

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 200 of 2018**

**IN THE MATTER** of the Foreign Judgment (Reciprocal Enforcement) Act Cap. 40, Laws of Fiji.

**AND**

**IN THE MATTER** of a Judgment of Local Court of Manukau obtained in Case No. CIV 2016-092-3994 by SHAMSHER ALI as Plaintiff and MOHAMMED JALAL as Defendant dated 28<sup>th</sup> July 2017.

**BETWEEN** : **SHAMSHER ALI** of 18 Marjorie Jayne Crescent, Otahuhu, Auckland, New Zealand, Businessman.

**PLAINTIFF**

**AND** : **MOHAMMED JALAL** formerly of 18 Marjorie Jayne Crescent, Otahuhu, Auckland, New Zealand and currently residing at Meigunyah, Nadi, occupation unknown.

**DEFENDANT**

**Appearances:** (Ms) Rishika Chand with (Ms) Veitokiyaki Salote and (Ms) Takali Joana for the plaintiff.  
(Ms) Ita Sauduadua for the defendant.

**Date of hearing** : Thursday, 09<sup>th</sup> May 2019.

**Date of ruling** : Friday, 26<sup>th</sup> July 2019.

**RULING**

(01) This is an application made pursuant to Order 71 of the High Court Rules, 1988, inherent jurisdiction of the High Court and pursuant to Foreign

Judgements (Reciprocal Enforcement) Act, Cap 40 to register a default judgement of the District Court of Manukau in New Zealand, dated 24/10/2017, in Case no: Civil 2016-092-3994 by 'Shamsher Ali' as plaintiff and 'Mohammed Jalal' as defendant.

- (02) The judgement by default against the defendant is in the sum of NZ\$160,470.62. No statement of defence having been filed in the court by the defendant, judgement is given that the plaintiff recover the sum of NZ\$160,470.62 together with interest at 11% from the date of the judgment and costs.

The proceedings in the New Zealand District Court has been served on the defendant pursuant to Rule 6.23 (2) (b) (i) and (iv) of the New Zealand District Court Rules, 2014. The fact is that the defendant took no part at all. There is nothing to suggest that he did not have every opportunity to defend himself in those proceedings.

- (03) The defendant in this matter has not appealed against the judgment by default of the New Zealand district court.

- (04) The defendant in this matter had previously travelled to New Zealand to visit and was once employed as a mechanic for a brief period at the plaintiff's automotive garage, Alis Garage, in 2011 at an agreed hourly rate of NZ\$24.00.

- (05) On or about 21.12.2016, the plaintiff instituted Case No:- CIV 2016-092-3994 in the District Court of Manukau in New Zealand claiming the sum of NZ\$160,470.62 against the defendant on the followings;

- ❖ Breach of loan agreement in the sum of NZ\$6,572.20.
- ❖ Breach of motor vehicle agreement in the sum of NZ\$3600.00.
- ❖ Loss on account of fraudulent misrepresentation in the sum of \$6,383.42.
- ❖ Damage and loss to property in the sum of NZ\$149,415.00; and
- ❖ Further losses being private investigator charges in the sum of NZ\$3,500.00

- (06) The plaintiff alleges that the defendant has not satisfied the judgment sum and asserted that the defendant is now residing in 'Meigunyah', 'Nadi', in Fiji. The plaintiff further asserted that the defendant has no assets in

'Manukau', New Zealand and therefore the judgment by default cannot be enforced in New Zealand.

- (07) The defendant 'Jalal' has filed an affidavit in opposition dated 25.09.2018 alleging among other things that;
- ❖ No submission to New Zealand jurisdiction.
  - ❖ Manukau District Court not a Superior Court.
  - ❖ New Zealand Court acted without jurisdiction.
  - ❖ Judgment obtained by fraud.
  - ❖ Contrary to public policy.

The plaintiff 'Ali' filed an affidavit in response adverting to the above questions.

- (08) I have had the benefit of oral and written submissions by Counsel for the plaintiff and the defendant and I shall refer to these in due course.
- (09) (Ms) Sauduadua for the defendant in her oral submissions argued that Manukau District Court in Auckland in New Zealand is not a 'Superior Court' to the High Court of Fiji within the meaning of Section 7 of the Reciprocal Enforcement of Judgments Act and therefore there is a serious legal impediment to the registration of Judgment. Reference was made to Section 4(2) of Senior Courts Act 2016 of New Zealand which reads as follows;

*"(2) A reference in any enactment to a Senior Court in New Zealand must, unless the context otherwise requires, be read as a reference to the High Court, the court of Appeal, or the Supreme Court."*

(Ms) Sauduadua made reference to the decision of Byrne J in "**Clement James Brown**" (1989) 35 FLR 203.

- (10) On the other hand (Ms) Chand for the plaintiff in her oral submissions made reference to Section 7 of the 'Reciprocal Enforcement of Judgments Act, Cap 39 and Section 3(1) (b) of Foreign Judgments (Reciprocal Enforcement Act) and argued that there is no mention in Section 7 that the foreign Court has to be superior than ours.

- (11) To understand these submissions it is necessary to set out the relevant legislation. The application for registration of the Judgment in the High Court of Fiji in Lautoka has been made by way of “Originating Summons” supported by an affidavit dated 23<sup>rd</sup> August 2018 deposed to by “Shamsher Ali”, under “Foreign Judgment (Reciprocal Enforcement) Act, Cap 40.
- (12) The Reciprocal Enforcement of Judgments Act, Cap 39 is confined to Judgments of the High Court of England, or Ireland, or in the Court of Session in Scotland. The Foreign Judgments (Reciprocal Enforcement) Act, Cap 40 related to Judgments of Courts in a number of other countries, which, by Proclamation, include New Zealand. Notwithstanding that these two Acts are made to apply to different jurisdictions their provisions have not been kept distinct from each other. Order 71 of the High Court Rules provides that the Reciprocal Enforcement of Judgments Rules made under the Reciprocal Enforcement of Judgments Act, Cap 39, shall apply, with necessary modifications, to proceedings under the Foreign Judgments (reciprocal Enforcements) Act, Cap 40.
- (13) Section 3(1) of the Reciprocal Enforcement of Judgments Act (Cap 39) provides;

*3.-(1) Where a judgment has been obtained in the High Court in England or Ireland or in the Court of Session in Scotland the judgment creditor may apply to the Supreme Court in Fiji at any time within twelve months after the date of the judgment or such longer period as may be allowed by the said Supreme Court to have the judgment registered in the said Supreme Court and on any such application the said Supreme Court may, if in all the circumstances of the case it thinks is just and convenient that the judgment should be enforced in Fiji, and subject to the provisions of this section, order the judgment to be registered accordingly.*

*(2) No judgment shall be ordered to be registered under this section if-*

*(a) the original court acted without jurisdiction; or*

*(b) the judgment debtor being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or*

*(c) the judgment debtor being the defendant in the proceedings was not duly served with the process of the original court and did not appear notwithstanding that he was ordinarily resident or was carrying on*

*business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or*

- (d) the judgment was obtained by fraud; or*
- (e) the judgment debtor satisfies the registering court either that an appeal is pending or that he is entitled and intends to appeal against the judgment; or*
- (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.*

*(3) Where a judgment is registered under this section-*

- (a) the judgment shall, as from the date of registration, be of the same force and effect and proceedings may be taken thereon as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;*
- (b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself but in so far only as relates to executions under this section;*
- (c) the reasonable costs of an incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.*

Section 3(1) of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 40 provides;

## **PART II – REGISTRATION OF FOREIGN JUDGMENTS**

*Power to extend Part II to foreign countries giving reciprocal treatment*

*3.-(1) The Governor-General, if he is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgment given in the Supreme Court, may by proclamation direct-*

- (a) that this Part shall extend to that foreign country; and*
- (b) that such courts of that foreign country as are specified in the proclamation shall be deemed superior courts of that country for the purposes of this Part.*

- (14) Application of the provisions of the 'Reciprocal Enforcement of Judgments Act', (Cap 39), including those of Section 3(1) above, has been extended to encompass a 'Superior Court' of other designated countries by Orders of the Governor-in-Council. New Zealand has been such a designated country of which Judgments of a 'Superior Court' of that country could be recognised in the High Court of Fiji from 10<sup>th</sup> July 1925 under Section 7(1) of the Act. Section 7(1) of the Act provides that;

**Power to extend provisions of Act**

*7.-(1) Where the Governor-General is satisfied that reciprocal provisions have been made by the legislature of any other country or territory of the Commonwealth outside the United Kingdom for the enforcement within such country or territory of judgments obtained in the Supreme Court of Fiji the Governor-General may by order declare that this Act shall extend to judgments obtained in a superior court in that country or territory in like manner as it extends judgment obtained in a superior court in the united Kingdom and on any such order being made by this Act shall extend accordingly.*

- (15) Section 4(2) of the Senior Courts Act 2016 of New Zealand provides;

*"(2) A reference in any enactment to a senior court in New Zealand must, unless the context otherwise requires, be read as a reference to the High Court, the Court of Appeal, or the Supreme Court."*

- (16) In the industrial Commission of New South Wales in "Levoune v Bacoulis' (1935) A.R. (NSW) 126, Cantor J said; "There is ample authority for the proposition that an inferior court such, for example, as the District Court or a Court of Summary Jurisdiction, has no power to do anything beyond what is authorised to do by the statute creating it."
- (17) I also place reliance on the judgments of the High Court of Fiji in the cases of 'Jones and Tozer v Mathieson' (1990) 36 FLR 116 and 'Jones v Chatfield' (1991) FJHC 42 where authoritative pronouncements were made to the effect that the High Court of New Zealand was a Superior Court for the purposes of the 'Reciprocal Enforcement of Judgments Act (Cap 39)'.
- (18) Therefore, Section 07 of the Reciprocal Enforcement of Judgments Act (Cap 39) and Section 3(1) (b) of Foreign Judgments (Reciprocal Enforcement) Act (Cap 40) does not have the effect contended for it by (Ms) Chand. I therefore reject (Ms) Chand's submission on that point.

- (19) I am bound to say that the District Court of Manukau in New Zealand is not a Superior Court for the purposes of the Act and therefore the judgment may not be registered in Fiji High Court. Section 3(2) of the Act mandates this Court to consider whether the registration of a judgment of a Superior Court of such a designated country could be excluded by the criteria set-out in that section 3.
- (20) I decline to hold, in view of Section 4(2) of the Senior Courts Act 2016 of New Zealand which I have mentioned, and the cases I have cited (i.e. **Levoune v Bacoulis, Jones v Chatfield, Jones & Tozer v Mathieson**) that the District Court of Manukau in New Zealand is a Superior Court for the purposes of the Act.
- (21) In view of the conclusion which I have reached, I find it unnecessary to consider the criteria set out in Section 3(2) of the Act.

### ORDERS

- (1) I refuse to grant leave for registration in this Court of the Judgment in 'Shamsher Ali v Mohammed Jalal', CIV; 2016-092-3994 of the District Court of Manukau in New Zealand.
- (2) I make no order to costs.

  
26/07/2019  
Jude Nanayakkara  
Judge



At Lautoka  
Friday, 26<sup>th</sup> July, 2019