IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 551 of 1981

Between

GANGA RAM s/o Khedu — Applicant

- and -

S. C. VERMA — Respondent

Mr. C. Gordon — Counsel for the Applicant

R U L I N G

The applicant wanted a solicitor to act for him in connection with a Supreme Court civil action, and in the matter of his father's estate. As a consequence he sought the services of the respondent legal practitioner. In respect of the respondent's services in the civil action the applicant agreed, and signed a written agreement to this effect, to pay to the respondent the sum of $3,500. This seems to be a practice approved by section 15 of the Legal Practitioners' Act. To secure this sum and also a sum of something over $500 for a loan and other sundries the applicant executed a crop lien in favour of the respondent for $4,000. Again this seems to be in accordance with the said section 15.

He now seeks a court order that the respondent delivers up "all documents and papers" and the agreement and crop lien. Although the summons is not very clearly worded it seems to ask the Court to cancel the agreement and crop lien and order the respondent's costs to be taxed in the normal way. The action purports to be brought under section 15 of the Legal Practitioners' Act. Section 15(3) empowers the Supreme Court to review any such agreement "and if, in the opinion of the Court or judge such agreement is unreasonable, the amount payable may be reduced or the agreement cancelled and the costs taxed in the ordinary way." Neither the summons nor the affidavit alleges that the amount provided for in the agreement is unreasonable and counsel for the application was unable to argue that there was anything wrong with the agreement itself, or that the sum mentioned in the agreement was in any way excessive for the work that was anticipated in representing the applicant.

The action seems to have dragged on for a year or eighteen months, which the applicant considers excessive, and although there was an unsuccessful attempt to settle it, it has still not been finalised. The applicant clearly has been and is dissatisfied with the respondent's services, hence his recourse to another firm of solicitors and this action.

Since there is no reason for the Court to treat the agreement as unreasonable, recourse to section 15(3) of the Act is not available to the applicant. But section 15(4) provides -

> "If after any such agreement as aforesaid and before the full performance thereof . . . the client shall die or change to another barrister and solicitor, the agreement shall cease and be void, and the former barrister and solicitor . . . shall be entitled to charge such client . . . for all services, fees, charges or disbursements then performed, paid or incurred, and such costs may be taxed and shall be dealt with as if such agreement had never been made."

Now although the affidavit of the applicant does not specifically state that the applicant has changed to another lawyer and terminated the services of the respondent, there is a quite obvious inference that he has done so. In such an event the applicant does not require an order of the Court cancelling the agreement, it is cancelled automatically by the Statute, and the respondent can only have his costs taxed and dealt with as if the agreement had never been made.

There is a complication in that the applicant executed the crop lien in favour of the respondent as security for the respondent's costs together with a sum of about $500 admittedly owed by the applicant to the respondent in addition to the agreed figure of $3,500.

The applicant certainly is indebted to the respondent for whatever are his taxed costs to date together with the additional sum of $500, and therefore the Court cannot cancel the crop lien as it was urged to do.

It is somewhat disturbing to learn that the respondent seems to have treated the crop lien as if the full sum of $4000 was already due and owing to him from the applicant, in spite of the fact that his services were apparently terminated before the conclusion of the case, and to learn that he has assigned the benefit of the crop lien to a third party - doing so at a time when it was obvious to him that the whole question of his costs was to be referred to the Court. It seems to me that this is questionable behaviour, and not in accordance with the spirit of section 15 of the Act.

The full sum of $3500 mentioned under the agreement is clearly not due to the respondent till he has completed the case on behalf of the applicant. Sections 15(3) and 15(4) of the Act show that the figure is not a final figure, since it can be reduced by the Court or it can be reduced to a taxed sum if the lawyer's services are terminated before conclusion of the case. Hence the crop lien should only be security for such sum as is actually due from the applicant to the respondent, that is now $500, plus such sum for costs as may be taxed by the Court, and there may well arise a question of damages if the third party attempts to execute the crop lien to its full extent.

However so far as this application is concerned there are no grounds to order cancellation of the agreement or the crop lien. But if the respondent attempts to deal with the crop lien without having his costs taxed it seems to me that he will do so at his peril.

Lautoka,
5th February, 1982

(C. O. L. Dyke)
Judge