



of possession of a motor vehicle which was the subject of a bill of sale dated 17 April 1991 executed by Mr G.F. Koi in favour of the Petitioner. The primary judge found that, on or about 28th February 1991, the Respondent Merchant Bank of Fiji had acquired property in the motor vehicle from the then owner, Farida Bibi, and, on 1 March 1991, entered into an agreement described as an "Asset Purchase Agreement" ("the Agreement") with Mr Koi as hirer. The primary judge held that the Agreement was a valid and subsisting hire purchase agreement when the bill of sale was executed with the result that the bill of sale was not effective to transfer title in the vehicle to the Petitioner.

In its proposed appeal the Petitioner seeks to challenge certain conclusions reached by the Court of Appeal. The first of these conclusions was the refusal of the Court of Appeal to admit new evidence in the form of an affidavit by Mr Koi giving additional details of the transactions leading up to the execution of the Agreement between the Respondent and himself. The Court of Appeal was plainly correct in refusing to admit this evidence on the ground that it could have been obtained with reasonable diligence for use at the trial. Accordingly, the new evidence ground does not merit the grant of special leave to appeal.

The other conclusions reached by the Court of Appeal which the Petitioner seeks to challenge all relate to the

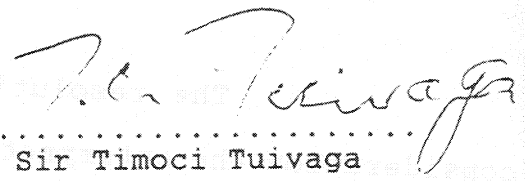
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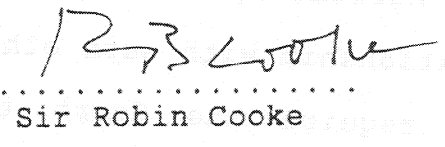
interpretation of the Agreement. The Petitioner argues that the Court of Appeal was wrong in holding that the Agreement was not loan upon security or a conditional sale agreement. In the event that it was an agreement for sale S.26(2) of the Sale of Goods Act (Cap.230) would apply so as to enable the purchaser in possession of the vehicle to pass the title in the circumstances mentioned in the subsection to a third party. Although these submissions turn on the construction of the Agreement, the argument that the transaction is loan upon security depends, in part, upon certain evidence in the case.

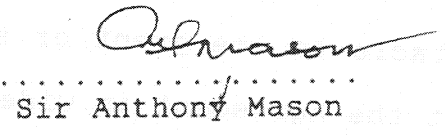
The resolution of these submissions raises for consideration the interpretation of the particular provisions of the Agreement, involving an analysis of them and of their relationship with each other, in light of the facts, and would not require the Court to answer any question of general principle. Counsel for the Petitioner sought to overcome this obstacle to the grant of special leave by seeking to establish that the Agreement is widely used in Fiji. No doubt it is used by the Respondent, but we do not consider that its use, whether it be extensive or not, warrants the grant of special leave to appeal when no question of general principle arises for determination and there is nothing to suggest that there is a number of other cases dependent upon the outcome of this case.

In any event we are of the opinion that the Court of Appeal was correct in concluding that the Agreement was a true hire purchase agreement.

The petition is therefore refused with costs.

  
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Sir Timoci Tuivaga

  
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Sir Robin Cooke

  
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Sir Anthony Mason

Solicitors

G.P. Lala & Associates, Suva for Appellant  
Munro Leys & Co., Suva, for Respondent