

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

CIVIL APPEAL NO. ABU 011 of 2023
[In the High Court at Suva Case No. HBC 268 of 2008]

BETWEEN : **INTERIOZ & EXTERIOZ ENGINEERING AND CIVIL ENGINEERING WORKS LIMITED** a limited liability company having its registered office at 181 Mead Road, Nabua, Suva in Fiji.

1st Appellant
[Original 1st Plaintiff]

KALPESH KUMAR PATEL (F/N Rameshbhai Patel) of Raiwaqa, Suva, Fiji. Businessman suing in his capacity as minority shareholder of the First Plaintiff.

2nd Appellant
[Original 2nd Plaintiff]

AND : **ABDUL ALEEM** (F/N Abdul Saleem) of Suva, Fiji Director and Shareholder of the First Plaintiff.

1st Respondent
[Original 1st Defendant]

ABDUL SHAMEEM (F/N Abdul Saleem) of Suva, Fiji Director and Shareholder of the First Plaintiff.

2nd Respondent
[Original 2nd Defendant]

Coram : **Prematilaka, RJA**

Counsel : **Ms. Chowdhury for the Appellant**
Mr. A. K. Singh for the Respondent

Date of Hearing : **20 March 2025**

Date of Ruling : **17 April 2025**

RULING

- [1] The appellants on 13 March 2023 had appealed against the decision of the High Court on 16 February 2023 striking out the appellants' action. Summons for security for cost had been determined and paid by the appellants. The main appeal has not progressed since then. On an interim application, this court had already granted an interim order (not an interim injunction) on 14 August 2023 in terms of section 20(1)(e) read with (k) as prayed for by the appellants in summons dated 09 May 2023¹.
- [2] Thereafter, the respondents have made an application by summons on 03 October 2023 accompanied by an affidavit seeking an order to have the notice of appeal struck out *inter alia* on the basis that the 01st appellant had been deregistered and the 02nd appellant had no *locus standi* to pursue this appeal. The respondents argue that if they succeed in these arguments, this appeal cannot proceed and should be struck out.
- [3] The respondents submit that the 01st appellant had got deregistered for not having registered itself in terms of section 759(1) of the Companies Act 2015² introduced by Companies (Budget Amendment) Act 2019 which came into force with effect from 15 January 2020. Section 759(1) states:

'Failure to reregister

759.—(1) If a company fails to apply for reregistration of the company within the period specified in section 753(1) or within the period extended by the Minister in section 755(3), as the case may be, the company is deemed to have been deregistered on the day after the date appointed by the Minister by notice in the Gazette under section 753(1).

¹ **Interioz & Exterioz Engineering and Civil Works Ltd v Aleem** [2023] FJCA 177; ABU0011.2023 (14 August 2023)

² No 3 of 2015 - commenced on 01 January 2016 except section 713 which commenced on 23 December 2015.

- (2) Notwithstanding the provisions of this Act, if a company has lodged an application for an extension before the expiration of the period specified in section 753(1) and, after the expiration of the period specified in section 753(1), has still not received the decision of the Minister, the registration of the company is deemed to continue until such time as the company receives the decision of the Minister.
- (3) If the Registrar refuses to reregister a company, the Registrar must deregister the company.

[4] Section 753(1) states that:

‘753.—(1) Notwithstanding other sections of this Act or provisions of any other written law, a company formed and registered under this Act upon the commencement of this section must, on or before the date appointed by the Minister by notice in the Gazette, apply for reregistration of the company under section 754.

(2) Notwithstanding subsection (1), a company formed and registered under this Act on or after the date appointed by the Minister by notice in the Gazette is not required to, and must not, apply for reregistration of the company under section 754.

(3) A company may only be reregistered if the company has paid the prescribed registration fee for each year as required under section 24, including any applicable late fee

[5] Section 754 (1) and (2) specify as to how a company’s reregistration had to be done. The Minister had extended the final date for reregistration of a company from time to time until 31 December 2021 by Gazette several notifications.

[6] On the other hand, the appellants argue that the 01st appellant was incorporated on 20 May 2004 under the now repealed Companies Act and therefore, arguably is not ‘... a company formed and registered under this Act..’ in terms of section 753 (1) of the Companies Act 2015. The contention is that therefore, they need not have applied for reregistration of the appellant under the new Companies Act. However, though both counsel have failed to mention, section 724(1) of the Companies Act 2015 under Transitional Provisions betrays

that argument according to which an existing company will be deemed to have been registered under the Companies Act 2015. Therefore, by virtue of section 724(1), the appellant came to be regarded a company as if it was a company registered under the new Act and thus, the appellant was deemed a company registered under the Companies Act 2015 and had to be reregistered under section 753(1). Section 725 sets out the application of Companies Act 2015 to companies formed and registered under the Repealed Acts. Therefore, all existing companies must have applied for reregistration under the Companies Act 2015 except those registered under the new Act on or after the date appointed by the Minister for reregistration [vide section 753(2)].

- [7] The letter issued on 21 March 2025 by the Acting Registrar of Companies, which the appellant does not dispute, clearly shows that the 01st appellant had been deemed deregistered as it was not registered by 31 December 2021 pursuant to section 759(3) of the Companies Act 2015. In other words, the 01st appellant had been deregistered with effect from 01 January 2022. The appellant's solicitors too in its letter dated 02 October 2024 more or less admits as much.
- [8] The appellant had filed this action in the High Court in 2008 and therefore, by that time the 01st appellant had already been deregistered and had not been a legal person who could sue and be sued in a court of law. In all the circumstances, I discussed above, I tend to agree with the respondent's position.
- [9] The respondent's second contention is that the 02nd appellant had ceased to be a director of the 01st appellant since April 2008 and had no *locus standi* to maintain this action. In any event, the respondent argues that when the 01st appellant company ceased to exist, the 02nd appellant could no longer be a director thereof and swore an affidavit on behalf of the 01st appellant as having been authorized by the latter. The respondent further submits that the 02nd appellant who was admittedly a minority shareholder of the 01st appellant could not have brought proceedings on behalf of the 01st appellant as no leave had been obtained in terms of section 180 of the Companies Act.

[10] While I tend to agree with the respondent's arguments on the 02nd appellant's *locus standi*, I do not think that section 180 applies to the 02nd appellant although he was a minority shareholder, for in this case he was not suing on behalf of the 01st appellant as the 01st appellant itself was a plaintiff. This is not a situation where the 01st appellant has refused to file action or the 02nd appellant was seeking to intervene in proceedings filed by the 01st appellant. Both the 01st appellant and the 02nd appellant were plaintiffs in the action. Neither do I agree that a director of a company needs specific authorization to file an affidavit on behalf of the company.

[11] Despite my observations in favour of the respondent's arguments, the crucial question that remains to be answered is whether I as a single has the power to strike out the appeal in terms of section 20(1) of the Court of Appeal Act. In **Santok Investment v Abbco Builders Pte Ltd** [2022] FJCA 191; ABU0044.2021 (30 December 2022) Hon. Justice Almeida Guneratne, P said:

'The Issue re: whether a single judge could strike out an appeal formally before the full Court (after even security for costs to appeal has been paid – the jurisdiction of a single Judge)

[17] That was an issue raised by this Court ex mere motu.

*[18] I am grateful to all Counsel who obliged Court in making submissions thereon as well, the said issue being as to whether a single judge could assume jurisdiction to **strike out "an appeal"** formally before the full Court.*

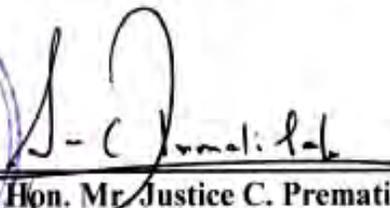
*[19] In that regard I have penned some rulings in the past, the Chief among them, (in my assessment) being the case of **PA Lal Coachwork v. Mohini Lata** (ABU 0002 of 2021, 17th December, 2021). **I hold the view that, a single judge is bereft of such jurisdiction.** In as much as, the issue calls for an interpretation of Section 20(1) of the Act, particularly Section 20(1)(k) thereof, **I would request the full Court to express its views thereon when determining the substantive appeal.***

[12] I agree with the observations of Justice Almeida Guneratne, P.

Orders of the Court:

1. *The respondents' summons to have the notice of appeal/appeal struck out is dismissed.*
2. *The appellant is directed to act expeditiously to have the appeal ready for hearing before the Full Court in terms of the Court of Appeal Act and Practice Directions.*
3. *No costs.*




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

Solicitors:

Neel Shivam for the Appellant
Ak Lawyers for the Respondent