

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

**CIVIL APPEAL NO. ABU 0018 OF 2023**  
**(ILSC No: 3 of 2021)**

**BETWEEN** : **CHIEF REGISTRAR**

**Appellant**

**AND** : 1. **DARSHIK NAIR**  
2. **SHAMAL KANT**

**Respondents**

**Coram** : **Dr. Almeida Guneratne, P**

**Counsel** : **Mr A Chand and Ms A Vikash for the Appellant**  
**Mr D Nair for the Respondents**

**Date of Hearing** : **24<sup>th</sup> April, 2023**

**Date of Ruling** : **4<sup>th</sup> May, 2023**

**RULING**

[1] The Appellant (the Chief Registrar) after appealing against a decision of the Commissioner of the Independent Legal Services Commission (ILSC), filed the present summons seeking an order from this Court that the security for costs for the prosecution of the appeal be dispensed with.

- [2] The summons is supported by an affidavit sworn to by Ravinsh Lal, a legal officer attached to the Legal Practitioners Unit. He states that he is employed at the office of the Chief Registrar within the Legal Practitioners Unit which looks after matters pertaining to legal practitioners etc.
- [3] He avers that the Appellant represents the public interest in this matter for the proper regulation of the legal profession and that it would be in the public interest that the security of costs be dispensed with.
- [4] At the hearing, Mr Nair on behalf of the Respondents submitted that, on principle he was opposing the Appellant's application but that he leaves the matter in the hands of the Court to make an appropriate Ruling. Consequently, I did not feel the need for the filing of written submissions (and drag this matter further) which Mr Chand, (Counsel for the Appellant), moved for.
- [5] Accordingly, I proceed to make my ruling with reasons as follows.

**The legal nature of the office of the Chief Registrar**

- [6] Section 2 of the Court of Appeal Act (the Interpretation section) states that the "*Registrar means the Registrar of the Court of Appeal.*"
- [7] Section 97(1) of the Constitution of Fiji decrees that, "*The judicial power and authority of the State is vested in the Supreme Court, the Court of Appeal, the High Court, the Magistrates Court, and in such other courts or tribunals as are created by law.*"
- [8] Consequently, if the said provisions are taken as initial premises, it does not require an exercise in semantics to draw the inference that the Registrar of the Court of Appeal is a State (statutory) authority.

### **The Nature of the functions of the office of Registrar**

[9] Besides a plethora of other functions, one principal function imposed on the Registrar is to fix security for costs in appeals between parties after inquiry (vide: Rule 17(1)(b) of the Court of Appeal Act).

[10] In the instant case, the Registrar himself is the Appellant.

[11] That situation which has arisen in this case thus needed to be addressed.

[12] Rule 30 of the Court of Appeal Act provides that: *“The Court of Appeal may, in its discretion, require security for the costs of the appeal or \_ \_ \_ \_ the Registrar has dispensed with security, as the case may be.”*

[13] Given the conflicting situation the Registrar has been placed in this appeal, he has quite properly, by order referred the matter of fixing security for costs of his appeal to this Court.

[14] That brings me to focus on the principal issue as to whether the Registrar in the shoes of an Appellant should be asked to pay security for costs of appeal (in principle as Mr Nair suggested) or ought to be asked to do in law (which Mr Chand with Ms Vikash counter-submitted briefly)

### **Determination by this Court on that principal issue as articulated in paragraph [14] above**

[15] I did see some merit in Mr Nair’s submission that in principle, he was opposing the Appellant’s application to dispense with payment of security of costs for the appeal.

[16] As against that, the Appellant's summons to dispense with the payment for such security of costs to prosecute the appeal supported by the Affidavit of Ravinesh Lal are based on the premises that:-

*“the Appellant was only seeking to regulate the conduct of legal practitioner in the “public interest” in pursuance of his duty to do so and that, against the ILSC decision, several grounds of appeal have been urged in his Notice of Appeal which have been urged as grounds of appeal against the said ILSC decision in terms of the Legal Practitioners Act (LPA).”*

[17] Having given my mind to the aforesaid aspects, I could not find any provision in the Court of Appeal Act to determine the said principal issue either way.

[18] However, I did find in the High Court Act (Rules) which decrees thus:

*“for the avoidance of doubt it is hereby declared that at an order to give security for costs may not be made against the state in any proceedings.”* (vide: Order 23 Rule 4 of the High Court Act).

[19] In **Reserve Bank of Fiji v. Trevor Robert etal** (ABU 2006) wherein, it was held that, the Reserve Bank of Fiji being a statutory functionary, is not required to lodge security for costs of appeal.

[20] In my final assessment in the light of the provisions of Rule 6 of the Court of Appeal Act, I adopt the provision stated therein together with the full Court rationale laid down in the **Reserve Bank of Fiji** (supra) given the fact that, a statutory bank was absolved from the requirement to pay security for costs of appeal, *a fortiori*, the Registrar of this Court (having no personal stake whatever) must be accorded that right being an officer of the State as articulated in paragraphs [6] to [8] above.

## **Conclusion**

[21] On the basis of the foregoing reasoning I proceed to make my Ruling and Orders.

## **Ruling and the Ensuing Orders**

- 1) The application of the Appellant for an order to dispense with payment for security for costs to prosecute his appeal is allowed.
- 2) Given the fact that, a legal practitioner's right to professional livelihood is involved, the decision of the ILSC decision being in favour of the said legal practitioner, I make order that his appeal be listed for hearing before the full Court in the next Court of Appeal sessions (2023).
- 3) The Parties may file written submissions on the merits or otherwise of the appeal at any time before the date that would eventually be fixed for hearing (preferably, one week before such date).



**Hon. Justice Almeida Guneratne**  
**PRESIDENT, COURT OF APPEAL**

## **Solicitors:**

Legal Practitioners Unit for the Appellant  
Sairav for the Respondents