

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0038 of 2022
[Suva HBM 0082 of 2021]

BETWEEN : PRANIL SHARMA

Appellant

AND :
1. INOKE TAKIVEIKATA
2. iTAUKEI LAND TRUST BOARD
3. FIJI POLICE FORCE
4. PC 5077 TIMOCI

Respondents

Coram : Dr. Almeida Guneratne, P

Counsel : Appellant in person
Ms N Mishra for the 1st Respondent
Mr J Cati for the 2nd Respondent
Ms S. Pratap and Ms A. Harikishan for the 3rd and 4th Respondent

Date of Hearing : 5th June, 2023

Date of Decision : 7th August, 2023

DECISION

Brief background on the factual content to the present application

[1] The High Court had struck out an application for constitutional redress by the Appellant under Order 18 and the attendant Rules thereon of the High Court Act. Against that judgment of the High Court the Appellant filed an appeal.

- [2] The Registrar, in pursuance of the jurisdiction conferred on him by the Court of Appeal Act held an inquiry to fix security for costs of the appeal which he did but which the Appellant failed to comply with.
- [3] Consequently, all the Respondents filed summons to strike off the appeal. Through all that, the Appellant filed a summons to file and an Amended Notice of Appeal.

Grounds upon which the Respondents sought to strike off the Appeal

- [4] The said grounds are:
- (i) The judgment of the High Court is interlocutory and therefore the Appellant was obliged to seek leave to appeal from the High Court first and if it were to be refused renewed a leave to appeal application before the Court of Appeal;
 - (ii) The Appellant failed to comply with Practice Direction No.1 of 2019.
- [5] Having read the written submissions tendered by the parties and after hearing the oral submissions at the hearing before me I proceed to discussion on the issues that surfaced for determination as follows.

Discussion on the issues that surfaced

- [6] The first issue was, as to whether a single judge has jurisdiction to entertain and strike off an appeal filed within time.
- [7] I must say at this point this was an issue raised *ex mere motu* by me.
- [8] In response to that issue the Respondents relied on the provisions of Sections 20(1)(j) and submitted that a single judge is possessed of such jurisdiction.

“Section 20(1)(j) general to hear any application _____”

- [9] The words employed in the section no doubt would cover “*a striking off application*” as well and I am grateful to the Respondents’ Counsel for the submissions made thereon.
- [10] The next issue for consideration was having the jurisdiction to (entertain) and hear a striking off application, a single judge being vested with the consequential jurisdiction “*to dismiss an appeal for want of prosecution*” under Section 20(1)(g) in the attendant circumstances of this case whether, the appeal should be dismissed.

The Attendant circumstances of this case

- [11] It is not disputed that the Appellant failed in the prosecution of the statutorily conferred right to appeal in failing to pay the security for costs of the appeal fixed by the Registrar.
- [12] However, as the Record reveals, the Registrar had not (a) issued a “*notice of discontinuance*” followed by (ii) submitting to court for its sanction to regard the appeal as having been abandoned.
- [13] Thus, the Respondents’ contention based on Practice Direction No.1 of 2019 loses its veracity (see the decision in **Trustees of South Seas Club vs. Chung Lee & Others** [ABU0017 of 2022, 2nd June 2023] per Justice Jitoko, Vice President of this Court, particularly at paragraph [17] thereof.
- [14] I pause here in saying that, it would serve legal practitioners well to be mindful of Practice Direction No. 1 of 2023 in this regard.
- [15] That leaves me to consider the Respondents’ contention that, the High Court judgment was ‘*interlocutory*,’ and therefore the Appellant was obliged to have sought leave to appeal as I have recounted at paragraph 4(i) above in this decision.

Was the judgment of the High Court interlocutory or final?

- [16] When the High Court struck off the Appellant's claim based on constitutional redress against the Respondents, the said claim in its totality stood dismissed and there was nothing left in the claim to pursue any further, the only remedy open to the Appellant being to prefer a direct appeal to this Court, the said judgment of the High Court being final. (see: in that regard the full Court judgment in **Abhinesh Singh & Anr. v. Rajesh Singh & Others**; ABU 0089/20, 28th July, 2023).

One final matter that remains to be addressed

- [17] That is, to date, the Appellant remains in default in not having paid security for costs to prosecute the appeal. No reasons appear on Record as to why the Appellant failed to comply with the said order for payment of security for costs.

The aspects I took into consideration in that regard

- [18] Although the Appellant being conferred with the substantive right of appeal which was exercised within time, there was a failure to comply with a procedural requirement to prosecute that right given that the

Procedural law (requirements) are the handmaid of the substantive rights

- [19] Though the Appellant has to date not complied with that requirement to pay security for costs of the appeal (being a Rule prescribed by statute as distinguished from a Practice Direction) on a calling date, the Appellant submitted that she was in a position to pay the same. (*vide*: proceedings of 16th December 2022 before this Court).
- [20] In view of that undertaking given by the Appellant and bearing in mind the oft quoted dictum that, courts are **Intuitions of Justice and not academies of law**. I gave my mind

to the provisions of Section 20(1)(j) of the Court of Appeal Act which vests on a single judge the jurisdiction to “*make any order or give any direction that is incidental to an appeal or intended appeal*” taking into consideration **the purpose of payment of security for costs** of appeal being to defray costs in the event of the appeal failing.

[21] In the proposed amended notice to appeal the Appellant has prayed for the following orders viz:

- “11. A court order that the appeal be allowed.*
- 12. A court order that the world bank to give the funding on the merits of section 45 of the constitution.*
- 13. A court order for appellant to travel for employment.*
- 14. A court order of this court of this court for the interpretation of the word (poverty alleviation).*
- 15. A court order for cost and compensation against all respondent / defendant in this matter civil appeal No. ABU 0038/22.*
- 16. A court order for this court to disregard the court records of HBM 82 of 2021.”*

[22] **Prayer 1.1.** that is sought is a matter for the full Court and **prayer 15** will be consequential thereto. Prayers 12, 13, and 14 are outside the purview of this Court’s jurisdiction and therefore the same are disallowed. This Court unhesitatingly makes order granting the prayer 16.

[23] On the basis of the foregoing discussion the Respondents’ joint application to strike off the appeal stands rejected.

[24] However, should the Appellant fail to pay the security for costs within the time I shall propose in my ensuing orders the appeal shall stand dismissed.

Orders of Court

- 1) *The applications by the Respondents to strike out the appeal is declined/dismissed.*
- 2) *Should the Appellant fail to pay security for costs of the appeal fixed by the Registrar at \$3,000.00 on or before the 30th September, 2023; the appeal shall stand dismissed.*
- 3) *The Registrar is directed to submit the file to a Judge of this Court by 1st October, 2023 or soon thereafter to ascertain compliance or otherwise with Order 2 above to enable the Court to make appropriate orders.*
- 4) *In the circumstances of this case, I make no order as to costs.*



A handwritten signature in blue ink, which appears to read "Almeida Guneratne", is written over a horizontal line.

Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL