

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

CIVIL APPEAL NO. ABU 084 of 2019
[In the Suva High Court Case No. HBC 200 of 2013]

BETWEEN : **BHIKABHAI BHINDI**

Appellant

AND : **DESMUKHBHAI BHINDI**

Respondent

Coram : **Prematilaka, RJA**
Andrews, JA
Clark, JA

Counsel : **Ms. N. Pratap for Appellant**
Ms. N. Choo and Ms. N. Nandani Narayan for Respondent

Date of Hearing : **04 February 2026**

Date of Judgment : **27 February 2026**

JUDGMENT

Prematilaka RJA

[1] The subject matter of the proceedings in the High Court is a property comprised in Certificates of Title No. 5946 and 6067, located at 53 – 55 Toorak Road, Suva, owned by the appellant (‘original plaintiff’), the respondent (‘original defendant’) and their father Sundarji Naranji Bhindi who is now deceased.

[2] Sundarji Naranji Bhindi died on 22 March 1994 leaving a last will and one Chandulal Naranji Bhindi was appointed as the sole executor and the trustee of his estate. Upon

the death of Sundarji Naranji Bhindi his 1/3rd share devolved on the appellant, the respondent living in Canada and their brother Sanjaybai Bhindi who also lives in Canada. Sanjaybai Bhindi was not made a party to the High Court proceedings. Nor is he a party to the appellate proceedings. Neither is Chandulal Naranji Bhindi made a party in the original court or in appeal. There is no explanation whatsoever by the appellant as to why both of them were not made parties.

- [3] The appellant instituted this action by way of writ of summons and he sought several reliefs in his statement of claim and the amended statement of claim including an order for the respondent to pay rent at the market rate (as determined by the Commerce Commission of Fiji) for the use of and occupation by him of the said property now used and occupied by him and his family effective from 23 March 1994. The appellant also demanded *inter alia* general damages on account of the failures on the part of the respondent to maintain the property since 23 March 1994 having acted as Trustee for the appellant in the administration of the said property.
- [4] The appellant has lived in Canada with his family for about 31 years (since 1988). After the death of Sundarji Naranji Bhindi on 22 March 1994, the respondent has been in possession of the property and has had unfettered control of all affairs of the property.
- [5] The respondent took up the position that his parents lived in the house and they were looked after by him and during that period with the approval of the parents he administered the commercial property. He also averred that he had to attend to and expend his own personal savings to maintain the property and administer it without any management fees or remuneration for the responsibilities he discharged. He contended that the appellant's several inactions or omissions had contributed in part to the dilapidated state of the property.
- [6] The High Court by its judgment¹ on 30 August 2019 dismissed the action and awarded \$10,000.00 as costs summarily assessed to the respondent.

¹ **Bhindi v Bhindi** [2019] FJHC 857; HBC200.2013 (30 August 2019)

[7] The appellant sought to have the said judgment set aside on several grounds of appeal. I shall now deal with them under different headings in the order in which they were dealt with by the appellant and responded to by the respondent.

Was there a partnership agreement?

[8] The trial judge ruled out the existence of a joint partnership agreement between the appellant and the respondent on evidence and law. The appellant has not pleaded a partnership agreement in the statement of claim or the amended statement of claim. What has been pleaded by the appellant is that after the death of Sundarji Naranji Bhindi, with the agreement of the appellant, the property was wholly administered by the respondent (which the respondent admitted in evidence and added that it was done on behalf of the other brother as well) and that he acted as a manager and discharged the functions of a care-taker and security officer of the property. However, the respondent has not admitted the appellant's contention that since 23 March 1994, he acted a trustee for the appellant in the administration of the property.

[9] It is relevant to record that it was an agreed fact that since the date of death of Sundarji Naranji Bhindi, and with the agreement of the appellant, the property was wholly administered by the respondent. The administration included:

- a. Letting out the property.
- b. Collecting all rents in respect of the said letting out.
- c. Attending to any repair and maintenance works that may be required to be effected on the said property from time to time.
- d. Making payment of any statutory outgoings e.g. rates in connection with said property.

[10] According to the judgment, it is a fact admitted by the parties that this was an oral administration agreement between the appellant and the respondent.

[11] The appellant argues that due to the nature of the ownership structure and nature of the property, it was administered as a partnership and all income generated by the property was being deposited into a partnership bank account. He argued that sharing of profits

and liabilities and having accounts prepared by the respondent noting each of the brothers as owners and beneficiaries of the property also gave rise to a partnership agreement. Thus, the appellant's argument seems to be that there was a Partnership by Implication, or Partnership at Will, or Partnership in Fact.

[12] At the same time, the appellant has submitted that the respondent was the sole person attending to communications and engagement with accountants to prepare the books for the commercial and warehousing part of the property and he made all decisions about the property on his own. The appellant alleges that the respondent made all decisions, operated the partnership bank account, collected all rents and made all payments all by himself without consulting any of the brothers. In other words the appellant submits that the respondent acted on his own in all matters relating to the property to the exclusion of the appellant and the other brother Sanjaybhai.

[13] However, the appellant did not make Sanjaybhai a party to the case. Thus, what his stand is in relation to the appellant's allegations against the respondent is not known. It cannot be assumed that Sanjaybhai's position on an implied partnership coincides with that of the appellant.

[14] In my view, the evidence is not conclusive of a Partnership by Implication or Partnership at Will or Partnership in Fact. The appellant has not revealed the terms of sharing of profits and losses, joint management, capital contribution and sufficient public representation which are the matters that would prove an implied partnership. Further, the evidence does not satisfy me of the existence of an agreement between the appellant and the respondent to carry on a business with a profit motive where both of them acted as both a principal and an agent with unlimited liability (unless it was a specific Limited Partnership). Without satisfying these essential elements, there cannot exist a partnership.

[15] As the trial judge has remarked the property which is the subject matter of this action is not only owned by the appellant and the respondent but also by the other brother Sanjaybhai who therefore has an interest in this property. There is no evidence to confirm that the whole of Sundarji Naranji Bhindi's estate has been administered. Therefore, the trial judge was right to say that without the consent and approval of the

administrator Chandulal Naranji Bhindi or Sanjaybhai (if the estate has already been administered) there cannot be a valid administration agreement in respect of this property as any such arrangement will also affect his rights in the property.

[16] Therefore, I agree with the trial judge that the totality of the evidence has not disclosed the existence of a partnership agreement among the joint owners of the property.

[17] I also agree that it cannot be said there was a partnership among the joint owners of this property created by law because in terms of section 3(a) of the Partnership Act 1910 there cannot be a partnership agreement created by operation of law among the joint owners or joint tenants. Section 3(a) of the Partnership Act 1910 provides:

In determining whether a partnership does or does not exist regard shall be had to the following rules:-

(a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned whether the tenants or owners do or do not share any profits made by the use thereof.

[18] The trial judge held that while it was an agreed fact that there was an oral administration agreement between the plaintiff and the defendant there could not be a valid administration agreement without the consent and approval of the administrator or (if the estate has already been administered), the other son of the testator. This conclusion is not contrary to or inconsistent with the agreed fact that the respondent wholly administered the property with the agreement of the appellant. The *de facto* administration of the property by the respondent only, with the oral agreement of the appellant but presumably without similar agreement of Sanjaybhai, would not make it an administration agreement enforceable in law. Moreover, other than the fact of an oral agreement on the administration of the property by the respondent as set out in the agreed fact, the terms, duties and liabilities etc. of the appellant and the respondent in that agreement have not been disclosed.

[19] There was no error in the trial judge's finding that since the death of Sundarji Naranji Bhindi on 22 March 1994, the respondent had to take it upon himself the task of administering the property or volunteered to do so as the appellant (and Sanjaybhai too) were away from Fiji. The appellant has been living in Canada since 1988. The respondent was the only one left in Fiji. Therefore, he had to do all that has been revealed in evidence to administer the property. The appellant (and Sanjaybhai) were not involved nor were they interested in the affairs of the property for a very long time over 1 ½ decades.

[20] The appellant did not show any interest in the property until 2011. There was no proof of any telephone calls or emails sent to the respondent prior to that. The first letter (P5) was sent by the appellant's solicitors on 16 January 2011 and the second letter was on 10 March 2011(P6). In reply to P6, the respondent wrote to the appellant on 31 March 2011 (P7) and with that letter he sent the annual financial statements from 1998 to 2006 to the appellant and he also stated that annual financial statements for the years 2007 to 2010 were being prepared. In the same letter the respondent stated that they should have a round table family discussion as this is very much a family matter but there had been no response from the appellant.

Was the trial judge wrong in stating that the appellant was not entitled to claim damages from the respondent?

[21] This question needs analysis of several aspects of the case. In my view, there is no merit in the appellant's complaint that the trial judge erred in stating that the appellant was not entitled to claim damages from the respondent on the premise that the respondent had failed to administer the estate properly. I shall now elaborate on this further.

[22] The respondent took it upon himself to manage the property upon the demise of Sundarji Naranji Bhindi not only for his benefit but also for the benefit of the appellant and Sanjaybhai both of whom have been living in Canada, without any assistance, financial or otherwise, from them. No agreement between the parties existed as to who should fund the maintenance of the property. The trial judge, in my view correctly, took the view that since the property is owned in common, the appellant, the respondent and

Sanjaybhai should have contributed to the maintenance of the property equally if they expected any return from the property, which they failed to do.

[23] The largely uncontested evidence of the respondent shows that the condition of the second floor of the building was not good and whatever available was rented out. From 1989 to 1999 the ground floor had been rented out for \$5,500.00 per month but as the tenants/lessees failed to pay the rent, distress for rent order was served and the things were auctioned to recover the arrears of rent. Then, it had been closed for three years and in the year 2000 during the coup the building was damaged and it could not have been rented out without repairing.

[24] During this period although the appellant and Sanjaybhai were informed about the damage, they had not provided any financial assistance. The respondent had to repair the property with the income from the upstairs hotel. He rented the bottom floor for \$3,600.00 per month, but the tenants/lessees after about 6-7 months paid two months' rent and vacated the premises. The respondent then rented it out in 2003 after informing the appellant.

[25] The evidence also reveals that with many difficulties the respondent had managed the property and paid some money to the respondent. The respondent once paid the appellant CAD 5000.00. The respondent had also obtained the approval from the Reserve Bank of Fiji to send CAD 19500.00 to the appellant but he had refused it and informed the respondent that he needed \$25,000.00 when he visited Fiji. However, when the respondent had offered \$25,000.00 in Fiji the appellant had refused to accept it. In answering the question whether the appellant had a legal or moral right to make the allegation against the respondent that he failed to adequately repair the property and to keep it well maintained, the trial judge had replied in the negative. I do not see any compelling reason to disagree.

[26] It also appears that there was no agreement or understanding between the appellant and the respondent that he must insure the building, to appoint an appropriate person to manage the property or to hand over the administration to a suitable person. The trial judge opined that the appellant, the respondent or Sanjaybhai do not have power to do anything with the property without the consent of the others and that any decision

regarding the administration of this property should be taken together. The appellant has kept Sanjaybhai away from the case for reasons best known to him. Chandulal Naranji Bhindi the sole executor and the trustee of his estate of Sundarji Naranji Bhindi too was similarly kept away from this litigation by the appellant.

[27] The totality of the evidence shows that the respondent managed the property as a joint owner and not as an employee of the appellant and therefore the appellant had no overriding power or authority to demand that the respondent should administer the property in the manner he wished. In the circumstances, the trial judge has concluded that if the appellant or Sanjaybhai were not satisfied with the administration of the property by the respondent they could have taken it over or appointed an outsider to manage the property without waiting for such a long time. The respondent on his part in his evidence has said that he had no objection in appointing another person to manage the property.

[28] The trial judge has decided that for the reasons above enumerated the appellant is not entitled to claim any damages from the respondent. The appellant has not established that the trial judge was wrong in his conclusion.

Has the respondent breached his fiduciary duty based on a constructive trust?

[29] The appellant's claim, as per the statement of claim or the amended statement of claim, is not based on a trust. In the amended statement of claim his claim is based on the ground that there was an administration agreement between the parties. The respondent has admitted in evidence that it was an oral agreement.

[30] It is not in dispute that the issues of partnership and constructive trust were raised for the first time in the closing written submissions filed in the High Court on behalf of the appellant. It is trite law that a party cannot change the character of its case mid-trial so as to convert the action into something fundamentally different from what was pleaded. Litigation is conducted on the pleadings and each party is entitled to know the case it has to meet. Therefore, the court will not allow a party to "shift ground" halfway through and run a materially different cause of action or defence. Put another way,

parties are bound by their pleadings and cannot, during the course of the trial, convert the action into a different one.

[31] In **Blay v Pollard and Morris** [1930] 1 KB 628 at 634, Scrutton LJ stated:

'Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case the issue on which the judge decided was raised by himself without amending the pleadings, and in my opinion he was not entitled to take such a course.'

[32] The above statement was cited with approval by the Court of Appeal in Singapore in **The Ohm Mariana** [1993] 2 SLR 698 at 715, [51] and in **Ong Seow Pheng v Lotus Development Corp** [1997] 3 SLR 137 at [40]. It is clear that "[a] court may not make a finding or give a decision on facts not pleaded and a finding or decision so made will be set aside": per GP Selvam JC (as he then was) in **Multi-Pak Singapore Pte Ltd v Intraco Ltd** [1992] 2 SLR 793 at 800, [24].

[33] Lord Griffiths in **Ketteman v Hansel Properties Ltd** [1987] AC 189 at page 62 noted that while courts have the discretion to allow amendments, they should not do so at the end of a trial to allow a party to "renew the fight on an entirely different defence" that was not originally part of the case.

[34] In the South African cases of **Minister of Safety and Security v Slabbert** [2010] 2 All SA 474 (SCA) and **Notyawa v Makana Municipality and Others** 2020 (2) BCLR 136 (CC); (2020) 41 ILJ 1069 (CC) it was held that courts are bound not to decide issues falling outside the pleadings, without determining issues of fairness and prejudice. It is impermissible for a party to plead a particular case and seek to establish a different case at the trial.

[35] In Canada it was held in **Rodaro v Royal Bank of Canada** 2002 CanLII 41834 (ON CA) that our jurisprudence relies on the adversarial process to get to the truth and:

'By stepping outside of the pleadings ..., [the judge] denied [a party] the right to know the case they had to meet and the right to a fair opportunity to meet that case (at para 61).'

... the introduction of a new theory of liability in the reasons for judgment also raises concerns about the reliability of that theory (at para 62).

[The adversarial] process assumes that the truth best emerges after a full and vigorous competition amongst the various opposing parties. A theory of liability that emerges for the first time in the reasons for judgment is never tested in the crucible of the adversarial process (at para 62).

Decision-making based upon a theory to which battle was never joined during the pleading proceedings, is fatal.'

[36] Pleadings and particulars have a number of functions: they furnish a statement of the case sufficiently clear to allow the other party a fair opportunity to meet it ... they define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at the trial ... and they give a defendant an understanding of a plaintiff's claim in aid of the defendant's right to make a payment into court: **Dare v Pulham** (1982) 148 CLR 658 at 664.

[37] The function of pleadings is to state with sufficient clarity the case that must be met ... In this way, pleadings serve to ensure the basic requirement of procedural fairness that a party should have the opportunity of meeting the case against him or her and, incidentally, to define the issues for decision: **Banque Commerciale SA, En Liquidation v Akhil Holdings Ltd** (1990) 169 CLR 279 at 286.

[38] It is trite law that parties are bound by their pleadings, which serve to define the issues for determination and to prevent trial by ambush. A party is not entitled, in the course of the hearing, to convert the action into one of a different character from that pleaded. The function of pleadings is to ensure that each side has fair notice of the case to be met². The High Court of Australia has repeatedly affirmed that litigation must be conducted on the basis of the pleaded case and not some different case raised for the first time at trial³. Likewise, the House of Lords has cautioned against permitting late shifts that would cause injustice⁴.

² **Blay v Pollard & Morris** (supra) - The court's function is to adjudicate on the specific dispute defined by the parties' written statements (pleadings), not to embark on an unpleaded "frolic" of its own.

³ **Banque Commerciale SA v Akhil Holdings Ltd** (supra)

⁴ **Ketteman v Hansel Properties Ltd** (supra)

- [39] Thus, allowing conversion mid-trial would cause unfair surprise, deprive the other side of a proper opportunity to respond, undermine procedural fairness and turn the trial into an ambush rather than an adjudication. However, courts *can* allow amendments, even late ones, but only where the amendment does not fundamentally alter the nature of the case, and any prejudice can be cured (e.g., by adjournment or costs) but a wholesale transformation — contract → tort, judicial review → private law claim, negligence → fraud, etc. — is not permitted.
- [40] The appellant did not seek an amendment of his statement of claim to include a cause of action based on constructive trust. Instead he raised it for the first time in written submissions in the High Court and now on appeal. Therefore, the trial judge was right to reject such a proposition. However, the judge went on to consider the appellant's argument that the respondent had a fiduciary duty as a constructive trustee. He concluded on the evidence (which I have discussed above) that it cannot be said the respondent breached his duty, as the respondent has paid the appellant his share of the profits, but the appellant refused to accept the money on one occasion.
- [41] Therefore, the appellant is not entitled to argue his case on an unpleaded cause of action based on the existence of a constructive trust either in the High Court or on appeal. Thus, there is no need to engage in a discussion on the formation of a constructive trust and the respondent's purported fiduciary duties as a trustee.

Alleged failure of the respondent to repair and maintain the property

- [42] I shall now deal with the set of grounds of appeal which focus on the alleged failure of the respondent to repair and maintain the property to maximize the revenue from it for the benefit of all three brothers. The appellant argues that the rental income from the property could have been used to repair the property but when asked why would there be a mortgagee sale of the property if in his mind there was money coming from rental, the appellant admitted that he did not know what was going on because he was never in the country.

- [43] I have already dealt with the factual scenario relating to this aspect earlier in the judgment under other headings. In summary, there is no evidence of any specific obligation as to the kind and level of repairs the appellant was to carry out in the so called oral administration agreement. Nor were there any terms and conditions as to who should attend to the repairs.
- [44] One of the agreed facts was that the appellant's said administration included attending to any repairs and maintenance works that may be required to be effected on the property from time to time. In other words, the respondent admitted that the appellant had in fact carried out such repairs and maintenance work as required. The appellant solely managed the property without any assistance from other beneficiaries including the appellant. The appellant refused to hold any discussion with the respondent over the management of properties. The respondent had been managing the property from the death of his father from 1994 and the appellant showed no interest until 2011. The respondent encountered many difficulties when the building had been damaged and the appellant was made aware of this, but made no attempts to provide any assistance. Given that situation, the respondent had no option but to use the rental income to repair the building.
- [45] The appellant's complaint that he received only CAD 5000.00 and the respondent could have used the balance of his share of the rental for repairs and maintenance to maximise the rental revenue is nothing more than a hypothesis divorced from the real events. As explained by the trial judge, the accounts produced by the respondent do not show that the respondent had such money in the form of the appellant's so-called share of the rental to spend for repairs as expected by the appellant. On the other hand the accounts produced by the appellant were based on several assumptions and devoid of the effect of intervening events that seriously affected the projected rental income. Furthermore, when the respondent offered CAD 25,000.00 the appellant refused to accept it.
- [46] The totality of evidence, largely unchallenged by the appellant, shows that the respondent has done repairs as required to maintain the property. He may not have maintained the property in prime condition, but that was not only due to lack of any support from the appellant and or Sanjaybhai but also due to the damage caused by events beyond his control from time to time. Without having made any contribution for

all these years, the appellant cannot now complain of this state of affairs. In the circumstances, the trial judge had concluded that the allegation that the defendant has failed to adequately repair the property and to keep it well maintained has no basis. I do not see any convincing reasons to interfere with that factual finding.

Accounts of the property

[47] Several grounds of appeal, in different ways, seek to argue on the accounts relating to the property produced by the respondent and the Forensic Report led in evidence by the appellant. The appellant's contention is that the respondent did not maintain proper books of accounts to show income and expenses which, he contended, would show that the property in 25 years has generated an approximate total income of four million one hundred and fifty eight thousand and seven hundred and six dollars (\$4,158,706) whereby each owner is entitled to one million three hundred and eighty six thousand and two hundred and thirty five dollars (\$1,386,235.00). By using this as a given, the appellant argues that the respondent has not only not paid the other two owners including the appellant their due share from the rent but also has failed to repair and maintain the property.

[48] However, the trial judge has critically analysed the contrasting accounts produced by the appellant and the respondent on the appellant's claim for his share of the rental for the said period. The appellant in proving his claim relied on the Forensic Accounting Report (FAR) of Insurance Risk Consulting Pty Ltd and a Rental Valuation Report (RVR) prepared by Rolle Associates, Valuers and Property Consultants. It appears that the FAR has relied on the RVR. Mr. Devendra Raniga who prepared the FAR has testified at the trial and explained how he arrived at the figures contained in the FAR and the material relied on by him in preparing the FAR. However, Mr. Raniga has admitted that his assessment was made without having all documents in his possession. Thus, it appears that FAR has mostly followed RVR which has given the loss caused to the appellant as \$1,386,235.00.

[49] The trial judge concluded that the assessment made by an expert without having all the required documents has no evidentiary value: what the appellant had to prove was the actual amount the respondent received by way of rent. Further, the judge remarked that

the income alone is not sufficient for the court to ascertain the entitlement of the partners but it needs the expenses incurred by the respondent for the maintenance of the commercial building. It is an undisputed fact that the appellant did not expend any money in respect of repair and maintenance. The observations in the RVR prepared by Rolle Associates which was relied on by Insurance Risk Consultant in preparing his report shows that the hypothetical figure arrived at by the Insurance Risk Consultant is highly questionable, unreliable and unrealistic. The evidence of Mr. Krishna Chand (who is a Lawyer and an Accountant and called by the respondent) coupled with his report (D11) has exposed the faulty and inappropriate methodology used in the RVR. In the circumstances, the trial judge has carefully and objectively analyzed the appellant's two reports and the report of Krishna Chand and concluded that it was clear to him that the experts employed by the appellant had based their reports on certain assumptions, and a mere assessment of the income based on those assumptions was not sufficient for the court to arrive at the correct amount to which each of the joint owners was entitled.

[50] On what could be considered a fair assessment of the cases for both sides, the trial judge had opined that the appellant was entitled to his share of the income from the property after deducting the cost of maintenance, and the respondent on his part had not denied the appellant's entitlement to his share of the profit. The accounts tendered by the respondent had shown how much each of them was entitled to with some accounts showing a credit balance and others a debit balance.

[51] The appellant had not successfully challenged these accounts except in respect of the personal expenses incurred by the respondent. The appellant admitted that he had no objections to the respondent using the money for his and his families' personal medical bills and also said that it was a commendable thing for the respondent to spend his time to avoid some big financial crisis that was faced by investment.

[52] The evidence has revealed that all large personal expenses were part of drawings of the respondent accurately recorded in the books as personal drawings (not as business expenses) and the respondent never took any remuneration (salary) for managing the property for so many years. Mr Krishna Chand's largely uncontested evidence shows that all expenditure by the respondent was accounted for and there were no

discrepancies in the drawings and disclosures of the drawings. Even the withdrawal of \$343,000 by the respondent reflected in the accounts was not someone's money but his own drawings over the period which were respondent's accumulated withdrawals.

- [53] In the circumstances, the appellant has not made out a sufficiently strong case for this court to interfere with the findings of the trial judge.

Should the respondent have paid rent for his residence?

- [54] Undisputed evidence reveals that the residential premises is the family house of the appellant, the respondent and their brother. Prior to migrating to Canada the appellant also lived in this house with their parents and after the demise of the father, the mother lived with the respondent in this house. Whenever the appellant visited Fiji he used to stay in the same house. Thus, the residential part of the property was owned in common by the appellant, the respondent and their father since 1975. There is no evidence that any one of them paid rent for occupying the house. There had been no agreement to pay rent by the occupier of the family house. Sanjaybhai never claimed rent from the respondent. Arguably, as the trial judge has said, if the respondent is liable to pay rent for the family house, then their father, their mother, the appellant and Sanjaybhai are also liable to pay rent for the respective periods of their stay in this house.

- [55] Moreover, the appellant admitted that rent was not payable as they all had equal shares but he only demanded that respondent should pay the rent so that they could teach him a lesson for wasting his life as he was a good jeweller and not successful in life.

- [56] In the circumstances, I cannot find fault with the trial judge when he did not find any legal basis for the appellant to claim rent for occupying the family home from the respondent.

Costs ordered is excessive?

- [57] The appellant is also challenging the costs ordered by the trial judge as excessive and not in line with such orders made by the High Court. The judge has summarily assessed the costs to be \$10,000.00.

[58] **House v The King** [1936] HCA 40; (1936) 55 CLR 499 is a landmark decision of the High Court of Australia that defined the principles governing appellate review of judicial discretion. The “*House* principles” have become the foundation of Australian appellate review of discretion. They apply across sentencing, evidence rulings, costs orders, and other judicial decisions. The case distinguishes between mere disagreement with a judge’s conclusion and actual legal error, ensuring that appellate courts respect trial-level discretion while safeguarding against miscarriages of justice.

[59] ***House*** is routinely cited in decisions of all Australian courts, including the High Court of Australia, to delineate the boundaries of appellate intervention. Its framework has also informed appellate standards in other common law jurisdictions, underscoring its enduring doctrinal importance.

[60] The High Court of Australia in ***House*** clarified when an appellate court may intervene in discretionary decisions. The justices held that such discretion “*is not unfettered but must be exercised judicially, according to rules of reason and justice.*” Appellate interference is justified only where error is demonstrated—such as acting on a wrong principle, considering irrelevant matters, ignoring relevant ones, misunderstanding facts, or delivering a decision that is “*unreasonable or plainly unjust.*”

[61] The assessment of costs is discretionary. No error of principle, misapprehension of fact, or manifest excess has been shown within the meaning of the “*House* principles” by the appellant. The appellant’s written submissions do not contain any submissions on this ground of appeal either. Therefore, in all circumstances of the case, I do not intend to disturb the costs ordered by the trial judge although it appears to be somewhat above the costs usually ordered by the High Court.

Andrews, JA

[62] I agree with the reasoning and conclusions in the judgment of Prematilaka, RJA.

Clark, JA

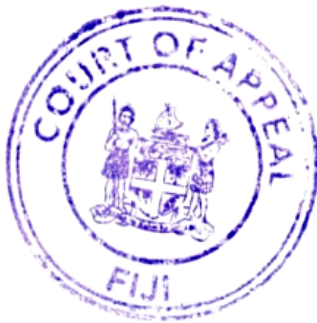
[63] I too agree with the judgment of Prematilaka, RJA for the reasons he gives.

Orders of the Court:

1. *The appeal is dismissed.*
2. *The appellant is directed to pay \$5000.00 as costs of this appeal to the respondent within 21 days hereof.*



Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL



Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL



Hon. Madam Justice Karen Clark
JUSTICE OF APPEAL

Solicitors:

Parshotam Lawyers for the Appellant
R Patel Lawyers for the Respondent