

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

**CIVIL APPEAL NO. ABU 012 of 2021**  
**[In the Lautoka High Court No. HBC 232 of 2017]**

**BETWEEN** : **NALESH NAND** of Yalalevu, Ba.

**Appellant**

**AND** : **FOUR ELECTRICAL AND GENERAL CONTRACTORS LIMITED** a limited liability company having its registered office at Yalalevu, Ba.

**Respondent**

**Coram** : **Prematilaka, RJA**

**Counsel** : **Appellant in person (now deceased)**  
**Ms. D. Pratap for the Respondent**

**Date of Hearing** : **01 December 2025**

**Date of Ruling** : **10 December 2025**

## **RULING**

[1] The appellant (now deceased) in person filed an appeal against the High Court judgment delivered on 05 February 2021<sup>1</sup> where the High Court dismissed the appeal without costs. The High Court judgment was in respect of an appeal lodged by the appellant against the

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<sup>1</sup> **Nand v Four R Electrical & General Contractors Ltd** [2021] FJHC 66; HBC232.2017 (5 February 2021)

Master granting an application pursuant to section 169 of the Land Transfer Act, Cap 131, brought by the respondent on 21 June 2019<sup>2</sup>. The Master had also made an order for vacant possession.

[2] The security for costs has been determined and duly paid by the appellant. On the first call date *i.e.* 07 March 2025 the respondent was represented but the appellant was neither present nor represented. It was revealed that the appellant had passed away on 04 February 2023 and his wife had filed the death certificate. Prior to his death, the appellant had obtained a certified copy of the appeal record and even filed written submissions and served the same on the respondent. However, it was not clear whether the appellant had served a copy of the certified record on the respondent. The court directed the CA Registry to serve notice on the deceased appellant's wife and direct her to be present in court or be represented to inform whether she intends to proceed with the appeal.

[3] Ms. Y. Nand, the wife of the deceased appeared in court on 24 March 2025 and informed that she intended to proceed with the appeal but requested time to retain a lawyer to effect substitution. Accordingly, she was given time till 23 April 2025.

[4] On 23 April 2025, Ms. Nand was absent/unrepresented and it was found that she had not taken any steps to cause a proper substitution to prosecute the appeal. The respondent's counsel moved that the appeal be dismissed for non-prosecution. The court directed the CA Registry to communicate to Ms. Nand the summary of the proceedings on 23 April 2025 and the next date which was fixed as 12 June 2025. The CA Registry by way of an email on 09 May 2025 to Ms. Nand has duly complied with the said directives.

[5] When the matter was mentioned on 12 June 2025, again Ms. Nand was absent/unrepresented but she had communicated to the CA Registry by email on the previous day from Australia that lawyer/s she retained in Fiji had declined to attend to the matter of substitution and she was unable to travel to Fiji as she and her children were on

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<sup>2</sup> **Four R Electrical & General Contractors Ltd v Nand** [2019] FJHC 609; HBC232.2017 (21 June 2019)

bridging visa A after the expiry of her student visa on 30 May 2025 - where she had applied for an extension. The respondent again moved for a dismissal of the appeal for non-prosecution with costs. This court directed the CA Registry to inform Ms. Nand that unless she takes steps to have the substitution effected before the next date, this court will have no other option but to dismiss the appeal for non-prosecution. The court fixed the matter to be mentioned on 01 December 2025. The CA Registry by an email addressed to Ms. Nand on 13 June 2025 has duly complied with the said directives.

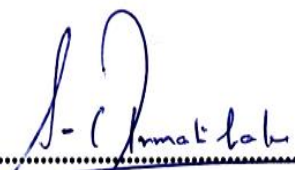
[6] Ms. Nand was again absent and unrepresented in court on 01 December 2025. No substitution has been effected either. She has not communicated with the CA Registry since 11 June 2025. The respondent moves that the appeal be dismissed for non-prosecution.

[7] Irrespective of Ms. Chand's personal difficulties, I think the circumstances above enumerated constitute non-prosecution of the appeal and is liable to be dismissed without costs. This court cannot grant further time for steps as *inter alia* Ms. Nand has failed to communicate with the CA Registry for 06 months.

**Orders of the Court:**

1. Appeal is dismissed in terms of section 20(1) (g) of the Court of Appeal Act.
2. No costs.



  
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**Hon. Mr. Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**

**Solicitors:**

Appellant in person (deceased)  
Krishna & Co for the Respondent