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

CIVIL APPEAL NO. ABU 0031 OF 2020
[Suva Civil Action No: HBC 17 of 2017]

BETWEEN : **JAI RAJI**

Appellant

AND : **1. THE PERMANENT SECRETARY OF HEALTH**
2. THE ATTORNEY GENERAL OF FIJI

Respondents

Coram : **(Dr.) Almeida Guneratne, P**
Morgan, JA
Lakshman, JA

Counsel: : **Mr G. O'Driscoll for the Appellant**
Ms M. Motofaga for the Respondents

Date of Hearing : **11th September, 2023**

Date of Judgment : **29th September, 2023**

JUDGMENT

Almeida Guneratne, P

[1] This is an appeal against the impugned judgment dated 18th September, 2018 of the High Court consequent to the High Court granting leave to appeal by its order dated 30th April, 2020.

[2] By that Judgment, the High Court refused an application made on behalf of the appellant for an adjournment of the trial date fixed for hearing and dismissed the action. (vide: page 153 of the Copy Record).

[3] Thus, the matter for this Court to determine fell within a narrow compass, as to whether, given the jurisdiction the High Court is vested with to grant (or not) an adjournment of a date fixed for trial, whether that jurisdiction had been exercised properly on the facts and circumstances of the case.

The relevant statutory provisions applicable to the grant of an adjournment of a trial

[4] The relevant statutory provisions are contained in Order 35 Rule 3 of the High Court Act (the Act).

> *"Order 35 Rule 3: The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit."*

[5] Before I proceed to address my mind to what I have put down in paragraphs [3] and [4] above, I shall reproduce below the grounds of appeal urged by the appellant against the judgment of the High Court,

Grounds of Appeal urged against the judgment of the High Court

> *"1. THE Learned Trial Judge erred in law and in fact in failing to vacate the trial date which was brought through an application where the appellant has advanced cogent reasons for adjournment.*
>
> *2. THE Learned Trial Judge erred in law and in fact in dismissing plaintiffs action without due consideration of the plaintiffs unchallenged medical report that she was unable to attend court.*

3. *THE Learned Trial Judge erred in law and in fact in failing to take into consideration the Constitutional Rights of the appellant and failed to apply correct principles of adjournment when he dismissed her action.*

4. *THAT the Appellant reserves the right to add, amend the grounds of appeal and adduce further evidence for the purpose of appeal once the same becomes available.*

5. *AND such further and other grounds as the Appellant may be advised in due course upon receipt of the copy record of the proceedings.*

6. *WHEREFORE the appellant prays that the damages be re-assessed by the Appellate Court."*

Discussion on the aforesaid in the light of judicially articulated principles impacting thereon.

[6] I extract those principles classifying them as (a) The Broad Principle; and (b) Counter-principles,

(a) The Broad Principle

Although an Appellate Court should be slow to interfere with the exercise of discretion of a trial judge to refuse an adjournment it will do so if the refusal will result in a denial of justice to the applicant (vide: **Maxwell v. Keun** [1928] 1 KB 645.

(b) The Counter-principles -

(i) **Need for Case Management**

That counter, visiting the Commonwealth jurisprudence, could reasonably be said to have come after more than six decades when the concept of case management came about (vide: **Sali v. SPC Limited** [1993] 67 ALJR 841.

(ii) **Ancillary consideration to (a) above**

That is, the consideration of not merely the parties to a particular suit but the other listed cases that due to the granting of an adjournment could result in delay, even if the parties in litigation in a particular case consent to an

adjournment. (vide: **State Pollution Control Commission v. Australian Iron and Steel Pty Ltd.** [1992] 29 NSWLR 487 at 493 – 494).

The Resulting (Pre-dominant) criterion emerging from those principles

[7] As was stated in the case of **State of Queensland v. I L Holdings Pty Ltd**. [1997] 189 CLR 146,

> *"Case management is not an end in itself. It is an important and useful aid for ensuing the prompt and efficient disposal of litigation. But it ought always to be borne in mind, even in changing times, that the ultimate aim of the Court is the attainment of justice and no principle of case management can be allowed to supplant that aim."*

Reflections based on the Principles emanating from the above discussion

[8] Based on the aforesaid principles in their application to the instant case, I was unable to find a rationale, which could be regarded as proper and reasonable for the learned judge to have refused an adjournment of the trial date resulting in a dismissal of the plaintiff's action.

[9] The learned judge evidently had laid emphasis on the requirement of time management in judicial proceedings.

Justice delayed is justice denied but justice hurried is also justice denied

[10] Consequently, it is a balancing exercise a Court is required to perform. From a *"legal-philosophical"* perspective, Courts in search of justice find the means to accomplish that search in the law in striking that essential balance for as it is often said *"justice must be done according to law."* It is that law which one finds in the established legal principles in the statute book as judicially interpreted taken in the circumstances of a given case. The relevant principles in their application in the circumstances of the instant case were recounted in the foregoing discussion.

[11] Although it could be said that whether to grant or refuse an adjournment of a trial date is a matter of exercise of discretion for the Court, that discretion is not absolute. It is one that must be exercised judicially. How that discretion is to be exercised must necessarily be in the light of established legal principles as articulated above.

[12] Here is a case where the proceedings (filed of record) established the following:

(a) The plaintiff who was over 70 years of age on the trial date was not in a medical condition to be present in Court.

(b) A medical report was tendered to court in that regard and a doctor also testified to that effect. The plaintiff had been languishing in two hospitals and had had to undergo three operations. Moreover, as a doctor testified, the plaintiff had on one occasion been discharged from hospital by an oversight.

(c) Apart from all that, it had taken just about one year for the trial to have been brought to the cause list through Counsel's efforts (a fact noted by the High Court judge when she granted leave to appeal).

Determination and Conclusion

[13] Consequently, this Court holds the view that the learned judge in his impugned judgment had over-emphasised the principle of time management in judicial proceedings in dismissing the action whereas the ends of justice could have been met by making a reasonable order for costs of the day while noting that the respondent had not even objected to an adjournment (as the learned judge who granted leave to appeal had noted when she allowed the same).

[14] In the result, this Court determines and concludes that, the learned Judge when he dismissed the plaintiff's action failed to exercise judicial discretion vested in him under Order 35 Rule 3 of the High Court Act properly and reasonably and in the light of relevant legal principles contained in judicial precedents referred to earlier in this judgment.

The outstanding issues to be addressed in this appeal

[15] On the basis of the reasoning in the foregoing discussion, while this Court allows the appeal on grounds 1, 2, and 3 urged in the Notice of Appeal, there being no need to address on grounds 4 and 5, in so far as Ground 6 is concerned, the said ground cannot be responded to for the reason that, the trial having not taken place and, evidence on the medical negligence being the cause of action alleged by the appellant, damages not being assessed, this Court cannot pre-empt all that by *"re-assessing damages"* as urged in the said ground 6.

[16] However, in a qualified response to the said ground 6, taking into consideration the appellant's action had been instituted as way back in the year 2014 and, the appellant's age which must be bordering around 80 years, this Court thought it fit to make an appropriate consequential order as would be reflected in its final orders.

Morgan, JA

[17] I have read the judgment of the Hon Justice Almeida Guneratne, P and concur with the reasoning and conclusions of the judgment.

Lakshman, JA

[18] I agree with the reasoning and the conclusions arrived at by Almeida Guneratne, P.

The Proposed Orders

1) The appeal is allowed and the judgment of the High Court dismissing the plaintiff's action is set aside.

2) *The High Court is directed to place this case for trial on a priority basis in its cause list.*

3) *Taking into consideration that the respondents had not objected to an adjournment of the first trial date in the High Court but did oppose this appeal, on a balance, I make an order in a sum of $3,500.00 as costs of this appeal to be paid within 14 days of notice of this judgment.*

Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL

COURT OF APPEAL FIJI

Hon Justice Walton Morgan
JUSTICE OF APPEAL

Hon Justice Chaitanya Lakshman
JUSTICE OF APPEAL

Solicitors:

Sen Lawyers for the Appellant
Office of the Attorney-General's chambers for the Respondents