

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

**CIVIL APPEAL NO. ABU 014 of 2023**  
**[High Court at Labasa Case No. HBC 042 of 2019]**

**BETWEEN** : **HAZARA KHATOON**

**1<sup>st</sup> Appellant**

**AHMED BEGG**

**2<sup>nd</sup> Appellant**

**AND** : **ABDUL AZIZ BEGG**

**Respondent**

**Coram** : **Prematilaka, RJA**  
**Heath, JA**  
**Winter, JA**

**Counsel** : **Mr A.K. Singh for Appellants**  
: **Mr A.C. Kohli for Respondent**

**Date of Hearing** : **01 July 2025**

**Date of Judgment** : **25 July 2025**

**JUDGMENT**

**Prematilaka, RJA**

[1] I agree with reasoning and orders proposed by Heath, JA.

**Heath, JA**

**The appeal**

[2] Mrs Hazara Khatoon and her son, Mr Ahmed Begg, appealed against findings made by the High Court at Labasa that they were each in contempt of a court order (the Contempt Decision) and liable to pay fines as a penalty (the Penalty Decision).

## The 2020 Order

[3] On 12 March 2020, in the High Court at Labasa, Mansoor J made an order (the 2020 Order)<sup>1</sup> approving terms of settlement in a civil proceeding between Mrs Hazara Khatoon and Mr Ahmed Begg (as plaintiffs) and Mr Abdul Aziz Begg (as defendant). Mrs Khatoon was acting in her capacity as administratrix of the estate of her late husband, Mr Nasib Begg (also known as Jaffar Begg). Mr Ahmed Begg was acting in his own right. Mr Aziz Begg was Mr Jaffar Begg's brother. Where appropriate, I use the term "Estate" to differentiate between Mrs Khatoon's role as the personal representative of the late Mr Jaffar Begg's estate and her personal interests.

[4] The civil proceeding in which the 2020 Order was made appears to have been directed to the potential resolution of interests held by wider members of the Begg family in a company called Waiqele Sawmills Ltd (Waiqele). The most valuable assets were real property situated in Labasa (the Labasa property) and Nadera (the Nadera property) respectively. They formed the bulk of the settlement.

[5] Waiqele was not a party to the litigation in which the 2020 Order was made. I infer (as did Mansoor J at first instance) that as the persons who each controlled (directly or indirectly) 50% of the shareholding in Waiqele, Mrs Khatoon and Mr Aziz Begg held themselves out to the Court as being able to implement the settlement by procuring the transfer of the Labasa and Nadera properties, and paying moneys to Mr Aziz Begg.

[6] For reasons of which we were not informed, the parties chose to have their agreement sanctioned by the Court, by way of a consent order, rather than recording it in a contractual document only.<sup>2</sup> Waiqele was not a party to the 2020 Order.

[7] The 2020 Order was issued in the following terms:

*"1. The Company shall transfer to Aziz Begg (or his nominee) the property of the Company situated in Labasa Town Complex housing the Shop and*

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<sup>1</sup> The terms of the 2020 Order are set out at para [7] below.

<sup>2</sup> See para [28] (a) as to the possible use of another procedure to achieve the parties' goal.

*Save Supermarket (Crown Lease No. 13317 known as Lot 2 SO 3807 Formerly Lot 6 M 2144 Labasa Town in the district of Labasa and the Province of Macuata with an area of 1955 Square Meters with no consideration. Parties agree to the value of the property as being FJD 3 million dollars.*

2. *The Company shall transfer to Estate of Nasib Begg aka Jaffar Begg (or his nominee) the property of the Company situated in Nadera, Nasinu known as Prime Plaza (being Housing Authority Lease No. 360292 being Lot 1 Deposited Plan No. 4581 in the Province of Naitasiri and the district of Naitasiri with an area of 2 Rod and 32.8 Perches and Housing Authority Lease No. 866868 being Lot 1 DP 11143 in the Province of Naitasiri and the Tikina of Naitasiri with an area of 1241 Square Meters for no consideration. Estate of Jaffar Begg shall be responsible the repayment of the mortgage against the said property. Parties agree to the value of the property as being FJD 6 million dollars.*
3. *Parties agree that Abdul Aziz Begg is to receive a further sum of monies which shall be calculated as follows:*

*½ of the sum remaining after the deduction of FJD 3 million and loan amount owed to Bred Bank from the Nadera property value of FJD 6 million.*

*This sum shall be paid by the Estate of Jaffar Begg aka Nasib Begg to Abdul Aziz Begg at the time of the transfer of the Prime Plaza Property.*

4. *The Company shall declare a Dividend of FJD 4 million which shall be paid in equal parts to the shareholders being Aziz Begg and Estate of Nasib Begg aka Jaffar Begg. That the shares of dividend payable to Aziz Begg shall be paid into the trust account of AP Legal whereas the dividend payable to Estate of Nasib Begg aka Jaffar Begg shall be paid out to individual beneficiaries with a written authority from Ahmed Begg and the cheque shall be drawn simultaneously.*

5. *The directors of the Company shall be Aziz Begg, Ahmed Begg, Feroz Begg and Maqsum Begg and the affairs of the Company shall be managed by the Directors sitting as a Board. No decision of the Company shall be considered approved unless there is a majority vote on the matter unless the decision reached is in consistence with Articles of association and the Companies Act 2015.*
6. *The signatories of all bank accounts of the Company shall be Ahmed Begg and Feroz Begg both of whom shall be required to sign cheque in order for the same to be honoured by the banks.*
7. *Upon the maturity of all keyman policies, the insurance pay out sums shall be equally divided between Aziz Begg and the Estate of Nasib Begg aka Jaffar Begg unless the Company requires the funds for its operational needs.*
8. *All parties shall be paid any unpaid monies due and owing relating to salaries and directors fees and any unpaid workers shall be paid any dues.*
9. *Upon filing of these terms in Court, Ahmed's phone and email access with the Company shall be restored.*
10. *Parties agree that this Deed resolves all claims of any nature between the parties in relation to the Company and no party shall bring any future claims against each other in respect of the matters already filed in the Court or any other claim the party intends to bring in respect of the cause of the operation of Waiqele Sawmill Limited.*
11. *The parties will bear their own costs."*

[8] No time was fixed for compliance with the 2020 Order. On 5 April 2022, just over two years after the 2020 Order had been made, Mr Aziz Begg applied for leave to issue committal proceedings against Mrs Khatoon and Mr Ahmed Begg for non-compliance with its terms.<sup>3</sup> In his affidavit in support, Mr Aziz Begg contended that

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<sup>3</sup> The application was made under Order 52 Rule 2 of the High Court Rules 1988.

Mrs Khatoon and Mr Ahmed Begg had “failed to obey the 2020 Order and had no “desire to comply”. The High Court granted leave to apply.

[9] The on-notice motion for committal was filed on 17 May 2022. In brief, the motion sought orders that Mrs Khatoon and Mr Ahmed Begg “be committed to prison for their contempt in that [they] failed to obey” the 2020 Order. Three breaches were alleged.<sup>4</sup> The motion sought Mrs Khatoon’s and Mr Ahmed Begg’s committal on the grounds that they had:

- a. *Failed to transfer the Nadera property to the Estate.*
- b. *Failed to pay to Mr Aziz Begg the whole of a sum of FJD 850,000 in respect of the balance of moneys payable to him under the 2020 Order. (Mr Aziz Begg acknowledged that he had been paid the sum of FJD 425,000 but asserted that a balance of FJD 425,000 remained owing).*
- c. *Failed to pay one-half of the insurance proceeds of all “keyman” policies.*

### **The committal proceedings**

[10] The committal motion came before Mansoor J on 15 August 2022, the Judge by whom the 2020 Order had been made. I have taken into account the fact that the Judge would have had far more background knowledge of the dispute and why the 2020 Order was made than do we, sitting as an appellate court.

[11] On the committal application, the Judge was required to consider whether, having regard to the terms of the 2020 Order and the evidence before him, Mrs Khatoon and Mr Ahmed Begg were in contempt of Court. In his Contempt Decision of 23 January 2023, Mansoor J found that both Mrs Khatoon and Mr Ahmed Begg were in contempt. Costs were ordered in favour of Mr Aziz Begg which Mrs Khatoon and Mr Ahmed Begg were to pay equally, within 21 days of the date of the order. Sentencing was deferred.

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<sup>4</sup> The grounds set out in paragraphs (b) and (c) of the motion for committal of 17 May 2022 overlap.

[12] The penalty hearing took place on 31 January 2023. On 22 February 2023, in his Penalty Decision, Mansoor J imposed a fine of \$10,000 on Mrs Khatoon and \$15,000 on Mr Ahmed Begg. No conviction was recorded against either of them. Subsequently, the decision requiring payment of money was stayed, pending appeal.

## Analysis

[13] Unfortunately, as Mansoor J observed in giving his Contempt Decision and Penalty Decision, there was an unhappy lack of precision in the way in which the 2020 Order was expressed. One of the issues is whether the 2020 Order was sufficiently clear in its terms to bring the contempt jurisdiction into play. At the time that Mr Aziz Begg's contempt motion came before the High Court, Mrs Khatoon and Mr Ahmed Begg acknowledged that:<sup>5</sup>

- a. *Contrary to the second order, Waiqele had not transferred the Nadera property to the Estate.*
- b. *Contrary to the third order, only \$425,0000 out of (an agreed amount) of \$850,000 had been paid to him.*
- c. *Contrary to the seventh order, the proceeds of matured "keyman" insurance policies, had not been paid equally to Mr Aziz Begg and the Estate.*

[14] I highlight five particular problems with the 2020 Order:

- a. Waiqele was not a party to the 2020 Order, or the proceedings in which it was made. Yet, the 2020 Order required important steps to be taken by Waiqele to implement the terms of settlement. One involved the transfer of the Labasa property to Mr Aziz Begg. The second required the transfer of the Nadera property to the Estate, subject to discharge of the mortgage over that property. Neither of those settlement obligations could have been performed without the consent of the directors of Waiqele.

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<sup>5</sup> The terms of the 2020 Order are set out at para [6] above.

- b. The terms of settlement recorded that:
- i. Mr Aziz Begg, Mr Ahmed Begg, Mr Feroz Begg and Mr Maqsum Begg were to constitute the Board of Directors of Waiqele. A majority vote of those four people was sufficient to approve any decision to be taken by the company unless inconsistent with its Articles of Association and the Companies Act 2015. Neither Mr Feroz Begg nor Mr Maqsum Begg were parties to the 2020 Order.
  - ii. Mr Ahmed Begg and Mr Feroz Begg were required to be signatories to all bank accounts of Waiqele in order for any drawings on those accounts to be honoured by relevant banks. Mr Feroz Begg was not a party to the litigation.
- c. While Order 10<sup>6</sup> resolved “all claims of any nature between the parties in relation to” Waiqele, it could not have prevented non-parties (for example, Mr Feroz Begg and Mr Maqsum Begg) from taking proceedings in relation to the same subject matter.
- d. Neither the 2020 Order nor the Penal Notice specified the time within which Mrs Khatoon and Mr Ahmed Begg (the plaintiffs) were to comply with the terms of the 2020 Order:
- e. The Penal Notice, in the terms drafted, was directed to the wrong person. Mrs Khatoon and Mr Ahmed Begg were the persons required to take steps to implement the order. They were the plaintiffs in the proceedings that led to the 2020 Order: Wrongly, the Penal Notice (set out below) was directed to the “defendant”, Mr Aziz Begg:

**PENAL NOTICE**

*If you the above named defendant disobey this Order you will be liable for process of execution for the purpose of compelling you to obey the same. (My emphasis)*

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<sup>6</sup> Set out at para [7] above.

[15] The starting point for analysis is the purpose of the contempt jurisdiction. In *Siemer v Solicitor-General*,<sup>7</sup> the Supreme Court of New Zealand held that the jurisdiction springs from common law, though there are some circumstances (not present in this case) in which a statutory overlay exists. The type of contempt with which this case is concerned involves the need for the Court to uphold the rule of law by protecting the integrity of its orders. McGrath J, for Elias CJ and himself, said that the Court’s role is to secure “the efficiency and the purity of the administration of public justice by dealing summarily with all conduct which is recognized by the common law as amounting to criminal contempt of court”.<sup>8</sup> Senior courts have taken a summary approach to determining questions of contempt to address the perceived public need for the courts to act quickly and effectively when their authority is challenged, whether by disobedience of an order or otherwise.

[16] Members of the Supreme Court in *Siemer* do not appear to have been unduly troubled by the question whether a particular contempt proceeding should be characterised as criminal or civil in nature. McGrath J observed that when “a court holds someone to be in contempt of court, whether the contempt is one categorised as criminal or civil, its determination stigmatises that person ... [and the] effect of the Court’s finding is equivalent to that resulting from conviction on a charge of committing a statutory crime”. In a footnote to that observation, McGrath J, indicated that any classification between criminal and civil contempt was “probably best avoided as unhelpful”.<sup>9</sup> The Judge said that the fundamental purpose of the jurisdiction is based on “the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner”.<sup>10</sup> On my reading of the other plurality judgment, Blanchard, Anderson and Wilson JJ did not disagree with that approach.

[17] In my view, the appeal must succeed, not only because of the deficiencies with the 2020 order that I have identified,<sup>11</sup> but also because the common law approach to contempt proceedings, read in conjunction with the rules under which the High Court

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<sup>7</sup> Ibid.

<sup>8</sup> *Nash v Nash, Re Cobb* [1924] NZLR 495 (SC) at 498 per Salmond J.

<sup>9</sup> *Siemer v Solicitor-General* [2010] 3 NZLR 767 (SC), at para [15] and fn 19.

<sup>10</sup> Ibid, at para [29].

<sup>11</sup> See para [14] above.

was entitled to make an order finding Mrs Khatoon and Mr Ahmed Begg in contempt, did not justify the making of an order.

[18] Drawing attention to the provisions of the High Court Rules 1988, Mr A K Singh, for Ms Khatoon and Mr Ahmed Begg, submitted that:

- a. *The 2020 Order, contrary to Order 42, Rule 3(a) of the High Court Rules, did not state a time by which compliance with its terms was required; and*
- b. *The “Penal Notice”, contrary to Order 45, Rule 6(4)(a) of the Rules;*
  - i. *did not contain a statement to the effect that a person might be held in contempt and sentenced to imprisonment if there were non-compliance; and*
  - ii. *wrongly referred to the “defendant” (Mr Aziz Begg) rather than the “plaintiffs” (Mrs Khatoon and Mr Ahmed Begg) as the person who must comply with the 2020 Order.*

[19] Mr Singh relied, primarily, on the judgment of the Court of Appeal in *Singh v Kiran*.<sup>12</sup> In that case, the High Court made an order that the administrator of an estate file an inventory of assets and statements of account. The order was made in 1997. By May 1999, no compliance with the order had been made. The order did not provide a date by which compliance was required.

[20] On 7 October 1999, Byrne J found Mr Kiran to be in contempt of court. Ultimately, he was fined \$300, and in default one month’s imprisonment. On appeal, the Court of Appeal took the view that the absence of a date by which compliance should be made in both the order and the Penal Notice was fatal. It referred to both Order 42 rule 3(1) and Order 45 rule 4(1) of the High Court Rules.

[21] In reaching that conclusion, the Court of Appeal emphasised that “the penal nature of contempt proceedings and the necessity for strict compliance” was “paramount”<sup>13</sup>.

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<sup>12</sup> *Singh v Kiran* [2002] FJCA 80 (Reddy P, Smellie and Penlington JJA).

<sup>13</sup> *Ibid*, at 11-12, set out at para [23] below.

While Order 42 rule 3(1) is expressly stated to be subject to Order 42 rule 3(2), it was unnecessary for the Court of Appeal to refer to it, as it did not apply on the facts of that case. However, in my view, Order 42 rule 3(2) is relevant in the present case.

[22] The relevant rules (including Order 42 rule 3 (2)) state:

***“Order 42 rule 3 of the High Court Rules 1988***

*3(1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.*

*(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.*

***Order 45 rule 6(4)(a)***

6. ...

*(4) there must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served –*

*(a) in the case of service under paragraph (2), that if he [or she] neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he [or she] disobeys the order, he [or she] is liable to process of execution to compel him [or her] to obey it.”*

(Emphasis added)

[23] In *Singh v Khan*, the Court of Appeal said:<sup>14</sup>

*“We now shortly set out our reasons for our conclusion in respect of the 0.42 r.3 point.*

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<sup>14</sup> Ibid, at 11-12.

*First, there is the clear wording of the rule itself. It is imperative in its terms. The rule states that the order must specify a time after service for compliance.*

*Secondly, the order as sealed and served did not specify the time after service of the order the appellant was required to file an inventory and accounts.*

*Thirdly, we note that the slip rule was not employed and there was no application to correct so as to give effect to the original intention of the court. Likewise there was no application for a supplementary order adding a time for compliance.*

*Fourthly, the penal nature of contempt proceedings and the necessity for strict compliance is paramount.*

*And lastly, we have had regard to the cases of *Hitachi Sales (UK) Ltd v Mitsui Osk Lines* [1986] 2 Lloyds Reports 574 (CA) applying *Van Houten v Foodsafe Ltd* [1980] 124 SJ 277(CA). These cases are two illustrations of the strict application of the corresponding rule (0.42 r.2) in the United Kingdom. See also 1991 Supreme Court Practice Vol.1 page 694 para 42/2/2; 9 Halsbury's Laws of England (4th Edition) page 36 para 60.*

*In our view there was no proper foundation for the contempt order and fine. The orders of Byrne J. of 7 December 1999 and 23 February 2001 must therefore be set aside.”*

(Emphasis added)

[24] The order in issue in *Singh v Kiran* required neither payment of a sum of money nor the transfer of possession of land. By contrast, the 2020 Order required both.<sup>15</sup> In that situation, Order 42 rule 3(2) applies in the present case and defeats the time point taken by counsel for Mrs Khatoon and Mr Ahmed Begg under Order 42 rule (3) (1).

[25] Order 42 rule 3(2) has a different function, which is helpful to Mrs Khatoon and Mr Ahmed Begg. It is consistent with the common law approach to attempts to enforce a judgment or order by committal, rather than through an orthodox enforcement process. A pithy description of the principle can be found in the judgment of the Court of Appeal of England and Wales in *Ansah v Ansah*.<sup>16</sup> Delivering the judgment of the Court, in a case in which a committal order had been sought and made to compel

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<sup>15</sup> See Orders 1 and 2 of the 2020 Order, set out at para [7] above.

<sup>16</sup> *Ansah v Ansah* [1977] Fam 138 (CA).

performance with an injunction that had been issued to prevent a separated wife from molesting her husband and returning to the matrimonial home, Ormrod LJ (with whom Stamp LJ and Sir John Pennycuick agreed) said:<sup>17</sup>

*“Such a breach or breaches, of an injunction in the circumstances of such a case as this do not justify the making of a committal order, suspended or otherwise. Breach of such an injunction is, perhaps unfortunately, called contempt of court, the conventional remedy for which is a summons for committal. But the real purpose of bringing the matter back to the court, in most cases, is not so much to punish the disobedience, as to secure compliance with the injunction in the future. It will often be wiser to bring the matter before the court again for further directions before applying for a committal order. Committal orders are remedies of last resort; in family cases they should be the very last resort. ...”*

(Emphasis added)

[26] Read in conjunction, the extract from Ormrod LJ’s judgment in *Ansah* and the terms of Order 42 rule 3(2) make it clear that the remedy of committal for breach of a court order should not be sought or obtained unless steps have first been taken to enforce the order in an orthodox way. In the present case, no effort was made by Mr Aziz Begg to compel compliance with the Order in a manner short of committal. Perhaps that was because of the deficiencies in the Order itself. No court could have made an order for specific performance of the transfer of the Labasa and Nadera properties unless directed to the owner, Waiqele. That was not possible because Waiqele was not a party to the proceeding that led to the 2020 Order. It was inappropriate to issue committal proceedings when enforcement of the Order could not be achieved in any other way.

[27] There is no need to make consequential orders in connection with the fines and compensation ordered by Mansoor J because there has been a stay of the orders made pending appeal. The appropriate remedy is to quash the committal order and the penalties imposed in consequence of it.

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<sup>17</sup> Ibid, at 143-144.

## **Observations**

[28] I conclude by drawing attention to two important points:

- a. It was not, in my view, appropriate for the Court to sanction an agreement between the parties in a case such as this. There was no question of legal incompetence of any party to enter into a contract. The settlement ought to have been made by contract. If an order had to be made, it should have been in the form of a *Tomlin* order which would have stayed the proceeding pending implementation of settlement with the right of a party to apply to the Court to enforce the settlement. The way in which the *Tomlin* order procedure operates was explained fully by Sir Maurice Casey, delivering the advice of the Privy Council, in *Horizon Technologies International Ltd v Lucky Wealth Consultants Ltd*.<sup>18</sup> A *Tomlin* order would have provided a much more satisfactory method of enforcing the settlement.
- b. It was imperative that Waiqele be a party to the civil proceeding that led to the 2020 Order. Had that been the case, it would have been bound to implement the orders made against it, particularly the first and second orders. It would have been the directors of Waiqele who would have been at risk of a committal application and a contempt finding had Waiqele not complied with the order.<sup>19</sup>

## **Result**

[29] I would allow the appeal and quash the orders for committal and the penalties imposed in consequence.

[30] In my view, each party should bear their own costs of the appeal. Despite their success in this appeal, the conduct of Mrs Khatoon and Mr Ahmed Begg does not justify an order for costs in their favour, whether in the High Court or in this Court.

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<sup>18</sup> *Horizon Technologies International Ltd v Lucky Wealth Consultants Ltd* [1992] 1 All ER 469 (PC).

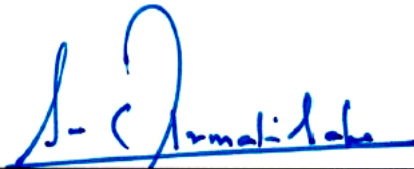
<sup>19</sup> High Court Rules 1988, Order 45 rule 4(1)(b)(ii), read in conjunction with Order 45 rule 1(2)(b).

**Winter, JA**

[31] I agree with this judgment.

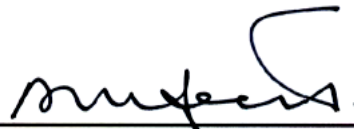
**Orders of the Court:**

1. *Appeal is allowed.*
2. *Order for committal dated 23<sup>rd</sup> January 2023 and the penalty decision dated 22 February 2023 are quashed.*
3. *Costs lie where they fall.*



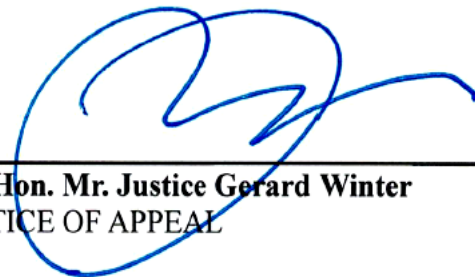
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**The Hon. Mr. Justice Chandana Prematilaka**  
RESIDENT JUSTICE OF APPEAL



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**The Hon. Mr. Justice Paul Heath**  
JUSTICE OF APPEAL



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**The Hon. Mr. Justice Gerard Winter**  
JUSTICE OF APPEAL

**Solicitors:**

AK Singh Law for the Appellant  
Kohli & Singh Lawyers for the Respondent