

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

CIVIL APPEAL NO. ABU 0077 of 2020
(Suva High Court Civil Action No: HBC 287 of 2018)

BETWEEN : **ROSY REDDY** of New Zealand Administratrix of **THE ESTATE OF NARAYAN REDDY**, late of Suva, Fiji Deceased

Appellant

AND : 1. **YANKTESH PERMAL REDDY**
2. **YANKTESH PERMAL REDDY, ROHIT REDDY, KALPANA REDDY, GIYANANAND NAIDU**
3. **REDDY CONSTRUCTION COMPANY LIMITED**
4. **REDDY ENTERPRISES LIMITED**
5. **CLYDE EQUIPMENT (PACIFIC) LIMITED**
6. **REDDY HOLDINGS LIMITED**
7. **FINEGRAND LIMITED**

Respondents

Coram : Almeida Guneratne, AP

Counsel : Ms F. Fa for the Appellant
Mr R. Singh for the Respondents

Date of Hearing : 29 March, 2021

Date of Ruling : 10 May, 2021

RULING

- [1] When the substantive matter (being a renewed application seeking leave to appeal out of time the decision of the High Court dated 26th June, 2019 arising out of committal proceedings) upon it transpiring that the one of the party (2nd) Respondents (Giyananand Naidu) having become deceased, I posed the question whether Court could proceed to hearing of the substantive matter before steps are taken for substitution in the room of the said deceased party which is a step the Applicant is required to take procedurally.
- [2] Consequently, having entertained submissions on the “*substantive matter*” I reserved my Ruling on the same subject to written submissions being filed by parties on the substitution issue.
- [3] The Applicant filed the written submissions as ordered by this Court while the Respondents lapsed by two days in filing theirs.
- [4] The Applicant has taken strong exception to that lapse which I have no hesitation in rejecting for the reason that, the requirement to file written submissions and indeed the function of filing written submissions is nothing more and nothing less than to assist the Court to make a determination whether it be on a substantive issue or a procedural issue.

The Applicant’s contentions on the said issue as to the need to effect substitution or not

- [5] The Applicant has submitted thus:

- “30. *It is important to note, that the 2nd Respondents are all Directors of the 3rd – 7th Respondents and as such, have the same knowledge as Giyananand Naidu with regards to the 3rd – 7th Respondents.*
31. *It is our respectful submissions that the demise of Giyananand Naidu cannot extinguish the Appellant’s right to cross-examine the Respondents on their Affidavits, when the Respondents, in their Affidavits, have all confirmed Giyananand Naidu’s position.*

32. Further, we note that the cause of action in this matter survives the death of Giyananand Naidu as the cause of action is not a cause of action listed in section 2(1) of the **Law Reform (Miscellaneous Provisions) (Death and Interest) Act [Cap 27]** which reads as follows:

“2.-(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section 32 of the Matrimonial Causes Act for damages on the ground of adultery.”

33. For this reason, we respectfully submit that this Court has jurisdiction to hear this matter and make a decision on the Appellant’s application for Leave to Appeal and Stay as the death of Giyananand Naidu does not extinguish the cause of action against the other Respondents.
34. The Respondents in this matter are all jointly liable to the Appellant as they are all Directors of the 3rd – 7th Respondents companies, who have the same knowledge as Giyananand Naidu, knowledge of which would be known by Directors of 3rd – 7th Respondent companies.
35. Further, and more importantly, the Appellant’s request to cross-examine the Respondents is not a request for one of the respondents, namely Giyananand Naidu who has since passed. But rather, the Appellant is seeking the attendance of the 1st – 2nd Respondents who are all directors of the 3rd – 7th Respondents. In that respect, we argue that the passing of Giyananand Naidu does not in any way affect the Appellant’s application for Leave to Appeal and Stay.”

(vide: the written submission filed on 6th April, 2010).

[6] Having given my mind to the said contentions the broadside of which (in effect) is in saying that, no substitution is necessary (vide: paragraph [5] above).

[7] What has been submitted by the Respondents’ in their two days late submissions (I looked at for the reasons adduced by me in paragraph [4] above)

[8] It has been submitted therein thus:

“13. *The Respondents submit that in the circumstances, the cause of action (Contempt against Giyananand Naidu) has not survived. Therefore, respectfully, the Court has no jurisdiction to deal with the matter.*

14. *No substitution has been applied for or ordered in the matter before this Honourable Court or the Court below. However, because the cause of action against Giyananand Naidu has not survived, substitution would not aide the Appellants.”*

[9] The Applicant at paragraph [35] of the written submissions dated 6th April, 2021 is saying, the way I read it that, “*no substitution is needed.*”

[10] That position I can understand even if I were to stretch my own judicial reasoning, on the issue of “the defective record”.

[11] In contrast however, I could not quite comprehend the Respondents submission that “*this Court has no jurisdiction to deal with the matter*” (paragraph 13 of the written submissions). To deal with the substantive matter without substitution? This seems to be what the Respondent is saying.

[12] Then, in the same breath the Respondents contention in paragraph 14 of their written submissions of 8th April, 2021 which I have capitulated above.

[13] In the result, I could not help but see a contradiction therein.

Determination and the Ensuing Orders

[14] Given the aforesaid reasons I am unable to make a ruling on the substantive issue (being the application which I articulated at paragraph (1) of this Ruling, at this point of time, for the reason that I am reluctant to determine the said substantive issue on a defective record for which reason I act on the powers vested in me as a Single Judge under Section 20(1) of the Court of Appeal Act.

- [15] In that regard *viz*: the aspect of the defective record I found assistance in the full Court's thinking in the case of K. Reddy (deceased) & Anor. -v- Rajend Kumar [ABU 011/2011], per Chitrasiri JA.
- [16] Consequently, I proceed to make my orders for the purposes of this matter as an interim matter, in the context of the necessity to effect substitution before considering the substantive matter.

Orders of Court

1. *The Applicant (Appellant) is ordered to take steps to substitute in the room of one of the 2nd Respondent parties appearing in the caption (deceased) any party for the purpose of perfecting the Record to enable this Court (in the exercise of its single judge jurisdiction to entertain, hear and determine the substitutive application for leave to appeal notwithstanding the lapse of time.*
2. *For such steps the Applicant is granted time till the 29th May, 2021.*
3. *The (Hon) Chief Registrar is directed to submit the file to me as Acting President or in my absence to a single Judge of this Court with (the Hon.) Chief Registrar's notification/certification for Court to make appropriate Orders after ascertaining compliance or not with Order 2 above on a date in June 2021 convenient to the Registry.*
4. *As far as the present Ruling/Order is concerned I make no order for costs.*



Idet Guneratne

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Hon. Justice Almeida Guneratne
ACTING PRESIDENT, COURT OF APPEAL