

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA FIJI

CIVIL CASE NO.: HBC 213 OF 1994

BETWEEN : RAVIND MILLAN LAL son of Jayant Chiranji Lal of Yalalevu, Ba. Suing on his own behalf and on behalf of his late wife MANJU LAL alias PREMIKA MANJU LAL and her Estate, there being no Executor or Administrator pursuant to Section 10 of Relatives and Compensation Act Cap 29, ADRIAN AMAN LAL son of Ravind Millan Lal, AKESH RAVINDRA LAL son of Ravind Millan Lal and ARCHANA LAL daughter of Ravind Millan Lal, infants suing their father and guardian Ravind Millan Lal.

PLAINTIFFS

AND : DEO KUMAR (fathers' name Raj Kumar) of Wailevu, Labasa.

1ST DEFENDANT

AND : MOHAMMED ATTULAH also called ATAM HULLAH son of Rahamatullah also called Raham Hullah of Nasinu, Suva.

2ND DEFENDANT

AND : R B RAHAMATULLAH of Nasinu, Suva

3RD DEFENDANT

AND : DOMINION INSURANCE COMPANY LIMITED

4TH DEFENDANT

AND : THE ATTORNEY GENERAL OF FIJI AND THE REPUBLIC OF FIJI

5TH DEFENDANT

AND : LAND TRANSPORT AUTHORITY

6TH DEFENDANT

AND : THE ATTORNEY GENERAL OF FIJI AND THE REPUBLIC OF FIJI

1ST THIRD PARTY

AND : LAND TRANSPORT AUTHORITY

2ND THIRD PARTY

Appearances: Mr V. Mishra for the Plaintiffs
Ms. Naidu for the 6th Defendant

RULING

1. By Summons dated 28th April, 2014, the Plaintiff sought an interpretation of the words in the Certificate of Judgment against the Land Transport Authority (LTA) which was filed in the Supreme Court on 21st March, 2013. They also sought an Order that Land Transport Authority pays interest upon the Judgment at the rate of ten percent per annum from the date of the Supreme Court Judgment which was on 23rd October, 2012 to the date of payment.
2. The Summons was supported by the Affidavit sworn by Ms. Archana Lal on 22nd March, 2013. However, when the matter came up for hearing it was found that the Original Copy of the Affidavit is not filed of record, only the Photocopy being filed on 28th April, 2014. With the leave of Court the Plaintiffs Solicitor filed a fresh copy of the Affidavit sworn by Ms. Archana Lal on 18th March, 2015.
3. The LTA has not filed an Affidavit in opposition to the application of the Plaintiff and the Solicitors of the LTA states in their written submissions that they have not filed the same as the questions involved are purely legal issues.

Hearing

4. On the date of hearing of this matter the Learned Counsel for the Plaintiff made oral submissions and filed a written submission with the leave of Court. The Learned Counsel for the 6th Defendant (LTA) stated that they are relying on the written submission already filed and therefore do not wish to make any oral submissions.

The Certificate of Judgment

5. The Certificate of Judgment on which the Plaintiff sought an interpretation reads as follow:

BY a Judgment of this Court dated the 23rd day of October 2012 affirming the decisions of the Court of Appeal and the High Court where it was ordered in High Court Civil Action No. HBC 213 of 1994 that the Petitioner do pay the Respondents the sum of \$877,272.00 (Eight Hundred Seventy Seven Thousand Two Hundred Seventy Two Dollars) and interest thereon at 4% percentum per annum amounting to \$216,505.34 (Two Hundred Sixteen Thousand Five Hundred Five Dollars and Thirty Four Cents) together with costs in the sum of \$12,000.00 (Twelve Thousand Dollars).

AND I HEREBY CERTIFY that the total sum payable to the Respondents pursuant to the said Judgment amounts to \$1,105,777.34 (One Million One Hundred Five Thousand Seven Hundred Seventy Seven Dollars and Thirty Four Cents).

Determination

6. In the written submissions filed by the Plaintiffs it is contended that the LTA is not the State but a separate entity by Law and must pay interest according to the Certificate of Judgment like other Corporates. It is also contended by the Plaintiffs that Section 4(3) of the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree 2011 only covers interest against the Attorney General and that the LTA is not the State but a separate Corporate entity.

7. Section 4(3) of the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree provides that :

“4 (3) Notwithstanding anything contained in this section, the State proceedings Act or any other written law, no interest shall be payable on any Judgment Debt entered in any proceedings against the State, or the Attorney-General.”

8. In the Affidavit filed in Support of this application the Plaintiffs have admitted that the Certificate of Judgment is against the State and despite the sealing of the said Certificate of Judgment against the State by the Supreme Court the State is refusing to pay interest upon Judgment sum (paragraphs 3 and 7 of the Affidavit).

9. Furthermore in a connected matter *Lal v Land Transport Authority [2009] FJHC 157 HBC 213, 1994 (31 July 2009)* Justice Inoke at page 10 found that:

59. *I also find that the LTA was acting as an agent or servant of the State for the purposes of collecting those funds and therefore cannot be subject to garnishee proceedings because of Order 77 rules 11 and 12 of the High Court Rules 1988.*

60. *I also find that Section 20(4) of the Crown Proceedings Act prohibits the issue of*

garnishee proceedings against LTA as agent or servant of the State or alternatively, as a body performing functions and activities which involve the affairs or property of the State and for purposes connected therewith.

10. On appeal, the Fiji Court of Appeal in *Lal v Land Transport Authority [2011] FJCA35; MA 21.09 (27 May 2011)* in refusing leave to appeal of Justice Inoke's decision stated at paragraph 4 that:

"Unfortunately the law on the Crown Proceedings Act is very clear. The object in Fiji as in other countries with Land Transport Authority and Fiji Islands Revenue Customs Authority is not to privatize government departments but to reduce the numbers of central government civil servants. So they indirectly rather than directly act as civil servants. The Crown Proceedings Act still applies. In my opinion there is no chance of execution being legally found to be available. For this reason I believe the only conclusion within the rules is that leave to appeal should be refused."

11. It is evident from the interpretation approached adopted in the Lal's case the definition of the State includes its agent or servant. Therefore it is clear that the LTA is a statutory body which should be considered as an agent or servant of the State. Moreover as mentioned above the Plaintiff has admitted that the Certificate of Judgment is against the State and that State is refusing to pay interest upon judgment sum. As such I find that the LTA comes in within the ambit of Section 4(3) of the Decree.

12. Next issue to be determined is whether the said Section 4(3) of the Decree should be construed retrospectively or prospectively. The Learned Counsel for the 6th Defendant argued that Section 4(3) should be construed as retrospective and not prospective as its procedural in nature. He contended that the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act and the Decree 2011 amending it do not vest any right to the parties to claim interest and it only vests discretionary powers to Court to award interest. He stated further that if interest is not pleaded no interest would be awarded and the Act does not confer rights to interest, therefore should be construed as retrospective. The Learned Counsel for the Plaintiffs stated in reply that the Decree is not expressed to apply retrospectively, therefore even if the LTA were to come within the ambit of the State for the purpose of payment of interest, Section 4(3) of the Decree would not apply to the interest awarded prior to the said amendment.

13. In *Moon v Durden 2 EX 45 at 389* it is stated as follow:

".....The General rule in construing recent statutes is "Nova

Constitutio futuris formam imponere debet, non praeteritis”; but that rule, which is one of construction only, will yield to a sufficiently expressed intention of the legislature that the enactment should have a retrospective operation”.

14. **Platt B** in the said judgment said at page 391:

“The general rule governing the construction of Statutes, [27] is correctly stated in Bac. Abr. 439, “Statute”, C, It is there laid down as a general rule that no statute is to have a retrospective beyond the time of its commencement; for the rule and Law of Parliament is, that nova constitutio futuris formam debet imponere, non praeteritis; and Gilmore v The Executor of Shooter (2 Mod.310) is quoted as an example.”

15. The general rule according to the said authority is that no statute is to have a retrospect beyond the time of its commencement.
16. However, the Learned Counsel for the Defendant argued that Section 4(3) of the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree 2011 is procedural and therefore it should be construed as retrospective and not prospective.
17. In *The King v Chandra Darma 2K.B. p 335 at p.338* Lord Alverstone CJ said as follows:

“We have none of us any doubt that the view taken by the Court in each of these cases was the correct one. The rule is clearly established that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective”.

18. In *New South Wales v Brian McMullin & Another [1997] FCA 120 (28 February 1997)*, the Federal Court of Australia states that:

“The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But, given rights and liabilities fixed by reference to past facts, matters or events, the law

appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption. Changes made in practice and procedure are applied to proceedings to enforce rights and liabilities, or for that matter to vindicate an immunity or privilege, notwithstanding that before the change in law was made the accrual or establishment of the rights, liabilities, immunity or privilege was complete and rested on events or transactions that were otherwise past and closed.”

And (at 270):

“Unless the language used plainly manifests in express terms or by clear implication a contrary intention – (a) A statute divesting vested rights is to be construed as prospective. (b) A statute, merely procedural, is to be construed as retrospective. (c) A statute which, while procedural in its character, affects vested rights adversely is to be construed as prospective.”

19. In the light of the guidelines set out by the above mentioned authorities I am of the view that the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Act and the Decree 2011 amending it is procedural in nature as it does not vest any right to the parties to claim interest and only vests discretionary powers to Court to award interest.
20. The next question before me is whether the said Section 4(3) should be construed as retrospective for the purpose of this application and the interest on the judgment sum should not be paid.
21. The Certificate of Judgment against the State in this matter includes the Judgment sum and the interest thereon. It states the total sum payable to the Respondents pursuant to the said Judgment amounts to \$1,105,777.34.
22. In my view the Judgment sum and the interest thereon becomes a vested interest of the successful party of this action from the date of the Judgment. The Plaintiffs right to get the interest was complete and vested on events that were otherwise past and closed.
23. Even though Section 4(3) of the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree 2011 is procedural in its characters if it is construed retrospective for the purpose of this application it will affect the vested rights of the Plaintiffs’ adversely.

24. Therefore applying the principles laid down in *New South Wales v Brian McMullin & Another* I would construe Section 4(3) of the Decree as prospective and hold that the Plaintiffs are entitled to the interest at 4% per annum amounting to \$216,505.34 on the Judgment debt.
25. The next issue to be determined in this application is whether the Court should order the 6th Defendant to pay interest and damages with interest at 10% per annum from the date of the Supreme Court Judgment dated 23rd October, 2013 to the date of payment.
26. The Learned Counsel for the Plaintiffs submitted the authority *QBE Insurance (Fiji) Ltd v Prasad [2011] FJSC 14; CBV 0003.2009 (18 August 2011)* in Support of his contention that the Court has a discretion under Section 3 to award post Judgment interest.
27. In my view application for post Judgment interest cannot be considered as an application for an interpretation of the words the Certificate of Judgment entered by the Supreme Court. It is entirely a fresh application made after the matter has been finally determined by the Supreme Court and the Certificate of Judgment entered accordingly. Therefore I find that this Court cannot now award to the Plaintiffs' any other interest other than the interest awarded to them by the Certificate of Judgment. The Court has become functus in regard the adjudication of the matter. In QB Bale's case it was the Supreme Court which exercised the discretion to award post Judgment interest at the conclusion of the proceedings.

The discretion exercised by the Supreme Court to award post Judgment interest in QB Bales case cannot be considered as an authority for this Court to exercise such a discretion at this stage.

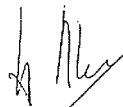
28. I will not make an Order for costs against the 6th Defendant as this application involved a interpretation of a Judgment in regard to payment of interest on a Judgment Debt against the State.

Final Orders

- 1) 6th Defendant to pay the Plaintiffs interest upon Judgment sum at 4% per annum amounting to \$216,505.34 (Two Hundred Sixteen Thousand Five Hundred Five Dollars and Thirty Four Cents).
- 2) Interest at 10% per annum from the date of the Supreme Court Judgment dated 23rd

October, 2012 to the date of payment declined and refused.

3) No costs.



Lal S. Abeygunaratne

Judge

At Lautoka

24 April 2015

