

**IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 429 of 2004**

**BETWEEN** : **MARIKA TUKANA**  
**PLAINTIFF**

**AND** : **PORTS TERMINAL LIMITED**  
**DEFENDANT**

**COUNSEL** : **Mr. I. Tuberi for the Plaintiff**  
**Ms. B. Narayan for the Defendant**

**Date of Hearing** : **30<sup>TH</sup> July, 2015**

**Date of Ruling** : **06<sup>th</sup> August 2015**

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**RULING.**

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- [1] By the notice of motion dated 26<sup>th</sup> March 2014 the solicitors of the plaintiff sought the intervention of this Court to reappoint Mr. Filimoni Jitoko, before whom the trial of this case was concluded, to write the judgment.
- [2] It is common ground that Mr. Jitoko who was a Judge of the High Court left the Judiciary without writing the judgment in this case.
- [3] It is the submission of the learned counsel for the plaintiff that the High Court has power under the Constitution of the Republic of Fiji 2013 (hereinafter referred to as the Constitution) to reappoint a Judge who has left the judiciary to conclude a case heard before him. It is the submission of the learned counsel for the plaintiff

that the High Court has the power to appoint Mr. Jitoko to conclude this matter under sections 15(2) and 100(3) of the Constitution.

- [4] Section 15(2) of the Constitution provides that every party to a civil dispute has the right to have the matter determined by a Court of law or if appropriate, by an independent and impartial tribunal and section 100(3) of the Constitution provides that the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution or any written law.
- [5] The learned counsel for the plaintiff submits that the reappointment of a Judge who has left the judiciary is within the unlimited original jurisdiction conferred upon the High Court by section 100(3) of the Constitution. None of these provisions empowers the High Court to appoint a person as a Judge of the High Court or reappoint a Judge who has left the judiciary. Section 100(3) of the Constitution confers jurisdiction on the Court to hear and try civil or criminal matters that are brought before it and the hearing of these cases are done by the Judges appointed by the President under section 106(4) of the Constitution.
- [6] The power to appoint Judges of the High Court is vested in the President by section 106(4) of the Constitution which provides as follows;
- The President may, on the recommendation of the Judicial Services Commission following consultation by it with the Attorney General, appoint a person to act as the Judge of the High Court during any period or during all periods, when an office of a Judge of the High Court is vacant or when a Judge is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.
- [7] The learned counsel also submits that there is no possibility of rehearing of the case because the plaintiff is bedridden and the only witness for the defendant has passed away. I am mindful of the difficulties the parties are faced with but this Court has no power or authority to appoint Judges.

[8] For the reasons aforementioned I make the following order.

**Order.**

[9] The application of the plaintiff to appoint Mr. Filimoni Jitoko to deliver the judgment in this case is refused.

*Lyone Seneviratne*  
Lyone Seneviratne  
**JUDGE**

The seal of the High Court of Fiji is circular, featuring a central emblem with a crown and two figures. The text "HIGH COURT OF FIJI" is written around the top inner edge, and "SUVA" is at the bottom, flanked by two stars.