

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO.: 78 OF 1995L

BETWEEN : **CHANDRA DEO** son of Baji Nath and **SURUJ WATI**
daughter of Munna Lal both of Johnson Road, Lautoka.

PLAINTIFF

AND : **VIJAY KUMAR**, son of Ram Charan, President, **KAMAL PRASAD** son of Ram Charan, Sardar, **UMESH CHAND** son of Ram Narayan, Secretary, **BISUN DEO** son of Ram Charan, **PRASANJIT NARAYAN** son of Dip Narayan (Committee Members) of Teidamu Lot 31 Cane Harvesting Gang sued on behalf and as representing all members of the said gang except the Plaintiffs.

DEFENDANTS

Appearances:

Mr S. Krishna for Plaintiff
Mr N. Vakacakau for Third-Named Defendant

RULING

Background

1. In this matter the 3rd named Defendant filed "Notice of Grounds of Appeal" on 23rd April, 2014 and a "Notice of Motion" on 22nd August, 2014.

The Notice of Motion reads:

"TAKE NOTICE that the Notice and Grounds of Appeal issued herein on 23rd

April, 2014 will be heard before J. Abeygunaratne at the High Court of Lautoka on Wednesday the 22nd of October, 2014 at 9.30am”.

An Affidavit in Support of the Notice of Motion sworn by a Lawyer employed by the Solicitors for the 3rd named Defendant is also filed on 21st November, 2014.

2. The Notice of Motion and the Notice of Grounds of Appeal seems to be an appeal filed by the 3rd named Defendant from the decision of the Master of the High Court delivered on 02nd April, 2014.
3. When this matter was taken up for hearing on 8th April, 2015 the Learned Counsel appearing for both parties sought a date to file written submissions. On 30th April, 2015 while moving for a further date to file their submissions they sought a Ruling on this matter on the written submissions to be filed. The Court granted leave for both parties to file their written submissions accordingly.
4. In perusing the record I find that only the Plaintiff has filed his submission and the Defendant has not tendered his submission on the due date.

Analysis and Determination

5. By the written submissions filed the Plaintiff opposes the Notice of Motion and submits that the said Motion appealing the decision from the Master is in breach of Order 59 Part II, Appeal from the Master of the High Court Rules, 1988 and is so misconceived that is bad at law amounting to an abuse of process.

Referring to Order 59 r.8(2) the Counsel for the Plaintiff argues that the 3rd named Defendant has failed to seek and apply for leave to appeal the decision of the Master.

6. Order 59 r. 8(2) reads;

“No appeal shall lie from an Interlocutory Order or Judgment of the Master to a single Judge of the High Court which may be granted or refused upon the papers filed”.

7. Plaintiffs’ Counsel submits that the above rule is mandatory and the 3rd named Defendant has breached that rule by filing the Notice of Grounds of Appeal and this amount to an abuse of process.

8. Before I deal with the aforementioned issue I will have to determine whether the Masters decision is Interlocutory in nature or not. For this purpose, I refer to “The Supreme Court Practice” 1999 edition Volume 01 page 1009 and 1010.

9. It is stated therein under *“Final and Interlocutory Orders” (O59, r.1A)* as follows:

1.A: (1).....

(2)(a).....

(b).....

(3).....

(4).....

(5).....

(6) *Notwithstanding anything in paragraph (3) but without prejudice to paragraph (5) the following judgments and orders shall be treated as Interlocutory.*

(a).....

(b).....

(c).....

(d).....

(e).....

(f) *any judgment in default or any “unless “ orders;*

(g).....

- (h).....
- (i).....
- (j).....
- (k).....
- (l).....
- (m).....
- (n).....
- (o).....
- (p).....
- (q).....
- (r).....
- (s).....
- (t).....
- (u).....
- (v).....
- (w).....
- (x).....
- (y).....
- (z).....
- (aa).....

(bb) *an Order setting aside or refusing to set aside another Judgment or Order (whether such other Judgment or Order is final or Interlocutory).*

10. In considering the above provisions I find that the Default Judgment entered in this matter and the Masters Ruling which struck out the application to set aside the default judgment are both Interlocutory in nature. As such, it is mandatory for the 3rd named Defendant to seek and apply leave to appeal the decision of the Master before lodging an appeal.

11. Due to the reasons set out above I do accept the argument of the Plaintiff that the 3rd named Defendant in total breach of the mandatory rule filed a “Notice and Grounds of Appeal” without any leave and this amounts to an abuse of


process. I also hold that due to the abuse of process by the Defendant the Plaintiff should be awarded costs on a higher scale.

Final Orders

12. I make the following Orders accordingly;

- (a) The 3rd named Defendants Notice of Motion to hear Notice and Grounds of Appeal struck out and dismissed.
- (b) The 3rd named Defendant to pay the Plaintiff costs summarily assessed at \$2,500.00 within 30 days of this Ruling.




Lal S. Abeygunaratne
Judge

At Lautoka
20 July, 2015