

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

Civil Appeal No. ABU 144 of 2018
(Lautoka Civil Action No. HBC 186 of 2017)

BETWEEN : **SHAREEN LATA HANS**
Appellant

AND : **MAHENDRA DEO**
Respondent

Coram : Almeida Guneratne, JA

Counsel : Mr. D. Nair for the Appellant
: Mr. A. K. Narayan for the Respondent

Dates of Hearing : 4th & 11th November 2020

Written submissions of Parties: 12th February, 2021

Date of Ruling : 22nd February, 2021

RULING

Prefatory Statement

- [1] This matter raises a question of jurisdiction of a single Judge of the Court of Appeal to grant “a stay order” under and in terms of Section 20(1) (e) of the Court of Appeal Act (Cap.12, “the Act”) where :
- (a) leave to appeal against a decision of the High Court has been granted by the single Judge to the full Court and,
 - (b) against which ruling of the single Judge a special leave to appeal application has been preferred to the Supreme Court.

Relevant background to the present application for a Stay

- [2] I shall record only the relevant background to the present application.
- [3] The matter arises from a Ruling dated 19th June, 2020 made by me as a Single Judge of this Court.
- [4] The full background to the present application is reflected in the orders I made in that Ruling.

“The Orders

- (1) The Appellant’s application to strike out the Respondent’s striking out applications is rejected and dismissed.*
- (2) The Respondent’s applications (Summons) to strike out the Appellant’s initial application (Summons) against the High Court orders (both in ABU 144/18 and ABU 147/18 are dismissed.*
- (3) The Respondent’s application (Summons) to strike out the Appellant’s application to amend the initial Notice (grounds) of Appeal is dismissed.*
- (4) Leave to appeal application of the Appellant in both ABU 144/18 and ABU 147/18 are allowed.*
- (5) Consequently, in view of this matter, both ABU 144/18 and ABU 147/18) being ordered by the full Court on 17th September, 2020, that dated shall remain leaving it for parties to argue the matters as urged in the said amended grounds of appeal for the full Court to make a determination on the same.*
- (6) In the overall aspects of this matter and in view of the earlier orders, I make no orders for costs and costs shall await the final outcome of the determination by the full Court.”*

- [5] The present application is by the Respondent in ABU 144/2018 to stay proceedings in this appeal in the full Court pending the hearing and determination of the Petition for

special leave to Appeal to the Supreme Court from my said Ruling dated 19th June, 2020. (Vide: paragraph 1 of the Summons for stay pending Appeal).

- [6] When this matter was mentioned before me on 24th September, 2020 I raised the question whether, in those circumstances, I as a single Judge of this Court had jurisdiction to grant the stay which has been sought.
- [7] Counsel having moved for a hearing date to address on the said issue of Jurisdiction, I fixed the matter for hearing on 4th November, 2020 and for written submissions to be filed as well.
- [8] I have before me now both sets of written submissions.
- [9] In that background of the proceedings I shall now summarise the submissions made by Mr. Vanananalagi on the Appellant's behalf on the issue of jurisdiction. He submitted that:-
- (i) He was relying on Section 20(1) (e) and (k) of the Court of Appeal Act (the Act)
 - (ii) Section 98 of the Constitution does not prevent a single Judge of the Court of Appeal from granting "the stay" that is being sought.
- [10] Counsel also placed reliance on (a) Section 98(3) of the constitution and Section 26(3) of the Court of Appeal Act. Further reliance was placed on Section 8 of the Supreme Court Act Cap.13).
- [11] It is based on those submissions and his written submissions dated 11th November, 2020 that he concluded seeking an order for stay pending determination of his petition for Special Leave to the Supreme Court.
- [12] Learned Counsel for the Respondent (respondent to the stay application) appeared to be content with whatever ruling this Court would make.

Determination

- [13] I shall begin by reflecting on the numerous authorities cited by the Applicant both in Counsel's oral submissions and the written submissions such as Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd. (2004) FJCA 10, New World Ltd v Vanualevu Hardware (Fiji) Ltd (2015) FJCA 172 and Stephen Patrick Ward v Yogesh Chandra, CBV 0010/2010, 20 April 2011.

Inapplicability and Irrelevance of those Authorities and Precedents to the instant issue under Consideration

- [14] I have no quarrel with any of those decisions. They all deal with the application of well-established principles relating to the grant of stay orders within the context of this Court's undisputed jurisdiction.
- [15] In contrast, the present matter is whether I as a single Judge could entertain the present stay application which reduces the inquiry to a matter pertaining to Patent Jurisdiction.

The Constitutional and Statutory Provisions relied upon by Counsel

- [16] I shall first take Section 98 of the Constitution which Counsel relied on
- [17] I could not see any basis impacting on the issue under consideration contained in that Section. I unhesitatingly reject the contention based on the said section as being without any merit
- [18] Then I moved to Section 20 (1) (e) of the Court of Appeal Act which decrees that:

"A judge of the Court ...may...stay execution or make an interim order to prevent prejudice to the claims of any party pending an appeal".

- [19] Execution of what is sought to be stayed? What is the prejudice to the claims of any party pending the appeal before the full Court as a result of the ruling of 19th June, 2020?
- [20] I could not see any basis to find answers in favour of the Applicant on reading the said provisions.
- [21] I say that for the reason that, the stay sought is to prevent the full Court from hearing the Appeal for which I have granted leave to appeal thereto.
- [22] Thus, I find the contention based on Section 20(1) (e) as being without any merit.
- [23] Moving next then to Section 20(1) (k) whether I could employ that provision to grant the stay order sought, I first looked at the terms of that section.

“Section 20(1) (k):

Generally, to hear any application, make any order or give any direction that is incidental to an appeal or intended appeal”.

Interpretation and application of the said legislative provision to the instant Case

- [24] The first requirement in the context of that section was to hear the Applicant’s application which I have done.
- [25] The second was to “make any order....incidental to an appeal or intended appeal”.
- [26] In that regard, it is to be noted that the order I had made on 19th June, 2020 is granting leave to appeal to the full Court against the impugned (decision) judgment of the High Court.
- [27] In doing so, I had expended my Jurisdiction within the framework of Section 20(1) of the Court of Appeal Act. A single Judge’s jurisdiction begins and ends within that statutory

framework in as much as, now the matter is before the full Court “as being incidental to an appeal”.

[28] However, I did see some merit in that argument on the part of the Applicant’s counsel in that regard.

[29] But, only at first blush for the reason that, if I were to give an interpretation on those lines, then I would, as a single Judge of this Court be:

- (i) staying proceedings which are now “on foot” before the final Court
- (ii) furthermore, the Applicant in having sought special leave to appeal from the Supreme Court against the Ruling of 19th June, 2020, I would be (in effect) staying proceedings before Their Lordships’ Court as well.

[30] I have no hesitation in saying that, as a Single Judge of this Court I am bereft of jurisdiction to do either.

[31] I am unable to and cannot place such a broad interpretation on Section 20 (1) (k) of the Court of Appeal Act which would have the effect of defying both logical reasoning as well as pursuing a constitutionally and statutorily overriding approach.

Section 26 (3) of the Court of Appeal Act

[32] As much as I did turning over the pages of the Statute Book in Fiji, I could not find a Section 26 (3). Regarding that reference, though to a section in “the Act”, I looked at Rule 26 (3) made under “the Act” in which regard I could not find a basis to consider favourably the Applicant’s application even in the context of that Rule.

[33] On the basis of the foregoing reasons, I lay down as a tentative provisional proposition for the judicial jurisprudence of this country that;

“Whenever a Single Judge of the Court of Appeal had granted leave to appeal against any Ruling of it to the Full Court of Appeal then:

- (i) (as the first limb) a Single Judge would stand bereft of jurisdiction to grant a stay of hearing of the appeal by the Full Court.*
- (ii) (as an addition limb), if an aggrieved party by such Ruling has invoked the jurisdiction of their Lordship’s Court of the Supreme Court, for that reason also a single Judge would be bereft of such jurisdiction.”*

[34] However, I was then required to consider the argument of counsel based on what interpretation was to be placed on Section 8 of the Supreme Court Act (Cap 13)

“Section 8:

A Single Judge of the Court of Appeal may, in respect of any appeal pending before the Supreme Court, make such orders and give a direction as he or she considers the interests of justice or the circumstance of the case require.”

[35] Indeed, this provision in addition to it leaving me baffled, certainly put in issue of what I had said earlier in the context of the provisions of the Constitution and the Court of Appeal Act.

[36] This drove me to research and look at precedents that have interpreted Section 8 of the Supreme Court Act.

Precedents interpreting Section 8 of the Supreme Court Act

[37] I began by looking at the case of Prasad v. Registrar of Titles [2005], CBV 10/03, 8 April 2005. The effect of that case involves the power of a Single Judge to give interlocutory

procedural directions where the President of this Court stood disqualified from sitting to hear the summons as he had given ex parte relief.

- [38] Then, there is the case of Julie Doyle v. Phyllis Latour Doyle et al (consolidated with Trustee Corporation v. Phyllis Latour Doyle [2000] 2 FLR 75, 7th November 2000, which dealt with issues of a constitutional nature at the time. Even then, it was held in that consolidated matter, should a stay be granted, a Single Judge had no power of this Court to grant “a stay.”
- [39] The only other case where a Single Judge of this Court had been called upon to deal with a pending appeal before the Full Court is when an adjournment of the hearing of the pending appeal had been sought on account of the changing of counsel and time being needed to brief new counsel. (Vide: Gulf Investments (Fiji) Limited v. Strategic Nominees Ltd [2012] FLR 202.
- [40] Having examined those cases where a Single Judge of this Court had exercised power and made orders in the context of Section 8 of the Supreme Court Act, the present case, to my mind, is a far cry from the situations that arose in those cases, the common theme in those situations being eventually of an interlocutory nature as opposed to impacting on issues of a substantive nature.
- [41] I say of a substantive nature because, here is a matter where a Single Judge of the Court of Appeal has made a ruling refusing a striking out application thus paving the way for the Full Court of Appeal to determine that matter in Appeal taken with the fact that, the aggrieved party from that Ruling (the Applicant in these proceedings) having even sought special leave to appeal to the Supreme Court (which is now pending before their Lordship’s Court), the Applicant is seeking a stay order from that very Single Judge’s Ruling seeking to prevent the Full Court from going into the substantive matter with the further designed objective of even seeking to prevent the Supreme Court from hearing his own special leave to appeal application.

[42] Thus, having given my mind to the aforesaid considerations, I refuse the Applicant's application for "a stay" on the basis that I do not have Jurisdiction to grant the same.

[43] Accordingly, I proceed to make my orders in the present application as follows:

Orders of Court:

1. The application for "a stay" urged in this case is refused and/or dismissed.
2. On a balance of the considerations in regard to which I have given my mind to in this Ruling I order a sum of \$2,500/= to be paid to the Respondent by the Applicant within 21 days of this Ruling.
3. I make further order in directing the Hon. Registrar to take this matter off the Cause list of this Court.



Almeida Guneratne

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Almeida Guneratne
JUSTICE OF APPEAL