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

CIVIL APPEAL NO. ABU 0127 of 2023
[In the Employment Relation Court at Lautoka Case No. ERCC 01 of 2019]

BETWEEN : **MOHAMMED RAIYAZ KHAN**

Appellant

AND : **COCA COLA AMATIL (FIJI) LTD**

Respondent

Coram : **Prematilaka, RJA**
Qetaki, RJA
Dobson, JA

Counsel : **Mr. S. K. Ram and Mr. D. Patel for Appellant**
: **Mr. R. Singh and Mr. J. Liganivai for Respondent**

Date of Hearing : **04 July 2025**

Date of Judgment : **25 July 2025**

JUDGMENT

Prematilaka, RJA

Facts in brief

[1] The respondent ('CCAL') appointed the appellant ('Khan') as a Sales Merchandiser with effect from 01 November 1998 and he was made the Senior Business Development Representative on 01 December 2008. He was required to service and maintain clients in designated areas in Lautoka, Ba and Tavua. On 10 February 2016, CCAL summarily

dismissed Khan from his employment for alleged wilful disobedience to orders given by Khan's managers and gross misconduct, pursuant to section 33(1) of the Employment Relations Act 2007 ('ERA'). The letter of summary dismissal dated 10 February 2016 details various events and aspects of such wilful disobedience and gross misconduct. The letter dated 01 December 2008 which elevated Khan to the position of Senior Business Development Representative has under the heading 'Termination' also reserved CCAL's right to summarily dismiss him for serious misconduct. Parties have not sought to make a distinction between gross misconduct and serious misconduct and treated then as if both carry the same meaning.

[2] Khan has (in person as the griever) promptly sought assistance from the mediation service of the Ministry for his employment grievance arising from his unfair dismissal calling for his reinstatement with back wages. In his employment grievance, Khan has specifically disagreed with the reasons (or specific allegations) given in the dismissal letter as he had done consistently in his explanations responding to those allegations prior to the dismissal. However, it appears that Mediation Service of the Ministry has not succeeded in resolving the matter which has then referred the dispute to the Employment Relations Tribunal ('ERT'). CCAL on its part has made an application to strike out Khan's Employment Grievance. However, on 06 November 2017, both parties seem to have consented to end the proceedings before the ERT without costs where CCAL has withdrawn its strike out application, Khan has withdrawn his Employment Grievance and both parties have also agreed that Khan is at liberty to file proceedings at the Employment Relations Court ('ERC').

[3] On 22 January 2019, Khan filed a Writ of Summons and Statement of Claim ('SC') against CCAL. The SC at paragraph 6 under the heading 'Breach of Contract' has pleaded that CCAL on or about 10 February 2016 summarily dismissed Khan when there was no serious misconduct on his part and from paragraphs 6.1 to 6.4 the SC had set out the particulars of the breach. At paragraph 7, the SC has pleaded that the termination was 'unfair and unlawful' and given particulars at paragraphs 7.1 to 7.4. In paragraph 8, the SC has stated that as a result of the said breaches, Khan had suffered loss and damages. SC has prayed for damages for 'breach of contract' and 'unlawful and unfair dismissal' and further damages for humiliation, loss of dignity and injury to feeling as a result of the said breach and unlawful & unfair dismissal.

[4] CCAL filed its Statement of Defence ('SD') denying the allegations made by Khan. It pleaded that Khan (a) was summarily dismissed for gross misconduct and for failing to comply with lawful directions; and (b) was granted due process and was fairly dismissed for lawful reason with no cause for humiliation, injury to feelings and/or loss of dignity. CCAL has not challenged the jurisdiction of the ERC which CCAL accepted at the settlement before the ERT.

[5] The case proceeded to trial on the following issues:

1. *Whether the plaintiff was required to travel to several towns and cities in Fiji as part of his duties?*
2. *Whether there was any serious misconduct on the part of the plaintiff during his employment with the defendant company justifying summary dismissal?*
3. *Whether the defendant breached the contract of employment by summarily dismissing the plaintiff?*
4. *Whether the termination of the plaintiff was unfair and/ or unlawful?*
5. *Whether the defendant caused the plaintiff humiliation, loss of dignity and injury to feelings?*
6. *Whether the plaintiff suffered or is entitled to any loss and damage?*

[6] Upon the conclusion of the trial, the trial judge Mansoor J asked the counsel for both parties to deal with his own previous judgment[1] in ***Buksh*** (see footnote 1) on the question of jurisdiction of the ERC in their respective written submissions.

[7] The ERC delivered the judgment on 01 December 2023[2] and dismissed Khan's action stating *inter alia*:

> *'The plaintiff's complaint is one of unfair termination, which constitutes an employment grievance as defined in section 4 of the Employment Relations Act.'*
>
> *'In written submissions, the plaintiff addressed the issue of whether this court has original jurisdiction to adjudicate an employment grievance. The plaintiff submits that the court has original jurisdiction to deal with this case.'*

[1] **Buksh v Bred Bank (Fiji) Ltd** [2021] FJHC 259; ERCC02.2019 (27 August 2021)
[2] **Khan v Coca Cola Amatil (Fiji) Ltd** [2023] FJHC 880; ERCC01.2019 (1 December 2023)

'The definition of employment grievance in the Act includes a dismissal. An employment grievance must, in the first instance, be referred to mediation services. If it is not settled by mediation, the mediator is required by section 194 (5) of the Act to refer the grievance to the Employment Relations Tribunal for its adjudication.'

'Section 211 (1) (a) of the Employment Relations Act confers the tribunal with the jurisdiction to hear an employment grievance. The original jurisdiction of this court is set out in sections 220 (1) (h), (k), (l) and (m) of the Act. The Act does not confer on this court original jurisdiction to hear an employment grievance excepting when it is specifically allowed by the Act. The court will not assume jurisdiction where it is not conferred by law or where jurisdiction can be clearly implied. The scheme of the legislation does not give original jurisdiction to this court to hear an employment grievance except where the statute allows it. This court has no jurisdiction, therefore, to hear the plaintiff's employment grievance.'

'The plaintiff has not pleaded or given evidence of any term of the employment contract which is said to have been violated in order to constitute an action for breach of contract. On this basis also the action cannot succeed.'

[8] As the main theme of the appeal, the appellant criticises Mansoor J's rigid bifurcation of jurisdiction of the ERT and the ERC by characterising his claim before the court exclusively in terms of an employment grievance and thereby holding that the ERC did not have jurisdiction to hear his employment grievance. It is clear that Mansoor J has been guided by his own judgment in ***Buksh*** delivered earlier which was contrary to then prevalent view in the ERC held by another High Court Judge Wati J[3]. This court's decision in **ANZ Banking Group Pte Ltd v Sharma[4]** ('***ANZ Banking***') is the judgment in the appeal against Wati J's judgment. ***ANZ Banking*** has endorsed the analysis and conclusions by Mansosor J in ***Buksh***. Thus, the appellant challenges the reasoning in both ***Buksh*** and ***ANZ Banking*** in the current appeal before this court whereas the respondent unsurprisingly supports both.

[9] In ***ANZ Banking***, Mr. Sharma who was in an essential service and industry first lodged an employment grievance and engaged in mediation failing which he had the matter referred to the ERT. However, on his own he decided to discontinue his grievance at the ERT and filed instead an action in the ERC for unlawful and unfair dismissal. ANZ being the respondent applied to strike out Mr Sharma's action where ANZ's first

[3] **Sharma v Australia and New Zealand Banking Group Ltd** [2020] FJHC 650; ERCC 02 of 2017 (14 August 2020)
[4] [2024] FJCA 29; ABU030.2022 (29 February 2024)

argument was that ERC had no jurisdiction to hear and determine Mr Sharma's action because the action was an *employment grievance* brought by an employee in an essential service and industry and the ERA did not provide for employment grievances to be heard and determined by the ERC. In dismissing ANZ's application to strike out, Wati J concluded that while the ERT *"...has jurisdiction to hear employment cases for claims up to $40,000 ... [b]eyond that, the claims must be filed in the Employment Court"*.[5]

[10] On the other hand, Mansoor J in ***Buksh*** (to be followed by other similar decisions by him including the one before this court now) took a contrary view of the ERC's jurisdiction by stating:

> *26. 'Section 211 (1) (a) confers the Employment Relations Tribunal with jurisdiction to adjudicate on employment grievances. Section 110 (3) of the Act requires all employment grievances to be first referred for mediation services. Section 194 (5) of the Act states that if a mediator fails to resolve an employment grievance or an employment dispute, the mediator shall refer the grievance or dispute to the Employment Tribunal. Parliament has mandated mediation procedures and vested the tribunal with features that are meant to assist in the effective resolution of or adjudication of grievances. Mediation services, the tribunal and the court have been established to carry out their different powers, functions and duties. The statutory scheme is such that an employment grievance must be referred for mediation and adjudicated in the tribunal in the first instance.*
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> *27. The court's original jurisdiction is set out in sections 220 (1) (h), (k), (l) and (m) of the Act. Proceedings can also be transferred from the tribunal to the court under section 218 and section 221 allows the court to order compliance. The Act does not confer on this court the original jurisdiction to hear an employment grievance excepting in the way allowed by the Act. The monetary limitation placed on the tribunal will not of itself permit the court to hear an employment grievance. The court, however, is not impeded by the monetary limit.*
>
> *28. The plaintiff referred to section 230 (1) of the Act in saying that the remedies specified by that enactment show that the court has original jurisdiction. The provision must be read to mean that a court can grant those remedies where a matter is properly brought before the court under the Act.*

[5] **Sharma v Australia and New Zealand Banking Group Ltd** (supra)

[11] Earlier in ***Buksh***, Mansoor J had said:[6]

> *22. Mr. Gordon submitted that the Court as a division of the High Court had unlimited original jurisdiction, and that the Court has power to hear the case as the Tribunal did not have the jurisdiction to pay compensation in excess of $40,000. His reference is to the limitation contained in section 211 (2) (a) of the Promulgation which states that the Tribunal has power to adjudicate on matters within its jurisdiction relating to claims up to $40,000. I agree with the plaintiff that the monetary limitation could pose a difficulty in some cases, particularly where the claims are of a large value. However, the Tribunal's jurisdictional limit alone is not a sufficient ground for the Court to assume jurisdiction when Parliament has not expressly given the Court the right to hear an employment grievance.*

[12] The Court of Appeal in ***ANZ Banking*** recognized that there are conflicting decisions of the ERC on the question whether it has jurisdiction to hear and determine employment grievances and identified at paragraph [7] the following two questions of law for determination posed by the counsel for ANZ:

> *(i) Under Part 19 and Parts 13 and 20 of the Employment Relations Act 2007,* ***can a worker in an Essential Service and Industry*** *bring an Action or employment grievance in the Employment Relations Court or is s/he restricted to reporting an employment grievance to Mediation Services which can only refer this to the Employment Relations Tribunal if the grievance is not settled in mediation?*
>
> *(ii)* ***Can any worker in Fiji (whether or not employed in an Essential Service and Industry)*** *bring a claim of unjustified dismissal or unfair dismissal directly to the Employment Relations Court (which has unlimited jurisdiction) or must those claims only be made in an employment grievance that can only be reported to Mediation Services and the Employment Relations Tribunal (which has jurisdiction not exceeding $40,000).*
>
> *(Emphasis mine)*

[13] The Court of Appeal in ***ANZ Banking*** answered the two questions at paragraph [64] as follows:

> *'Answer:* ***The Employment Relations Court has no jurisdiction to hear and determine an employment grievance brought by a worker in an essential service and industry***[7]*. Such a worker is bound to pursue their employment grievance first,*

[6] **Buksh v Bred Bank (Fiji) Ltd** [2021] FJHC 259; ERCC02.2019 (27 August 2021)

[7] With the exceptions set out at paragraph 34 of the judgment.

by lodging it in accordance with s 188(4) and secondly, in accordance with Part 13 pursuant to which the employment grievance will "first be referred for mediation services…"

'Answer: ***The ERC has no jurisdiction to hear employment grievances but if a claim for unjustified or unfair dismissal is "founded on a contract of employment", and properly pleaded as such, the ERC has jurisdiction under s 220(1)(h) to hear and determine such a claim****.*

(Emphasis mine)

[14] Previously, the Court of Appeal said[8] in a somewhat different context and in response to a different argument that the ERA does not remove the jurisdiction of High Court (as opposed to ERC) to entertain claims involving employment contracts, the jurisdiction of the High Court in such matters has not been excluded by the ERA, and *it is a claimant's choice whether to institute an action under the ERA or under the Common Law and the applicant is not precluded from bringing an action in common law in the High Court for breach of the employment contract*. The Court agreed that an action filed under common law for breach of contract is not governed by the ERA hence the ratio of ***Vinod***[9] has no application to a situation contemplated in ***Suva City Council***. It appears that in ***Suva City Council*** following respondent's dismissal she had filed a Writ of Summons and Statement of Claim in the High Court (not in the ERC) against the appellant alleging *breach of contract and unlawful termination* and claiming typical common law reliefs such as damages etc.

[15] Thus, considering ***ANZ Banking*** and ***Suva City Council*** together, the legal position appears to be that an action under common law based on breach of employment contract resulting in unlawful termination seeking common law remedies may be filed in the High Court. However, if and when the action is founded on an employment contract and properly pleaded as such alleging unjustified or unfair dismissal, the ERC has jurisdiction under the ERA. If the action is based on an *employment grievance* and pleaded as such, the ERC has no jurisdiction but jurisdiction lies in ERT. Therefore, the forum will be determined by the manner in which action is couched including the

[8] **Suva City Council v Saumatua** [2023] FJCA 131; ABU056.2020 (28 July 2023)

[9] **Vinod v Fiji National Provident Fund** [2016] FJCA 23; ABU0016.2014 (26 February 2016)

remedies sought. The differences of forum and jurisdiction of the High Court, ERC and ERT appears to depend on the characterization of the action as pleaded.

[16] Mr. Singh for the respondent argued before this court that this was an employment grievance and the appellant had framed it as such and therefore given the decision in ***ANZ Banking,*** the ERC had no jurisdiction whereas Mr. Ram appearing for the appellant contended that his client had indeed pleaded breaches of the employment contract by the respondent and therefore the ERC had jurisdiction to entertain and determine his action. Mr. Ram argued that any hint in the pleadings regarding the claim that it may fall within the category of an "employment grievance" as opposed to a breach of employment contract cannot preclude an employee from bringing a claim at the ERC.

[17] Mr. Singh on the other hand submitted that the appellant has not pleaded any specific term or any breach of any term of his contract (*i.e.* merely making reference to the employment contract is insufficient) by the summary dismissal that also allegedly led to his dismissal being 'unfair and unlawful'. Mr. Singh also highlighted that the appellant seeks damages for breach of contract as well as unlawful and unfair dismissal but no breaches of his contract are properly pleaded in a manner that could bring it within the original jurisdiction of the ERC under section 220(1)(h) of the ERA whereas unfair dismissal is particularly in the realm of employment grievance for the ERT to adjudicate. Moreover, Mr. Singh argued that damages for humiliation, loss of dignity and injury to feelings sound very much as remedies available for employment grievance under the jurisdiction of the ERT in terms of section 211 (1)(a).

[18] Mr. Singh also submitted that ***ANZ Banking*** is applicable to this case in as much as the Court of Appeal held that (i) only the ERT has original jurisdiction to hear *employment grievances* of a worker in an essential service/industry **or** any other worker such as the appellant who, of course, was not employed in an essential service and industry (ii) a worker employed in an essential service/industry must file the *employment grievance* within 21 days and after filing the claim, cannot withdraw it and file a "fresh action" over the same subject matter in the ERC after the 21 days limitation period (iii) **all** *employment grievances* (workers in an essential service/industry and otherwise) must commence with a report to Mediation Services under section 110(3) of the ERA and, if

not settled, can only be referred to the ERT (iv) the ERT can adjudicate matters (of essential service and industry workers and others) relating to claims up to $40,000 and **all** *employment grievances* (by workers in an essential service/industry as well as other workers) are therefore limited to a maximum of $40,000 and (v) the ERC has original jurisdiction to determine an action founded on an *employment contract* but those claims must properly be pleaded as such.

[19] First thing to say as a matter of observation is that I am not sure whether the *ratio decidendi* of ***ANZ Banking*** is as wide-ranging as Mr. Singh argued and whether some propositions in the paragraph above are really part of *obiter dicta.* ***ANZ Banking*** does not rule out jurisdiction of the ERC from hearing and determining an action even for unfair and unjustified dismissal provided it is founded on the employment contract and pleaded as such. Interestingly, section 4 of the ERA on what an employment grievance means does not distinguish between unfair, unjustified and unlawful dismissals. An employment grievance means *inter alia* a dismissal of a worker.

[20] The appellant has argued that he referred to humiliation, loss of dignity and injury to feeling in his SC because any worker summarily dismissed is entitled to a certificate of service and once the ERC is vested with jurisdiction it could grant any remedial orders as per section 230 of the ERA even for humiliation, loss of dignity and injury to feelings. He submits that unlawful termination was also a breach under the ERA. However, while section 230(2) empowers ERT and ERC to consider whether a worker has an employment grievance by reason of unjustifiable or unfair termination, it does not specifically refer to unlawful termination.

[21] Mr. Ram also argued that his client's SC before the ERC satisfied the jurisdictional requirements laid down by the Court of Appeal in ***ANZ Banking*** i.e. '…..*if a claim for unjustified or unfair dismissal is "founded on a contract of employment", and properly pleaded as such, the ERC has jurisdiction under s 220(1)(h) to hear and determine such a claim.'* and submitted that therefore ***ANZ Banking*** would not help the respondent as the appellant's claim was validly made to ERC and founded and pleaded properly in terms of his contract of employment. Mr. Singh disputed both elements and stated that the appellant's claim was neither founded on contract of employment nor properly pleaded as such.

[22] Thus, to me it appears that the issue of jurisdiction of the ERC in this instance depends on the interpretation and application of ***ANZ Banking*** to the facts of this case which are not the same as in ***ANZ Banking.***

[23] There are several distinguishing features in the appellant's case before this court which sets apart ***ANZ Banking*** from this case. Some of them are:

*(i) Unlike Mr. Sharma in **ANZ Banking** who was employed in an essential service and thus had no option but to file a claim with the ERT within 21 days, the appellant was not employed in an essential service.*

(ii) Mr. Sharma's claim did not make reference at all to an employment contract whereas the appellant's claim was primarily founded (first cause of action) on breach of his employment contract in that he had referred to and pleaded the particulars of the breaches of his employment contract in his statement of claim.

(iii) The appellant has as the second cause of action pleaded unfair and unlawful dismissal causing him humiliation, loss of dignity and injury to his feelings. He has also given particulars of what could be considered as supportive of the second cause of action which, he argues, does not nullify his claim based on breach of contract.

(iv) The appellant has specifically prayed for damages for breach of contract and unfair and unlawful dismissal and separately pleaded damages for humiliation, loss of dignity and injury to his feelings.

*(v) Unlike Sharma in **ANZ Banking**, the appellant did not on his own withdraw his proceedings before the ERT but did so as a settlement by the consent of both parties leading to formal orders by the ERT where the respondent also agreed that the appellant was at liberty to institute proceedings in the ERC.*

*(vi) In **ANZ Banking** the impugned judgment of ERC was on an initial strike out application by ANZ on pleadings alone whereas in the current matter, the case proceeded to full trial and both parties led oral and documentary evidence which could have been adequately considered by the trial judge in determining the question of jurisdiction, if he chose to do so.*

*(vii) The primary focus of **ANZ Banking** was the condition of a worker in essential service which is governed by a different statutory regime under the ERA.*

[24] It is common ground that the appellant was summarily dismissed for gross misconduct and wilful disobedience to orders of his Managers. Summary dismissal for serious misconduct is specifically permitted by the contract of employment under

'Termination' clause. The dismissal letter speaks of gross misconduct and statutorily authorised by section 33 (1)(a) of the ERA. Although, there is no specific contractual term referring to wilful disobedience, it is an implied term of any contract of service. Thus, as per the summary dismissal letter, the appellant is dismissed for acting in violation of both written and implied terms of his contract of employment and for his conduct constituting same grounds for 'statutory dismissal'. His SC refers to both.

[25] In his statement of claim, the appellant has pleaded that the respondent acted in breach of the employment contract by summarily dismissing him for no serious misconduct. There is no direct mention of wilful disobedience but his reference at paragraph 6.3 of the SC that no proper investigation was carried out into the allegation that he had left without permission is directed at the allegation of 'lack of trust and disobeying a lawful order' by failing to seek permission to leave his work area. The summary dismissal letter in its totality makes it clear to me that the appellant's alleged wilful disobedience by leaving his work area without permission is inextricably interwoven with the allegation of serious misconduct connected to the alleged purpose of such trips outside the work area. Thus, it is not possible to separate the two grounds for the appellant's dismissal in a factual context. This means that the respondent also had sufficient notice of the appellant's challenge to the allegation of wilful disobedience as a breach of an implied term of the contract of employment in addition to the issue of serious or gross misconduct. This means that the appellant's claim before court consisted of pleadings both on serious misconduct (breach of an express term of the contract of employment) and disobeying orders of managers (breach of an implied term of the contract of employment) which were the two reasons for summary dismissal.

[26] Therefore, I have no difficulty in holding that the appellant's action was founded on a contract of employment as he has pleaded breaches of employment contract in his statement of claim and applying ***ANZ Banking*** straightforwardly to the facts of this case, to determine that Mansoor J was in error in his decision to dismiss the action, for as per ***ANZ Banking*** if an action is 'founded on a contract of employment', and 'properly pleaded' as such, the ERC has jurisdiction under section 220(1)(h) to hear and determine such a claim.

[27] However, Mr. Singh argued that the appellant has not *properly pleaded* any breach of his employment contract as adverted to in ***ANZ Banking.*** The requirement of '*properly pleaded'* was introduced in ***ANZ Banking*** over and above the statutory requirement of 'founded on an employment contract' under section 220(1)(h) of the ERA. This additional requirement was introduced in the context of ***ANZ Banking*** where the employee Mr. Sharma being an essential service worker had instituted his action in the ERC based on 'unfair dismissal' and his statement of claim had made no mention of contract of employment. What is meant by '*properly pleaded'* is not elaborated in ***ANZ Banking.*** Obviously, it depends on the facts and circumstances pleaded in every case.

[28] However, whether it is '*properly pleaded'* or not in any given action is very much in the eye of the beholder[10]. In my view, if the requirement of '*properly pleaded'* is to be insisted upon, it should not mean anything more than giving sufficient information in the statement of claim which enables the employer to know what breaches of employment contract (express and implied) the employee complains about to found his action on his employment contract. Considering the appellant's pleadings, I am satisfied that the appellant's action is founded on the contract of employment and he has properly pleaded it as such. Nevertheless, it has to be admitted that the appellant's claim had a dual character of a breach of contract and an employment grievance. However, the additional pleadings on unfair and unlawful termination in the appellant's statement of claim would not persuade me to change my view. What is necessary according to ***ANZ Banking*** for the ERC to have jurisdiction is that as a matter of pleading and evidence, the contract should necessarily be central which is what the appellant's claim is about. Even if one disregards the second cause of action in the SC based on unfair and unlawful termination, there is still the first cause of action founded on the employment contract and pleaded as such. Thus, the second cause of action cannot in any way remove the jurisdiction of the ERC.

[29] Mr. Singh also argued that the trial judge has considered the evidence and concluded that the appellant has not given evidence of any term of the employment contract said to have been violated in order to constitute an action for breach of contract in dismissing the appellant's action. Mr. Singh's attempt was to say that the dismissal of the action

[10] See [87] of **FMV v TZB** (SC 72/2019) [2021] NZSC 102

was not based only on pleadings but on evidence as well. It is true that the trial judge has summarised the evidence in four paragraphs but does not seem to have considered the same in relation to the question whether the summary dismissal was justified on the evidence presented particularly with regard to the allegations in the dismissal letter. It was a case of the respondent presenting allegations of gross misconduct and wilful disobedience with oral and documentary material and the appellant challenging them both before and during the trial. The appellant has never admitted those allegations in his replies to the respondent during his employment. I do not think that the trial judge has engaged in an analysis of these two opposing positions and come to a finding. Neither has the judge given reasons or at least adequate reasons why he accepted the respondent's evidence and rejected the appellant's versions of events. I shall deal with this aspect in more detail in the context of duty to give reasons.

[30] In **Abdel Naser Qushair v Naji Raffoul** [2009] NSWCA 329 Sackville AJA (Campbell JA and Bergin CJ in Eq agreeing) it was held at [52]:

> *'[52] The principles relating to the obligation of a trial judge to give adequate reasons for making findings of fact, including findings said to be demeanour based, were summarised by McColl JA (with whom Ipp JA and Bryson AJA agreed) in Pollard v RRR Corporation Pty Ltd [2009] NSWCA 110. Her Honour's statement of the principles was accompanied by detailed citation of authority. The following is a summary, with reference only to some of the leading authorities:*
>
> *(i) The giving of adequate reasons lies at the heart of the judicial process, since a failure to provide sufficient reasons can lead to a real sense of grievance because the losing party cannot understand why he or she lost (at [57]): see Beale v Government Insurance Office of NSW (1997) 48 NSWLR 430, at 442, per Meagher JA.*
>
> *(ii) While lengthy and elaborate reasons are not required, at a minimum the trial judge's reasons should be adequate for the exercise of a facility of appeal, where that facility is available (at [56]): see Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247, at 260, per Kirby P; at 269, per Mahoney JA.*
>
> *(iii) The extent and content of the reasons will depend on the particular case and the issues under consideration, but it is essential to expose the reasoning on a point critical to the contest between the parties (at [58]): see Soulemezis v Dudley, at 259, per Kirby P; at 280, per McHugh JA. This may require the judge to refer to*

evidence which is critical to the proper determination of the issue in dispute (at [62]): Beale v GIO, at 443, per Meagher JA.

(iv) Where credit issues are involved, it is necessary to explain why one witness is preferred to another. Consequently, bald findings on credit, where substantial factual issues have to be addressed, may not comply with the common law duty to give reasons (at [65]): Palmer v Clarke (1989) 19 NSWLR 158, at 170, per Kirby P (with whom Samuels JA agreed).

(v) Where an appellate court concludes that the trial judge has failed to give adequate reasons, the court has a discretion whether or not to direct a new trial. If, despite the inadequate reasons, only one conclusion is available, a new trial may not be necessary (at [67]).'

[31] Harrison AsJ in **Zeait v Insurance Australia Limited t/as NRMA Insurance** [2016] NSWSC 587 said:

'[28] It is trite law that if a court fails to give sufficient reasons for its decision it constitutes an error of law: see Wang v Yamamoto [2015] NSWSC 942; and Jung v Son [1998] NSWCA 120.

[29] In Wang v Yamamoto at [35]-[38], I stated:

"[35] It is not in dispute that a Magistrate is obliged to provide adequate reasons and not to do so constitutes an error of law: see Stoker v Adecco Gemvale Constructions Pty Ltd [2004] NSWCA 449 at [41] per Santow JA.

[36] In Beale v Government Insurance Office of NSW (1997) 48 NSWLR 340 Meagher JA at 422 stated:

> *'A failure to provide sufficient reasons can and often does lead to a real sense of grievance that a party does not know or understand why the decision was made: Re Poyser and Mills Arbitration [1964] 2 QB 467 at 478. This court has previously accepted the proposition that a judge is bound to expose his reasoning in sufficient detail to enable a losing party to understand why it lost.'*

[37] In Stoker, Santow JA at [41] said that "It is sufficient if the reasons adequately reveal the basis of the decision, expressing the specific findings that are critical to the determination of the proceedings." However, "the extent and the content of reasons will depend upon the particular case under consideration and the matters in issue. While a judge is not obliged to spell out every detail of the process of reasoning to a finding, it is essential to

expose the reasons for resolving a point critical to the contest between the parties": see Pollard v RRR Corporation Pty Limited [2009] NSWCA 110, McColl JA at [58] (with whom Ipp JA and Bryson AJA agreed).

[38] In Soulemezis v Dudley (Holdings) Pty Ltd (1987) NSWLR 247, McHugh JA at 281 stated:

> *"In a case where a right of appeal is given only in respect of a question of law, different considerations apply from the case where there is a full appeal. An ultimate finding of fact, which is not subject to appeal and which is in no way dependent upon the application of a legal standard, can be treated less elaborately than an issue involving a question of mixed fact and law. If no right of appeal is given against findings of fact, a failure to state the basis of even a crucial finding of fact, if it involves no legal standard, will only constitute an error of law if the failure can be characterised as a breach of the principle that justice must be seen to be done. If, for example, the only issue before a court is whether the plaintiff sustained injury by falling over, a simple finding that he fell or sustained injury would be enough if the decision simply turned on the plaintiff's credibility. But, if, in addition to the issue of credibility, other matters were relied on as going to the probability or improbability of the plaintiff's case, such a simple finding would not be enough."'*

[32] In **Jung v Son** (supra), Stein JA stated (at 6):

> *"While a judge does not have to state reasons for every aspect of the case, his reasons must be sufficient to satisfy the requirements of Pettitt Dunkley [1971] 1 NSWLR 376. The reasons must be sufficient to enable an appellate tribunal to gain a proper understanding of the basis of the verdict. Not to do so is an error of law (Asprey JA at 382 and Moffitt JA at 388). Failure to give reasons also makes it impossible for an appellate tribunal to give effect to a plaintiff's right of appeal. Issues critical to the case, as these were, must be dealt with by reasons (Samuels JA in Mifsud v Campbell (1991) 21 NSWLR 725 at 728).*
>
> *In short, the judicial officer should make it clear what he or she is deciding and why."*

[33] In the Supreme Court of Canada in **R. v. Sheppard** 2002 SCC 26; [2002] 1 SCR 869 (2002-03-21) Binnie, J said:

> *'5. At the broadest level of accountability, the giving of reasoned judgments is central to the legitimacy of judicial institutions in the eyes of the public. Decisions on individual cases are neither submitted to nor blessed at the*

ballot box. The courts attract public support or criticism at least in part by the quality of their reasons. If unexpressed, the judged are prevented from judging the judges. The question before us is how this broad principle of governance translates into specific rules of appellate review.'

[34] Similar observations have been made by Hon Stock VP in **Hksar v Okafor Peter Eric Nwabunwanne** [2012] 1 HKLRD 1041 (27 January 2012) speaking for the Court of Appeal (Hong Kong) where it was held that *'....where reasons are required, how much needs to be said is as long as a piece of string; ....., sufficient for particular purpose, ... that it depends on all the circumstances..'.*

[35] In **Flannery v Halifax Estate Agencies Ltd** [1999] EWCA Civ J0218-13; [1999] EWCA Civ 811 the Court of Appeal (Civil Division) (England & Wales) (18 February 1999) applied **Eckersley v Binnie** [1998] 18 Con LR 44, CA [1998] and held:

''That today's professional judge owes a general duty to give reasons is clear ... although there are some exceptions ... It is not a useful task to attempt to make absolute rules as to the requirement for the judge to give reasons ... For instance, when the court, in a case without documents, depending on eye-witness accounts, is faced with two irreconcilable accounts, there may be little to say other than that the witnesses for one side were more credible ... But with expert evidence, it should usually be possible to be more explicit in giving reasons ...' (emphasis added)

[36] Moreover, it appears from the impugned judgment that the trial judge having stated the evidence in a nutshell, has directly proceeded to consider the question of jurisdiction and decided to dismiss the action for lack of jurisdiction on pleadings. The question of jurisdiction was not one of the issues on which the case was tried although both counsel had filed written submissions at the invitation of the judge on that. In the end, there were no findings on the factual issues raised by both parties and therefore to suggest that the trial judge's dismissal could be justified on evidence is wrong. There is only an uneventful hint to the appellant's evidence at the last paragraph of the judgment which is just a passing reference.

[37] Therefore, in the light of above legal principles, I think Mr. Singh's submission that the dismissal of the appellant's was based on the trial judge's finding of fact presented at the trial cannot hold much water due to lack of reasons or adequate reasons. This will

have a bearing on the final orders of this court as I would explain later. In any event, should the pleadings be the decisive test when the trail has already proceeded on agreed issues and evidence led? Should not the pleadings take a backseat once issues are raised and evidence led?

[38] Coming back to the main theme of the appeal, Mr. Ram submits that it is wrong to treat an employment grievance as totally unrelated to an action 'founded on an employment contract' or mutually exclusive which will also leave a worker seeking relief for an employment grievance beyond the ERT's $40,000 monetary jurisdiction without a meaningful avenue for redress. This aspect to some extent, of course, has come to the attention in ***ANZ Banking***[11] where the court cited **Eastwood v Magnox & McCabe v Cornwall County Council**[12], a decision of the House of Lords justifying such a monetary cap in the following words:

> *"13. In fixing these limits on the amount of compensatory awards Parliament has expressed its view on how the interests of employers and employees, and the social and economic interests of the country as a whole, are best balanced in cases of unfair dismissal. It is not for the courts to extend further a common law implied term when this would depart significantly from the balance set by the legislature. To treat the statutory code as prescribing a floor and not a ceiling would do just that…"*

[39] In my view, ***Eastwood*** reasoning does not fully dispel Mr. Ram's concerns. Mr. Ram also seems to have a number of reservations regarding the decision in ***ANZ Banking.*** I shall try to articulate some of them in a summary form:

> *(i) An entire class of legitimate employment claims is excluded from adjudication solely due to the form of pleading, rather than substantive merit. This will adversely affect particularly unrepresented workers who lack the skill or means to navigate pleading requirements, and effectively denies access to justice for high-value grievances. Even properly advised litigants are required to re-characterise plainly statutory grievances into common law forms, at the risk of forfeiting relief entirely.*
>
> *(ii) The strict division between statutory grievances and contractual breaches is not supported by the statutory text and fails to recognise the contractual foundation upon which the entire employment relationship*

[11] See paragraphs [59[-[61]
[12] [2004] 3 WLR 322, [2004] UKHL 35 at [13].

is constructed. The distinction between a statutory grievance and contractual breach is conceptually and practically artificial. It is practically impossible to plead an action founded in contract which does not include an element of employment grievance as defined under the legislation.

*(iii) It defies logic to suggest that the "dismissal" referred to in the definition of employment grievance means anything other than dismissal from a contract of service. The conclusion in **ANZ Banking** that because section 220 does not mention employment grievance, the ERC has no jurisdiction to hear an employment grievance is incorrect. An employment grievance includes an action founded in contract. Its definition does not exclude it. If Parliament intended to exclude employment grievances from the ERC's jurisdiction, it was required to say so in clear and express terms.*

(iv) The cap of $40,000 on the Tribunal's jurisdiction under section 211(2)(a) operates as a ceiling on compensation for an "employment grievance" brought before the ERT. It does not put a ceiling on all cases of dismissal from an employment contract.

*(viii) Section 230(1) of the ERA 2007 expressly states that "the **tribunal** or the **court**" may determine whether a worker has an employment grievance and grant one or more statutory remedies. Thus, the ERC, in addition to the ERT, is expressly empowered to hear and determine employment grievances and award appropriate relief. The qualifying words 'not inconsistent with this Act' in section 220(3) are not intended to operate as a backdoor limitation on the jurisdiction of the ERC. The correct interpretation of section 211(2)(a) is that a person with an employment grievance claim of more than $40,000 can take it to the ERC.*

(ix) There is no prohibition in the ERA that absolutely blocks an employment grievance from being brought into the ERC only by reason of section 220 (1) which sets the jurisdiction of the ERC not mentioning employment grievances.

(x) Unless a worker carefully pleads a claim founded on an employment contract without in any way pleading something that might fall within the category of an employment grievance, that worker has no remedy whatsoever if the claim exceeds $40,000.

(xi) Sections 220 (3) expressly confers broad jurisdiction on the Employment Relations Court in that the Court has "full and exclusive jurisdiction to determine [matters]… in a manner not inconsistent with this Act or any other written law or with the employment contract."

(xii) Section 220(4) unambiguously states that "no decision or order of the court, and no proceedings before the court, may be held to be invalid for want of form, or be void or in any way vitiated by reason of an informality or error in form." It prevents the unjust result of dismissing a claim without considering its merits simply because of the label it is given. If the

ERC is functionally seized of the matter and the dispute involves the employment contract, then, unless a specific statutory bar applies (which doesn't), the Court must exercise jurisdiction. ***ANZ Banking*** *did not consider section 220(4) in any substantive way, and to that extent, the argument remains open.*

(xiii) The ERA should be interpreted purposively to fill legislative gaps, guided by the mischief rule[13] *consistent with purposes and objects mentioned in the long title of the ERA and right to access to justice guaranteed in the Constitution.*

[40] Though I am not required to decide on any of the matters above raised given the conclusion already arrived at, I would flag these concerns for future deliberations by the Court of Appeal or the Supreme Court with some of my own observations.

[41] Many countries have enacted legislation to come up with a better balance than common law provides between competing objectives: on the one hand, ensuring employment contracts are successful market transactions, and on the other hand, protecting employees with unequal bargaining power against the natural tendency of such transactions to commodify their labour.[14] Fiji did so by enacting ERA 2007, the long title (general scope of the Act) being the promotion of the welfare and prosperity of all Fiji's people by seeking *inter alia* to regulate employment relations and effective settlement of employment related disputes coupled with complying with international obligations and giving effect to the Constitution and related matters. Section 20 under Bill of Rights of the Constitution sets out matters relating to employment relations including fair employment practices and the right to limit those rights by law providing mechanisms for the resolution of employment disputes and grievances. Right to access to justice is also guaranteed in the Constitution.

[42] In terms of section 4 of the ERA, employment grievance means several things including a dismissal. Dismissal means any termination of employment including summary dismissal (section 33). Employment means the performance by a worker of a contract of service. Contract of service *inter alia* means a written or oral contract, expressed or implied to serve as a worker for a fixed or indefinite period. Employment contract

[13] cf. **Corkery v Carpenter** [1951] 1 KB 102

[14] See Gordon Anderson "Employment Rights in an Era of Individualised Employment" (2007) 38 VUWLR 417.

among other things means an oral or written contract of service between a worker and an employer. Thus, dismissal is termination of employment contract or contract of service. Therefore, employment grievance as result of dismissal cannot be totally separated from the contract of employment. They are inextricably interwoven. Therefore, whether it is possible to compartmentalise jurisdiction of the ERT under section 211(1)(a) for employment grievance and jurisdiction of the ERC under section 220 (1)(h) looks doubtful and such an uncompromising division seems artificial. I think it may be appropriate in future to reconsider the position that the ERC has no jurisdiction to entertain an employment grievance claim *as such* (unless transferred from the Tribunal or on appeal) but it does have jurisdiction to hear claims founded on contract where, as a matter of pleading and evidence, the contract will necessarily be central.

[43] Further, neither section 211 nor section 220 confers exclusive jurisdiction on the ERT and ERC in their respective areas similar to section161 (1) and section 187(1) of the Employment Relations Act in New Zealand. The employment grievance remedies under section 230 of ERA are common to both ERT and ERC. Section 230(1) states *'If the tribunal or* ***the court*** *determines that a worker has an employment grievance….'* . Thus, the ERC too can determine whether a worker has an employment grievance and grant any one or more remedies thereunder. The attention of ***ANZ Banking*** does not seem to have been drawn to this section. If the legislature intended that an employment grievance should not be heard by the ERC, this provision would not be there. In the light of this, the correctness of the answer 'no' to the question whether an employment grievance may be brought under s 220(1)(h) which gives the ERC jurisdiction to "hear and determine an action founded on an employment contract" in ***ANZ Banking*** seems doubtful. I also have some concerns with the statement in ***ANZ Banking*** that for ERC to have jurisdiction to hear claims founded on contract, as a matter of pleading and evidence, the contract should necessarily be central. Because, the contract of employment is central in any employment grievance in the form of dismissal, for without an employment contract there cannot be a dismissal and by extension an employment grievance due to a dismissal.

[44] I do not know whether the introduction of the additional element 'properly pleaded' to section 220(1)(h) in addition to the existing 'founded on an employment contract' is

permissible in terms of rules of interpretation, It seems to unduly restrict the scope of the section particularly in the absence of any guidance as to what is meant by 'properly pleaded'. Perhaps, the idea was to allow the court the discretion to decide that in each and every case.

[45] Moreover, going by the long title and the overall scheme of the ERA, the theme and focus of the ERA is employment relationships and not employment contracts. The emphasis in ERA is not on employment contracts like former Employment Contracts Act in New Zealand. Thus, in my view the provisions in the ERA should be interpreted not in strict contractual terms but in terms of employment relationships. While employment contracts remain important, the focus under ERA should be employment relationships. In my view, this is the approach that should guide the interpretation of sections 211 and 220 of ERA. Further, the language of section 211 and 220 seem to reflect a fact-based, problem-solving approach and not one strictly looking for strict pleadings or causes of action.

[46] ***ANZ Banking*** has adopted the approach of looking at pleadings[15] to determine where jurisdiction lies *i.e.* the ERT or ERC. This will allow parties to plead their way out of or in to the exclusion of jurisdiction of either ERT or ERC. However, the majority in the Supreme Court of New Zealand considering the line between the jurisdiction of the Employment Relations Authority and Employment Court in **FMV v TZB**[16] considered this approach as flawed. The Court also referred to the test applied in ***JP Morgan***[17], the "essential character" test[18], which upholds Parliament's intention by asking whether the substance of the claim falls within the Authority's jurisdiction, not the form but added that ***JP Morgan*** is a difficult decision . This is similar to the position advocated by the appellant in this case. The Supreme Court also disapproved at paragraph [91] the approach of looking to the overall facts rather than the pleadings and tried to distil from

[15] See, for example, **Porteous v The National Mutual Life Assoc of Australasia and AMP Life Ltd** [2018] NZHC 2056 at [17]–[18]; and **Ecostore Co Ltd v Worth** [2017] NZHC 1480, (2017) 15 NZELR 93 at [25].
[16] SC 72/2019) [2021] NZSC 102 - See [90], [91]
[17] **JP Morgan Chase Bank NA v Lewis** [2015] NZCA 255, [2015] 3 NZLR 618
[18] See, for example, **Pain Management Systems (NZ) Ltd v McCallum** HC Christchurch CP72/01, 14 August 2001; **BDM Grange Ltd v Parker** [2006] 1 NZLR 353 (HC).

them the true legal essence of the problem[19]. The majority in the Supreme Court finally came up with their approach as follows:

> *[93]* '……..*The question is simply one of fact. If the controversy arises during the course of the employment relationship and in a work context, then it will be an employment relationship problem….'*

[47] William Young J in his minority judgment identified the majority's approach as a universalist approach (increasing jurisdiction) and as a factual test where the statutory language is applied without gloss[20] and decided to focus on parliamentary contemplation (parliamentary contemplation test) which means that the determination of jurisdiction is based on a legal rather than a factual assessment, and in this sense differs from the approach of the majority.

[48] However, more importantly and closer to the division of jurisdiction between the ERT and ERC under ERA, both the majority and William Young J agreed that there may on occasions be situations where overlapping statutes create the possibility of competing jurisdiction. William Young J's approach suggests that jurisdiction in such a case should most appropriately be determined by reference to the language, scheme and purpose of the enactment. In my view, this approach with relevant inputs from other approaches could be safely applied to decide on a jurisdictional divide when faced with overlapping jurisdictions such as under sections 211 and 220 of the ERA. This may apply within the same statute where there may be occasions on which parallel jurisdictions are intended on two adjudicative bodies, subject only to clearly stated limitations, monetary or otherwise. Section 211 and 220 read with section 230 may be an example of such a scenario as neither section has conferred exclusive jurisdiction on ERT or ERC. Therefore, the question on jurisdiction is to be decided on the language of section 211 and 220 and scheme and purpose of ERA and where necessary calling in aid any other tests as appropriate in any given case.

[49] I think until the decisions in ***Buksh*** and now ***ANZ Banking,*** ERC heard and determined employment grievances in the form of dismissal from employment contracts subject

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[19] See, for example, **Barbara Buckett & Associates t/a Buckett Law v Farani** [2016] NZERA Wellington 110 at [19]–[21

[20] **FMV v TZB** (supra) paragraph [176]

only to the monetary limitation of $40,000.00. If the legislature considered this position unsatisfactory, it would no doubt have moved to amend the ERA accordingly as it brought several amendments to the ERA since 2007. The Parliament up to now has not done so. I think in view of the currently prevailing contests on jurisdiction on employment grievances in the form of termination of employment or dismissal from employment, it is more urgent now than before that Parliament clarify the jurisdictional divide between ERT and ERC for employment grievance matters. One factual scenario can legitimately give rise to more than one category of legal claim, as the Court in ***JP Morgan*** accepted. As suggested by William Young J and agreed to by the majority in ***FMV v TZB***, there can be a default assignment of jurisdiction with a power to transfer appropriate cases between ERT and ERC subject to a monetary limitation. Or the legislature may confer concurrent jurisdiction on employment grievance matters with a monetary cap or other reliefs ERT could grant. Parliament simply could also increase the monetary threshold of the ERT.

[50] Mr. Singh's response to Mr. Ram's criticisms of ***ANZ Banking*** is mainly on the basis that this court is bound by ***ANZ Banking*** in terms of doctrine of binding judicial precedent also known as *stare rationibus decidendis* usually referred to as *stare decisis* which in practice means that when a court makes a decision in a case then any courts of equal or lower status must follow the previous decision if the case before them is similar to the earlier case. Mr.Singh's main plank is based on **Young v Bristol Aeroplane Co Ltd**[21]. The subsequent decisions have clarified and modified the rules laid down in ***Young*** and created some exceptions.

[51] In Fiji's context, the Court of Appeal is generally bound by its own previous decisions subject to exceptions. However, it is the ratio decidendi (which itself is not set in stone but is subject to interpretation) of the previous decision that would be binding on the subsequent decision and not obiter dictum or obiter dicta. The Court of Appeal is not bound to follow its previous decision inconsistent or in conflict with a decision of the Supreme Court or overruled by the Supreme Court directly or impliedly. This rule also has been the subject of some debate[22]. The Court of Appeal can choose between its own

[21] [1944] KB 718
[22] See for example **Miliangos v George Frank (Textiles) Ltd** (No.1) [1976] A.C 443; [1975] 3 WLR 758; [1975] All ER 801

conflicting decisions (if that be the case) subject to some arguable modifications[23]. The Court of Appeal is not bound by its own decision found to have been made *per incuriam*[24] i.e. where another division of the Court reached the previous decision in ignorance or forgetfulness of a decision binding upon it or of an inconsistent statutory provision. One example cited by the appellant is Fiji Supreme Court's decision in **Sun Insurance Company Ltd v Chandra**[25], where it departed from its earlier judgment in **Sun Insurance v Prakash Chand**[26] despite both cases being decided by a bench of equal strength. However, these are decisions of the Supreme Court and not the Court of Appeal where somewhat different principles apply. There are examples of the Court of Appeal where the above principles have been more or less adopted in Fiji in a number of decisions[27].

[52] The Court of Appeal may consider its previous decision or that of the Supreme Court distinguishable on facts or law[28]. **Naba v Tower Insurance (Fiji) Ltd**[29] is not a binding authority to the contrary and in any event it is debatable whether the full Court of Appeal is bound by a single judge decision of the Supreme Court on an interlocutory application. In this matter, I have already demonstrated that ***ANZ Banking*** is clearly distinguishable on facts and in some respects on law and therefore this court is not bound by it in the appeal before us. Therefore, in any case doctrine of *stare decisis* is not applicable in this instance.

[53] We canvassed with Mr. Ram and Mr. Singh the idea whether in the event of this court overturning the impugned judgment, the matter should go back to the ERC for another judge (we were made to understand that Mansoor J is not serving in this jurisdiction any longer) to deliver a judgment and reliefs, if any, on the material available in the ERC record without new evidence being taken only subject to both counsel to make any oral and/or written submissions. Both Mr. Ram and Mr. Singh agreed with that proposition.

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[23] See **Starmark Enterprises Ltd v CPL Distribution Ltd** [2001] EWCA Civ 1252; [2002] 4 All ER 264
[24] **Peter Limb v Jack Removals Ltd and Honess** [1998] 1 WLR 1354; [1998] 2 All ER 513
[25] [2012] FJSC 8; CBV0007.2011 (9 May 2012)
[26] CBV0005 of 2008S (15 October 2010)
[27] For example **Nand v Khan** ABU 0066 of 1995S [1997] FJCA 26 (14 August 1997)
[28] See **R v Parole Board** [1992] 2 WLR 707; [1992] 2 All ER 576 & **R v Spenser** [1985] All ER 673
[29] 2011] FJSC 9 CBV 0002 of 2011 (12 May 2011)

[54] Therefore, for the reasons given above, the judgment of Mansoor J dated 01 December 2023 is set aside subject to further orders for costs and otherwise as below.

Qetaki, RJA

[55] I have read and considered the judgment of Prematilaka, RJA in draft and I agree with it, the reasons and orders.

Dobson, JA

[56] I agree with the reasons and orders.

Orders of the Court:

1. *Judgment of the Employment Relations Court by Mansoor J dated 01 December 2023 is set aside.*
2. *Employment Relations Court is directed to deliver a judgment de novo only on the material available to Mansoor J in Employment Relations Court record within 06 months from today.*
3. *Counsel for the appellant and respondent are allowed to make oral and/or written submissions if they so wish or as determined by the Judge.*
4. *Respondent is directed to pay $5,000.00 as costs of this appeal to the appellant within 21 days hereof.*

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

The Hon. Mr. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

The Hon. Mr. Justice Robert Dobson
JUSTICE OF APPEAL

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