P2.

[16] In that background, each party led evidence of only one witness. On a consideration of the above reservation in P2, there is no evidence before court to suggest that the scope of work changed since the commencement of work despite the increase in the construction budget. Therefore, naturally the Plaintiff's claim cannot be allowed.

[17] However, on a careful scrutiny of the evidence led before court, especially of the defence witness, Mr. Daurewa, it is clear that the scope of work had not been finalized at the time of the commencement of the project. At page 170 of his evidence in Court, during Ms. Devan's examination in chief of Mr. Daurewa he states the following:-

> *Ms. Devan: Now, Mr Daurewa in order for Rawlinson Jenkins to submit the tender, what would they have been provided what information would they have had in order to submit their fee costing. Are you aware?*
>
> *Mr. Daurewa: Basically, at that particular time the only documentation that we had was just the budget, no further documentation was provided to the consultant at that time. So I can say that this fee they just based on budget that was provided.*

[18] The above evidence makes it crystal clear that at the time of the submission of the tender, the only documentation the Public Rental Board had was the budget and nothing else. This position is fortified by the answers given by Mr. Daurewa under cross examination at pages 177 and at 179 to the effect that at the time of the first quotation they were in possession of only the construction budget while, the drawings nor the Scope of Work had been finalized.

[19] From the outset, the defendants maintained the position that, though the construction budget increased, the scope of work remained static. The absence of the finalized Scope of work at the initial stage of tendering the quotation makes it impossible for this Court to compare and analyse whether there is in fact an increase in the scope of work or not.

However, it is not unreasonable to conclude that an increase of the construction budget from 11M to 18M required additional work. The admission of the defendant's witness, Mr. Daurewa under cross examination aids the court in arriving at this conclusion. He states as follows:-

"Mr. Daurewa:	*Obviously it would be more assessments for the progress claims done by the contractor, so obviously it would be additional work to the consultant on assessments of progress claims.*
Mr Singh:	*Okay, now isn't it correct that Rawlinson Jenkins did this additional work up till completion of the project?*
Mr Daurewa:	*Yes, they did."*

[20] In view of the above, it is indisputable that the increase of the construction budget to 18M entailed additional work. The Defendant has not adduced any evidence to refute the admission of its witness. Hence, despite the absence of any documents to compare the initial and final scope of work, I am satisfied that the plaintiff had performed additional work subsequent to the enhancement of the budget.

[21] As pointed out earlier, P2 and Clause 7 of the Cost Consultant Agreement read together gives the Plaintiff the right to amend the fee if both the construction budget and the scope of work increase. I am satisfied that the Plaintiff had fulfilled both requirements of the reservation in P2 and therefore is entitled to the increased fee as provided by P8.

[22] Had there been any need for the Plaintiff to obtain prior approval for any additional work as suggested by the defendant, such requirement ought to have been incorporated into the Cost Consultant Agreement similar to Clause 7. In the absence of any such conditions, it can safely be concluded that there was no requirement for prior written approval before any additional work was done. Therefore, I hold that no necessity presented itself for a request by the defendant as suggested in their written submissions thus:-

(a) The Defendant would make a request for a quote for additional works to be done by the Plaintiff;

(b) The Plaintiff would then provide a quote for the additional work to the Defendant; and

(c) If the quote provided by the Plaintiff was agreeable, the Defendant would then need to provide a written instruction to the Plaintiff to commence the additional works.

[23] Whatever the yardstick we may use, there is ample evidence to prove that the project had entailed additional work which the Plaintiff had not billed for in its previous quotation. Hence, it is nothing but correct to compensate for such additional work by allowing the claim of the plaintiff.

[24] It is also noteworthy to mention that when a bill was presented for the additional work, the defendant's only position was that there was no change to the scope of work. The defendant did not attempt to challenge the composition of the amount of $121,186.52 i.e. the defendant had challenged the liability to pay the additional fee claimed by the Plaintiff, the defendant had failed to challenge the quantum demanded. Therefore, as per P8 and other relevant evidence, I am satisfied that the above claim is in accordance with the amount of additional work the plaintiff had performed.

[25] Further, the defendant has taken the position that, to maintain a claim on *quantum meruit*, parties must have got rid of the old contract and relied upon a new contract. In view of the authorities cited by the defendant, I concur that there is no new contract in this case. However, the contract between the plaintiff and the defendant came to an end after the completion of the project which did not in any event, contain a provision to cover the exact amount that can be claimed. It only contained a clause reserving the right to amend the fee accordingly. It is only a reservation of the right to amend and does not specify the amount that has to be paid by the Defendant.

[26] Clause 4 is the only clause in the original Agreement which deals with the payment regarding the services to be provided by the Plaintiff but does not state any amount payable by the Defendant for additional work. Hence, the claim for any additional payment, especially the exact amount due, naturally fell outside the ambit of the original Contract. However, could it have been claimed under the principle of *'quantum meruit'*?

[27] The Learned High Court Judge arrived at the correct conclusion by holding that the principle of *quantum meruit* is applicable in the instant case, proceeding on the basis of *'unjust enrichment'*. The rationale for the principle of *quantum meruit* is to avoid unjust enrichment.

[28] In view of the above reasoning, I will answer each of the grounds of appeal by the Appellant in ABU 065 of 2018 in the following manner:-

1. *The learned Trial Judge erred in law and / or misdirected himself in law and in fact in holding that the respondent had proven its claim on balance of probabilities when ;*

   (i) The respondent failed to plead in its statement of claim any specific particulars of work carried out at the request of the appellant;
   Answer: ***The Appellant cannot rely on this ground in view of page 73 in the Amended Statement of Claim of the Plaintiff. Paragraph 10 of the Statement of Claim clearly lists out the work it had carried out with reference to the relevant invoices and the letter dated 30th April, 2015. The Plaintiff had given the particulars in Invoice No. 2619/F2085. I reject this ground of appeal.***

   (ii) The respondent failed to tender any evidence to show that it had carried out any works for the appellant as claimed in its invoice No. 2619/F2085;
   Answer: ***On perusal of the proceedings, especially from page 194 onwards, I find that the relevant details in P8 were produced by the Plaintiff in the course of his evidence. Therefore, I reject this ground of appeal too.***

(iii) The respondent had not produced evidence pertaining to items 1.0, 2.0, 4.0, and 5.0, as per its invoice No.2619/F2085.

Answer: ***The evidence pertaining to these details are given in the document itself and by Mr. Lutu in his oral evidence. Hence, this ground of appeal too is rejected.***

2. The Learned Trial Judge erred and/or misdirected himself in law in fact in holding that the Respondent was entitled to recover a sum of $121,186.52 from the Appellant by way of 'Quantum Meruit' when:

(i) There was a valid and subsisting contract between the parties by way of a Cost Consultancy Agreement dated 28 November 2011 and Respondent's letter dated 2 November 2011 which governed Respondent's entitlement to any additional fee claim.

Answer: ***The original Contract did not stipulate payment for the additional work. However, the Plaintiff retained the right to claim for additional work as per Clause 7 of the Agreement. This clause does not specify the quantum or the arithmetical figures of the claim, which therefore could be claimed additionally provided the conditions stipulated in P2 were met. Therefore, I reject this ground.***

(ii) The scale of fees for additional fees was prescribed and fixed by the contract.

Answer: ***While the learned High Court Judge could not order any payments outside the ambit of the Contract, for reasons I have already stated, the additional fees ordered to be paid are in conformity with the principle of 'quantum meruit'. Therefore, I reject this ground.***

(iii) The contract between the parties had not been discharged or had become ineffective or unenforceable.

Answer: ***No provision in the contract dealt with additional fees. Therefore any claim for additional fees with the relevant quantums falls outside the contract and therefore enforceable upon the quantum meruit principle.***

3. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in failing to consider that the Court could not make inferences on the Respondents entitlement to reasonable payment outside the ambit of the contract.*

   Answer: ***The inferences drawn by the learned high court judge were not irrelevant as the claim for additional fees fell outside the ambit of the strict terms of the contract but nevertheless, whether the plaintiff were entitled to claim for the additional work on quantum meruit.***

4. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in failing to properly consider the principles of 'quantum meruit' as expounded in the case of Benedetti v Sawiris & Ors [2013] UKSC 50.*

   Answer: ***For reasons already given, the Learned High Court Judge had not failed in properly considering the principles of 'quantum meruit'.***

5. *The Learned Trial Judged erred and/or misdirected himself in law and in fact in holding that the Respondent was entitled on a claim for Unjust Enrichment/Restitution when the Respondent had failed to plead or rely on the doctrine of Unjust Enrichment /Restitution.*

   Answer: ***For reasons already given, I hold that the Learned Judge has not erred in proceeding on the basis of unjust enrichment.***

6. *The Learned Trial Judge erred in law by misconstruing the evidence and holding that the Respondent had carried out additional work when this fact was denied by the Appellant and no evidence was tendered by the Respondent establishing this as a fact.*

   Answer: ***For reasons presented earlier, I respond in the negative to this contention.***

7. *The Learned Trial Judge erred in law and in fact in misconstruing the evidence and holding that the Appellant conceded that additional work was performed by the Respondent when:*

   (i) *The Appellant had denied by paragraph 9 of its statement of Defence that additional works to the value of $121,186.52 had been requested and carried out by the Respondent.*

   Answer: ***The defendant's (appellant) witness in no uncertain terms admitted that there was additional work done by the Plaintiff. This evidence vitiates the denial in the Statement of defence and has not been rebutted during re-examination.***

   (ii) *The Appellant had only given instructions for additional work to the value of $10, 470.75 which was paid to the Respondent.*

   Answer: ***The appellant has denied an enhancement of the scope of work entailing additional work simultaneous to the enhancement of the construction budget. Therefore, the learned high court judge has not erred in treating this contention as a concession on the part of the appellant. Further, no evidence was produced in support of this claim.***

8. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that the Appellant had been enriched at the expense of the Respondent.*

   Answer: ***The Learned Trial Judge has not erred for reasons stated previously.***

9. *The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that the Appellant had no defence to the Respondent's claim when the learned Trial Judge in fact disallowed the Respondent's claim for additional fee under the contract.*

   Answer: ***The additional fees were decided on the basis of quantum meruit as discussed earlier. Therefore, the Learned Trial Judge has not erred in this regard.***

10. *The Learned Trial Judge erred and/or misdirected himself in law in failing to consider the closing submissions of the Appellant when the submissions had been filed and received by the High Court Registry.*

Answer: ***This is untenable in light of the fact that the learned Judge was not under an obligation to list the closing submissions in his judgment. One cannot conclude he did not advert his attention to the closing submissions merely because the Judge has not made reference to each and every fact separately. Suffice is that the Judge has considered the essence of the submissions in arriving at his conclusion. Hence, it is erroneous to contend that the Judge has failed to consider the submissions.***

11. *The Learned Trial Judge's decision is wrong and erroneous and tantamount to a wrongful exercise of discretion having regard to all the facts and circumstances of the case and evidence on the whole.*

Answer: ***The appellant has not demonstrated the manner in which the use of discretion of the learned high court judge has resulted in a manifest miscarriage of justice amounting to an abuse of discretion or wrongful discretion. I categorically state that the learned judge has not used his discretion in a wrongful manner.***

ABU 0071/2018

[29] I respond to the grounds of appeal of the Appellant as follows:

1. *The Learned Trial Judge erred in fact and in law by finding that the Appellant did not succeed in its claim in contract when it failed to satisfy that there was a significant change in the scope of work when the only information provided to the Appellant when it provided its quotation dated 2 November 2011 was the construction budget of $11m and no scope of works was provided by the Respondent to the Appellant.*

Answer: ***This has no impact on the outcome of the Appeal.***

2. *The learned Trial Judge erred in fact in failing to take into account that as a result of the Respondent not finalizing its scope of works provided to the Appellant by the Respondent at the time the Appellant had entered into the contract with the Respondent which comprised the following documents:*

    (a) The Appellant's quotation of 2 November 2011,
    (b) The Respondent's acceptance letter of 21 November 2011, and
    (c) The Cost Consultant Agreement dated 28 November 2011.

Answer: ***The learned Judge had taken cognizance of all relevant matters and therefore I reject this contention.***

3. *The Learned Trial Judge erred in fact and in law in failing to take into account that as a result of the Respondent not finalizing its scope of works the construction cost between the builder, China Railway First Group Company Limited, and the Respondent increased to $18,358,413.46 despite there being a contract between the Respondent and China Railway First Group Company Limited and the Respondent had accepted and paid the additional sum to the builder.*

Answer: ***In view of the outcome of this appeal this issue becomes irrelevant..***

4. *The Learned Trial Judge erred in fact by failing to take into account that the Appellant had been given a construction budget of $11,000,000.00 by the Respondent in or about November 2011 while the builder, China Railway First Group Company Limited, had already informed the Respondent that the construction cost would be approximately $17,500,000.00 on 5 September 2011.*

Answer: ***Although the Learned Judge failed to particularize each item, he had taken cognizance of the essence of all the relevant material that was before him. Therefore, I reject this ground of appeal too.***

5. *The Learned Trial Judge erred in fact and in law by failing to consider the Appellant's claim for pre-judgment interest and failing to award pre-judgment interest to the Appellant.*

Answer: ***I find that the Learned Trial Judge had failed to order the pre-judgment interest. The principle that interest is awarded to compensate the successful party is of paramount importance in all circumstances pertinent to this case. It is nothing but fair to award pre-judgment interest to the Plaintiff having regard to what is fair, reasonable, and proportionate. Hence, I order interest at the rate of 4% from 30th April 2015 until such time as the Defendant makes payment in full.***

6. *The Learned Trial Judge erred in fact and in law by awarding the Appellant the sum of $4,000.00 as costs when a much higher sum or an award for indemnity costs should have been made.*

Answer: ***In considering the long years of litigation, it is only equitable to order an enhanced amount of cost. Therefore, I award $7,500.00 as costs in the lower court.***

[30] In conclusion, I shall briefly refer to the scope and content of the doctrine of *"quantum meruit"*.

[31] Quantum Merit is a doctrine by which the law infers a promise to pay a reasonable amount of labour and material furnished, even in the absence of a specific enforceable agreement between the parties (even in the absence of a binding contract). Leading authorities such as Cheshire v Fifoot & Hansen of the Law of Contract strike common ground on the scope and content of the doctrine of Quantum Meruit.

[32] Adjunct Considerations

(i) Has the party relying on the doctrine acted at his own risk?
(in this case for the additional work he claims?)

(ii) On the contrary, even if the contract is silent of money to be paid but there is some evidence of intent."

(iii) It is then possible to claim on the basis of restitution for that work done but only where certain stringent conditions are made and the other party benefits from the work done.

Orders of Court:

1. Plaintiff/Appellant's Appeal is allowed.
2. Defendant/Appellant's Appeal is rejected.
3. The Defendant/Appellant is ordered to pay the Plaintiff/Respondent interest at the rate of 4% from 30th April 2015 until Full Payment on the general award of $121,186.52.
4. The Costs of $4000.00 awarded in the High Court is set aside.
5. The Defendant/Appellant is ordered to pay costs to the Plaintiff/Respondent in the High Court a sum of $7500.00.
6. Defendant is ordered to pay $5,000.00 as cost for this action within 3 months from the date of this Judgment (this is in addition to costs in the High Court).

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Hon. Almeida Guneratne
ACTING PRESIDENT,
COURT OF APPEAL

COURT OF APPEAL FIJI

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Hon. E. L. Basnayake
JUSTICE OF APPEAL

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Hon. D. S. Lecamwasam
JUSTICE OF APPEAL