

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

**CIVIL APPEAL NO. ABU 052 of 2024**  
**[In the High Court at Lautoka Case No. HBC 106 of 2016]**

**BETWEEN** : **SHAVEENA KUMARI** of Jinnu Road, Lautoka, Domestic Duties.

***Appellant/  
Original Plaintiff***

**AND** : **IFTIKAR IQBAL KHAN** of Lautoka, Barrister & Solicitor,  
operating as **IQBAL KHAN & ASSOCIATES**, Barristers &  
Solicitor, Lautoka.

***1<sup>st</sup> Respondent/  
Original 1<sup>st</sup> Defendant***

**AND** : **MUSTAFA NEWAZ KHAN** of Lautoka, Businessman as the  
Trustee of the **ESTATE OF SHAH NEWAZ KHAN** of Lautoka,  
Senior Law Clerk to **IQBAL KHAN & ASSOCIATES**, Barrister  
& Solicitors, Lautoka by virtue of the Probate.

***2<sup>nd</sup> Respondent/  
Original 2<sup>nd</sup> Defendant***

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

**Counsel** : **Ms. R. Prasad for the Appellant**  
**Ms. R. Fa for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents**

**Date of Mention** : **24 February 2025**

**Date of Ruling** : **17 March 2025**

## **RULING**

[1] The appellant had filed a notice of appeal and grounds of appeal against the Ruling of the High Court on 30 April 2024<sup>1</sup> (the respondents had not appealed the Ruling of the High

---

<sup>1</sup> **Kumari v Khan** [2024] FJHC 276; HBC106.2016 (30 April 2024)

Court on 30 April 2024) along with summons (supported by an affidavit by the appellant) seeking an order to pay to the appellant the sum of \$61,469.76 pending the determination of the appeal. The 01<sup>st</sup> respondent had opposed the summons by an affidavit in opposition followed by an affidavit in reply by the appellant. After both parties had complied with directives for written submission by 07 February 2025, this court was ready to fix a date for the hearing into the appellant's summons on 17 February 2025. On that day Ms. Fa initially stated that Mr. Iqbal Khan wanted to appear for respondents and could not take a hearing date till July this year or could take a date after July 2025. Ms. Prasad insisted that the matter be taken up on an early date as the appellant was in a critical condition and in need of funds for medical and nursing care. When the matter was called again later on the same day, Mr. Fa said that Mr. Khan could not take a date from 28 February to 20 May 2025. The court informed both counsel that it could accommodate any date from 18<sup>th</sup> to 21<sup>st</sup> February 2025. However, no date could be agreed upon between the parties and I informed the parties that this court could deliver a ruling on the written submissions filed as well. Ms. Fa could not agree to that option either without instructions from Mr. Khan. Thus, the matter was adjourned to 19 February 2025 at the request of Ms. Fa to have further consultations with Mr. Khan and the counsel for the appellant was directed to submit adequate proof of the appellant's conditions by way of a medical report.

[2] On 19 February 2025, the counsel for the appellant submitted four photographs of the appellant and the appellant's discharge summary from hospital. She had suffered from septicemia. She looks bed-ridden, her whole body puffed, legs massively swollen and her left big toe already amputated. Undoubtedly, she seems to be in need of constant medical and nursing care. Copies of these documents were given to Ms. Fa too. Ms. Fa indicated that Mr. Khan could take a date in April but Ms. Prasad insisted on a date in February or March (which was not acceptable to Mr. Khan) for the inquiry as the appellant was urgently in need of funds due to her medical condition. This court gave a final date (24 February 2025) for the parties to agree or informed them that given the appellant's condition this court would consider giving a ruling in Chambers based on all the papers and written submissions filed, if an early date could not be agreed upon.

- [3] On 24 February 2025, Ms. Fa indicated that Mr. I. Khan could take 03 April 2025 but Ms. Prasad wanted a date in March. As no agreement ensued between the counsels for both parties, the court indicated to both counsel that it would deliver a ruling into the appellant's summons in due course with notice to both parties.
- [4] In the meantime, security for cost for the appeal had been fixed and paid by the appellant and the appellant's solicitors had been directed to take steps in terms of the Court of Appeal Act and Practice Directions to have the appeal ready for the full court hearing in due course.
- [5] The appellant had brought an action (HBC106 of 2016) against the respondents seeking among other things recovery of a sum of money \$37,000.00, general and pecuniary damages and costs. Her claim was based on fraud, false misrepresentation and negligence and professional misconduct.
- [6] Apparently, the plaintiff was a client of Iqbal Khan & Associates. She had entered into an arrangement to buy some land from another party for a consideration of \$12,000. Iqbal Khan & Associates was the common solicitor. However, the sale did not proceed because the vendor decided to pull out of the deal. Mr. Iqbal Khan's chief clerk Newaz knew of this. However, Newaz did not tell the plaintiff until after some time had passed. Instead, Newaz kept demanding payment from the plaintiff on the pretext that the agreement was still on foot and that the vendor had decided to increase the purchase price. Overall, the plaintiff paid a total of \$37,000 to Newaz at the Office of Iqbal Khan & Associates. She had filed the claim in order to recover the \$37,000 which she had paid to Newaz.
- [7] The respondents in their joint statement of defence had denied the appellant's claim and stated that she never paid that amount of money into the first respondent's Trust Account but the appellant had intended an illegal dealing with the seller and the second respondent refused to entertain her request and advised the appellant that such a dealing was illegal and as such no such transaction would be not be entertained by their law firm.

[8] The first respondent, Mr. Iftikar Iqbal Ahmed Khan is a well-known practicing lawyer based in Lautoka operating as Iqbal Khan & Associates while the second respondent Mustaffa Newaz Khan was Mr. Iqbal Khan's chief clerk. Newaz had passed away on 15 November 2017 sometime after giving evidence at the trial of this case. Substitution had been duly effected.

[9] One day trial had been concluded on 31 July 2017. On 03 April 2018, the High Court judge Justice Ajmeer entered judgment<sup>2</sup> in favour of the appellant as follows:

1. *The defendants jointly and severally refund the sum of \$37,000.00 to the plaintiff.*
2. *The defendants jointly and severally pay general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00, totally \$50,000.00 to the plaintiff.*
3. *The defendants jointly and severally pay costs on an indemnity (full solicitor-client) basis to be assessed before the Master, if not agreed.*

[10] The respondents had appealed to the Court of Appeal (ABU 0031 of 2018) which delivered the judgment on 29 November 2019<sup>3</sup> with the following orders:

1. *Appeal is partly allowed.*
2. *Defendants to jointly and severally refund the sum of \$37,000.00 to the plaintiff/respondent.*
3. *First defendant to pay FJ\$10,000 as general damages to the plaintiff.*
4. *2<sup>nd</sup> defendant to pay general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00 i.e. a total of \$50,000.00 to the Plaintiff.*
5. *The defendants to jointly and severally pay costs of this court in a sum of \$5,000.00 and of the High Court.*

[11] On a reading of the judgments of Ajmeer, J and that of the Court of Appeal, I get the feeling that there is some lack of clarity and inconsistency in the orders made by the Court of Appeal. Ajmeer, J awarded general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00 totally \$50,000.00 against both respondents jointly and severally. They seem have challenged both. The Court of Appeal at paragraphs [29] and [30] of the judgment

---

<sup>2</sup> **Kumari v Khan** [2018] FJHC 284; HBC106.2016 (3 April 2018)

<sup>3</sup> **Khan v Kumari** [2019] FJCA 248; ABU031.2018 (29 November 2019)

had dealt with punitive damages of \$30,000.00 (though not used the word ‘punitive’) and reduced punitive damages against the 01<sup>st</sup> respondent to \$10,000.00 while imposing \$30,000.00 as punitive damages (just as Ajmeer, J did) on the 02<sup>nd</sup> respondent. At paragraph [31] the Court of Appeal set aside the general damages of \$10,000.00 ordered against the 01<sup>st</sup> respondent. The Court of Appeal had not disturbed the general damages of \$20,000.00 ordered against the 02<sup>nd</sup> respondent. However, in its orders, the Court of Appeal had directed the 01<sup>st</sup> respondent pay \$10,000.00 as general damages (not as punitive damage) while making the 02<sup>nd</sup> respondent to pay general damages of \$20,000.00 and punitive damages of \$30,000.00.

[12] The Supreme Court in its judgment (which I shall refer to below where the only appellant was the 01<sup>st</sup> respondent) at paragraph [58], having understood the Court of Appeal to have at paragraphs [29] and [30] set aside the award of punitive damages in the sum of \$30,000.00 against the 01<sup>st</sup> respondent and substituted for it punitive damages of \$10,000.00, then proceeded to set aside the punitive damages of \$10,000.00 as well against the 01<sup>st</sup> respondent. The Supreme Court also confirmed that despite wrongly recorded in the Court of Appeal order no. 3 as general damages, the \$10,000.00 therein should be the reference to punitive damages (which the Supreme Court set aside against the 01<sup>st</sup> respondent) and confirmed that general damages of \$10,000.00 awarded by Ajmeer, J against the 01<sup>st</sup> respondent had been set aside previously at paragraph [31] by the Court of Appeal. However, Keith, J in the Supreme Court at paragraph [60] had mentioned that in addition to the cost of \$5,000.00 of the appeal which the court was ordering, the 01<sup>st</sup> respondent had agreed to pay \$3,500.00 as the price for the appellant agreeing to an adjournment of the hearing from 11 to 24 October 2022 which, however, is not mentioned in the orders of the Supreme Court.

[13] Earlier, upon an application by the respondents seeking an interim stay of execution of the High Court judgment pending their appeal in the Court of Appeal, Ajmeer, J had by his ruling on 30 November 2018, granted the stay on the condition that the respondents deposit the judgment sum of \$87,000.00 into court. It appears that this amount had been duly deposited by the 01<sup>st</sup> respondent and got the execution of the HC judgment stayed.

[14] The 01<sup>st</sup> respondent (as the sole petitioner) appealed to the Supreme Court against the judgment of the Court of Appeal and the Supreme Court delivered the judgment on 28 October 2022 (referred to earlier) and ordered as follows.

1. *Leave to the Petitioner to appeal, limited to ground 21 in the Petition for leave to appeal.*
2. *The award of punitive damages against the Petitioner be set aside.*
3. *Apart from (2), the appeal be dismissed,*
4. *The Petitioner must pay the Respondent the sum of \$5,000 towards her costs of the appeal.*

[15] Thus, the liability of the respondents upon the judgment of Ajmeer, J in the aftermath of the judgments in the Court of Appeal and the Supreme Court could be summarized as follows:

- (A) Respondents are *jointly and severally* liable to pay \$37,000.00 to the appellant.
- (B) 02<sup>nd</sup> respondent is liable to pay general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00 *i.e.* a total of \$50,000.00 to the appellant.
- (D) The respondents are *jointly and severally* liable pay costs of the Court of Appeal in a sum of \$5,000.00.
- (E) The 01<sup>st</sup> respondent is liable to pay the appellant a sum of \$5,000 towards her costs of the Supreme Court appeal and \$3500.00 as the price for the appellant agreeing to an adjournment of the hearing from 11 to 24 October 2022.
- (F) The respondents are *jointly and severally* liable to pay costs on an indemnity (full solicitor- client) basis to be assessed before the Master, if not agreed.

[16] Therefore, the 01<sup>st</sup> respondent's liability consists of \$37,000.00 – not including the post judgment interest (*jointly and severally* – monies had and received), \$5,000.00 (*jointly and severally* - cost of Court of Appeal), \$5,000.00 (cost of Supreme Court), \$3,500.00 (as agreed by the 01<sup>st</sup> respondent for the adjournment in the Supreme Court) and such sum of money on an indemnity basis (*jointly and severally*) as determined by the Master, if not agreed.

[17] The 02<sup>nd</sup> respondent's liability consists of \$37,000.00 – not including the post judgment interest (*jointly and severally* – monies had and received), \$5,000.00 (*jointly and severally* - cost of Court of Appeal), general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00 (*i.e.* a total of \$50,000.00) and such sum of money on an indemnity basis (*jointly and severally*) as determined by the Master, if not agreed.

[18] The appellant had filed summons for assessment of indemnity cost and the summons for Payment Out (*i.e.* release of funds) a sum of \$61,469.76 out of already deposited \$87000.00 and Master Azhar (now Azhar, J) on 30 November 2022 in his ruling on Payment Out, had ordered the High Court registry to release the sum of \$67,000.00 from the deposited amount of \$87,000.00 to the appellant's Solicitors Trust Account. Master Azhar also held that there was no need to assess the indemnity cost (effectively dismissing the summons for assessment of indemnity cost) and ordered the balance of \$20,000.00 to be released to the respondents.

[19] On 01 December 2022, the respondents appealed the Master's decision to the High Court and also applied for a stay of execution of the Master's decision (which was granted pending appeal). On 05 December 2022, the appellant also appealed the Master's decision and moved for restraining orders on the 01<sup>st</sup> respondent preventing him from uplifting \$20,000.00 from the High Court pending the determination of the appeal. Upon hearing both appeals, on 30 April 2024, Justice Anare Tuilevuka delivered the Ruling<sup>4</sup> into both appeals. The judge set aside the Master's orders and replaced them with the following orders.

1. *The Registry is not to release the sum of \$87,000 until further Orders.*
2. *The Plaintiff's application for assessment of indemnity costs is to be restored and re-issued with a returnable date before the Master.*
3. *Deductions against the \$87,000 are to be made in accordance with the scheme in paragraph 23 above, after indemnity costs are assessed if not agreed.*
4. *Parties to bear their own costs.*
5. *Parties at liberty to apply.*
6. *The plaintiff is at liberty to pursue enforcement against the estate of Newaz for the \$20,000 general damages plus 4% post judgment interest.*

---

<sup>4</sup> **Kumari v Khan** [2024] FJHC 276; HBC106.2016 (30 April 2024)

[20] The appellant had filed summons for correction of certain orders of Tuilevuka, J who, however, dismissed the summons and decided that the proper way is to go to the Court of Appeal. The appellant then lodged the current appeal in the Court of Appeal against the Ruling of Justice Anare Tuilevuka. The respondents have not challenged the Ruling of Justice Tuilevuka.

[21] Justice Tuilevuka had determined the liabilities of the respondents as follows:

‘Iqbal Khan (01<sup>st</sup> respondent) is liable for the following:

\$87 , 000		
Less	\$37,000 - 00	
Less	\$10,000 - 00	General Damages
Less	\$ 5,000 - 00	FCA Costs
Less	\$ 5,000 - 00	FSC Costs
Less	4% post judgment interest on \$47,000 - 00	On \$47,000 (\$37,000 plus \$10,000)
Less	Indemnity costs	(at High Court) to be taxed if not agreed

Subject to paragraph 20 above, Newaz<sup>5</sup> (02<sup>nd</sup> respondent) is liable for the following:

- (i) \$20,000 in general damages imposed by the FCA and left undisturbed by the Supreme Court.
- (ii) 4% post judgment interest on \$20,000 (General Damages imposed by FCA).

[22] In my view, Justice Tuilevuka’s above calculations have a few errors. Firstly, the 01<sup>st</sup> respondent is not liable to pay any general damages and 4% post judgment interest should be only on \$37,000.00. Further, Justice Tuilevuka has not taken into account \$3500.00 (as agreed by the 01<sup>st</sup> respondent to be paid to the appellant for the adjournment in the Supreme

<sup>5</sup> Kumari v Khan [2024] FJHC 276; HBC106.2016 (30 April 2024)



Court). I must state that my observations here must be read subject to paragraph [16] above. Even with regard to the 02<sup>nd</sup> respondent's liability, Justice Tuilevuka's calculations should be subject to what is stated paragraph [17] above. However, what I said on the liabilities of the 01<sup>st</sup> and 02<sup>nd</sup> respondents at paragraphs [16] and [17] is obviously based on the judgment of Ajmeer, J and the conclusion of appeal procedure therein in the Court of Appeal and the Supreme Court. They are not intended to affect the final judgment of the Court of Appeal of on the appellant's appeal against Justice Tuilevuka's ruling, which is yet to be heard.

[23] Nevertheless, as far as the present Pay Out application for \$61,469.76 out of \$87,000.00 already deposited in the High Court is concerned, the outcome of the current appeal has little impact as the liabilities of both respondents regarding \$37,000.00 (*jointly and severally* – monies had and received), \$5,000.00 (*jointly and severally* - cost of Court of Appeal), of the 01<sup>st</sup> respondent regarding \$5,000.00 (cost of Supreme Court), \$3,500.00 (as agreed by the 01<sup>st</sup> respondent for the adjournment in the Supreme Court) and of the 02<sup>nd</sup> respondent regarding general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00 (*i.e.* a total of \$50,000.00), have already been quantified and finally determined which would collectively far exceed the deposited amount even without what is yet to be determined *i.e.* the sum of money on an indemnity basis (*jointly and severally*) as determined by the Master, if not agreed and the post judgment interest for nearly 10 years at the rate of 4%.

[24] There is already \$87,000.00 deposited in the High Court supposedly by the 01<sup>st</sup> respondent as a condition to stay execution of the judgment of Ajmeer, J, which, of course, benefited both respondents and therefore should be deemed to have been made on behalf of both respondents. It does not also matter who deposited that amount as Justice Tuilevuka correctly observed:

*'..... the principle of joint and several liability means firstly that the defendants who are named will share in the responsibility for settling the award and that the plaintiff may recover from all or any one or two of them a part or the whole sum because each named defendant is still independently liable for the full sum'* – vide paragraph [17] of the Ruling

[25] Therefore, if one were to look at the liabilities of both respondents as highlighted at paragraphs [16] and [17] above, I think the appellant's summons for an order to pay \$61,469.76 out of \$87,000.00 could be safely allowed. It would not cause any irreparable or irreversible prejudice to the respondents. On the other hand, given the unfortunate condition of the appellant, I am convinced that paying out that amount is urgently required in the interest of justice. She is yet to enjoy the fruits of her judgment or any part of it since April 2018 even after the Supreme Court reached a finality as far as the liabilities of the respondents were concerned.

[26] The 02<sup>nd</sup> respondent has not resisted the appellant's summons for a paying out order but the 01<sup>st</sup> respondent has done so.

[27] Under section 20(1)(k) of the Court of Appeal Act, a single judge of the Court of Appeal has the power to:

*"generally, to hear any application, make any order, or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal."*

[28] This provision grants a single appellate judge jurisdiction to issue procedural or interim orders necessary to facilitate the appeal process, provided such orders do not determine the substantive appeal itself.

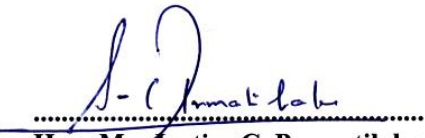
[29] A Pay-Out Order generally involves the release of funds held by the court to a designated or specific party. If the order is incidental and necessary for managing the appeal process (e.g., securing funds for legal costs, urgent medical requirements or ensuring compliance with a prior ruling etc.), a single judge has the jurisdiction to grant it under section 20(1)(k). This would be consistent with a single judge's authority to make orders incidental to an appeal. However, if granting the order would effectively decide the main issue in the appeal (e.g., releasing disputed funds before the final determination of ownership) or encroach upon decisions reserved for the full court or involve deciding the appeal's merits, then a single judge cannot issue such an order.

[30] I am convinced that by allowing the orders sought by the appellant in her summons for Pay-Out, I am only making an order incidental to the existing appeal the outcome of which is not going to decide the respective liabilities of the respondents as they have been already thoroughly scrutinized by the Court of Appeal and the Supreme Court and finally determined. My order relates to an amount which is well within the quantum of liability of the respondents already so determined. No subsequent proceedings in any court including this court in the current appeal could change what the Court of Appeal and the Supreme Court have already decided. The only liability yet to be determined in respect of both respondents by the Master is the sum of money on an indemnity basis (jointly and severally), if not agreed coupled with the post judgment interest for nearly 10 years at the rate of 4%. Therefore, my orders do not seek to preempt any decision by the full court into the appellant's current appeal.

**Orders of the Court:**

1. *The High Court at Lautoka is hereby directed to forthwith pay unto the appellant's Solicitors Trust Account a sum of \$61,469.76 out of \$87,000.00 already deposited in the High Court.*
2. *The appellant's Solicitors are directed to ensure that the money so released is used for medical and nursing care of the appellant or anything incidental thereto and nothing else.*
3. *The 01<sup>st</sup> respondent is directed to pay \$2,500.00 as cost of these proceedings to the appellant through her Solicitors within 21 days from this Ruling.*



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

**Solicitors:**

Fazilat Shah Legal for the Appellant  
Messrs Iqbal Khan & Associates for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents