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JOHN FONG

v.

JOHN T. POLOTINI & ANOTHER

B

[SUPREME COURT, 1974 (WILLIAMS J.) 22nd February]

Civil Jurisdiction

C

Practice and procedure—judgment—entry of judgment in Supreme Court Registry—whether practice of entering judgments in Crown proceedings differs from the practice when Crown not involved—Supreme Court Rules 1968 rs. 4(a), 5, 0.42 r.5—Supreme Court Rules (Imperial) 0.1 r.4, 0.59 r.4.

Appeal—civil appeal—time within which notice of appeal must be lodged—Court of Appeal Rules (Cap. 8) r.16.

Practice and procedure—judgment—when date of entry of judgment in civil appeal perfected—Supreme Court Rules 1968 rs.4(a), 5, 0.42 r.5—Supreme Court Rules (Imperial) 0.1 r.4, 0.59 r.4.

D

Appeal—civil appeal—when date of entry of judgment perfected—Supreme Court Rules 1968 rs.4(a), 5, 0.42 r.5—Supreme Court Rules (Imperial) 0.1 r.4, 0.59 r.4.

In Fiji the practice of entering judgments in Crown proceedings did not differ from the practice when the Crown was not involved.

The date of entry and perfecting of a judgment in a civil appeal from a Supreme Court judgment was not the day on which judgment was delivered in court, but the date on which the Registrar approved, entered, and filed a draft proof.

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Cases referred to:

Higher Bebbington Local Board v. Lighthouse (1895) S.J. 5 C.A.

Application for a stay of execution pending determination of an appeal from a judgment of the Supreme Court.

R. I. Kapadia for the plaintiff.

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M. Scott for the defendants.

WILLIAMS J.: [22nd February 1974]—

This is an application for a stay of execution pending determination of an appeal. The summons dated 3/12/73 also requests the Judge to fix a sum to be deposited as security for costs.

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The appeal is against a Supreme Court judgment favouring the Attorney-General as defendant. The notice of appeal was also filed on 3/12/73, several months after the judgment which was delivered on 18/5/73. The Attorney-General had not entered the judgment in the Supreme Court Registry, and the applicant no doubt felt that he was in time with his notice of appeal under the Court of Appeal Rules (Cap. 8). Under those rules the time for appealing is governed by Rule 16 which reads:

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“16. Subject to the provisions of this rule, every notice of appeal shall be filed and served under paragraph (4) of the last preceding rule within the following period (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that is to say—
(a) in the case of an appeal from an interlocutory order, 21 days;
(b) in any other case, 6 weeks.”

The defendant caused judgment to be entered and filed on 3/12/73, and therefore he no doubt felt that he had clear six weeks therefrom in which to give notice and file his appeal. **A**

However, the Attorney-General who appeared by Mr Scott, submits that the right of appeal lapsed six weeks after 18/5/73, when the judgment was delivered. He argued that the practice of entering judgments in Crown proceedings differs from the practice when the Crown is not involved.

He referred to Order 59, Rule 4, which governs the time it allowed for appealing in England. The notes to Order 59, Rule 4, contain a reference to the practice governing the entering of judgments in which the Crown is a party. The case which Mr Scott relied upon in those notes is *Higher Bebbington Local Board v. Lighthound* (1895) S.J. 5 C.A. and he obtained a photostat copy of the judgment from England. It explains that a judgment in Crown proceedings in England is perfected by being entered in the Crown Office book on the day it is delivered. In that case the parties and the Court itself were not aware of the Crown Office practice and their Lordships were obliged to ask the Crown Office what the practice was. On being informed of the practice the Court held that an applicant seeking leave to appeal was out of time because more than six weeks had elapsed after the judgment had been delivered. **B**

Mr Scott has pointed out that Order 59, Rule 4 of the English Rules has been superseded by Rule 16 of the Court of Appeal rules. He argues that this amendment should not exclude the English practice of entering judgments which are given in Crown proceedings. However, Order 59, Rule 4, relates to the time for appealing and not to the mode of entering judgment and therefore its deletion from our rules does not affect the practice here of entering judgments. **C**

Mr Kapadia, for the appellant, submitted that there should be no preferential treatment extended to the Crown in regard to appeals. He did ponder as to whether there was in Fiji a Crown Office book similar to that maintained in the Crown Office in England. **D**

Mr Scott submitted that there was such a book; that there is a Crown Proceedings Ordinance and that judgments affecting the Crown would, or should, be entered in the Crown Office book on the date of their delivery. He did not indicate who would enter them or be responsible for perfecting the judgments before entering. **E**

One should, I think, ascertain what is meant by the Crown Office, and Central Office, which are referred in the English Rules and whether the same terms and meanings are applicable in Fiji. **F**

In the English Rules, Order 1 Rule 4 states:

“Central Office” means the Central Office of the Supreme Court.

“Crown Office” means the Crown Office and Associates determined by the Central Office”. **G**

Thus the Central Office is specially endowed under the Rules with a specific and separate department for dealing with proceedings in which the Crown is a party.

The Fiji Supreme Court Rules appear in L.N. 186 '68 Rules 2 and 3 thereof. Rules 2 and 3 state that the rules of the Supreme Court in England in force on the 1st January 1967, shall apply to the Supreme Court of Fiji, subject to, and with, all necessary modifications, and subject to Appendix 1 which itself contains a number of modifications to the English Rules. Under Appendix 1 the English Order 1 Rule 4 is amended as follows by Rule 4(a):— **H**

A "In para. (1), for the list of definitions there given, substitute the following—
 "Central Office" means the Registry of Supreme Court and the "Crown Office" means the Registry of the Supreme Court.

"Registry" means the Registry of the Supreme Court."

B Clearly the Supreme Court Registry has no separate department for dealing with Crown Proceedings as opposed to proceedings which do not involve the Crown. Since there is only one department for receiving and filing proceedings, and for perfecting and filing judgments, it seems rather unlikely that the Registry would have one practice for Crown proceedings and another practice regarding proceedings in which the Crown is not a party.

C Following the example of their Lordships in the above quoted case of the Higher Bebbington Local Board, I consulted the Chief Registrar of the Supreme Court and he assured me that his Registry has only one book for entering and perfecting judgments when they are filed.

Rule 5 of the Supreme Court Rules 1968, lays down that the Supreme Court in Fiji will follow the practice in the English High Court of Justice where there is no express provision in the Fiji Supreme Court Rules.

D The practice in Fiji for entering judgments is set out in Order 42 Rule 5, of the Supreme Court Rules. The Supreme Court Rules 1968 do not mention judgments in Crown proceedings. No doubt a different practice developed in England relating to the entering of judgments in Crown proceedings because of the existence of a Crown Office. In Fiji there is no Crown Office, and there in so substitute for it; therefore one may feel that there can be no separate Crown Office practice. Thus Rule 4(a) does not substitute the Registry of the Supreme Court for the Crown Office, it says,

E ".....for the list of definitions there given substitute the following—
 "Crown Office" means the Registry of the Supreme Court."

F The Crown Office is not simply given another name; it is re-defined; it becomes the Registry of the Supreme Court. One cannot say that the Supreme Court Rules 1968 have failed to provide for the entry of judgments in Crown proceedings because the Supreme Court Registry has assumed that obligation. If there were no enactment or accepted practice in Fiji governing the entry of judgments in the Registry, then in incorporating the English practice one would probably have to incorporate the whole of that practice, which then may well include the special practice relating to the entering and perfecting of judgments in Crown proceedings.

G It would seem then that if one wants to know the practice relating to the entering of judgments one must refer to the Supreme Court rules in Fiji, and the practice is set out in the Appendix 1, to L.N.186/68 at Order 42 Rule 5. Therefore, the onus would appear to be just as much upon the Crown to see that a judgment is entered and perfected as it is upon the other party.

If I am correct, then the submissions of Mr Scott fails and the applicant is in time with his appeal.

H Under Order 42, Rule 5(1), judgments must be settled under the direction of the Registrar before they are entered or drawn up. By this it is meant that when a judgment has been delivered, the actual order to be framed and endorsed under the judgment must be set out and approved by the Registrar as accurately containing the Judge's directions. Rule 5(2) places an onus upon the party who seeks

to enter a judgment, i.e. to file and perfect it, to prepare a draft for the Chief Registrar's approval. 5(3) states that if the judgment creditor does not within 21 days prepare a draft judgment for the Registrar's approval then the other party may do so. **A**

By 5(4) every judgment when entered shall be endorsed with the date of entry.

It is clear from the foregoing that the date of entry and perfecting of a judgment in a Civil Appeal from a Supreme Court judgment, is not the day on which the judgment is delivered in Court, but the date on which the Registrar approves, enters and files a draft thereof. **B**

Although what I have just explained in regard to entering of judgments is the accepted practice in Fiji I have merely set it out so as to emphasise that there appears to be no scope for different practices to develop in Fiji regarding entering of judgments in Crown proceedings.

Turning now to the application for a stay of execution I note that it is not supported by any affidavit setting out reasons and grounds for such a stay. As has recently been pointed out in Supreme Court Civil Action 192/72, the only ground, as a general rule, for a stay of execution, is an affidavit showing that if the appeal were successful then there would be no possibility of getting back any costs or damages which had been paid to the other party. **C**

In this case the other party is the Attorney-General and it can scarcely be said that he in his representative capacity is impecunious to that extent. **D**

I order that the application for a stay of execution be dismissed, and that the applicant do deposit the sum of \$200 as security for costs of this appeal. The costs hereof to be costs for the appeal. And I rule that the applicant is not out of time.

Application dismissed. **E**