IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CIVIL PETITION NO. CBV 0014 of 2022
Court of Appeal No. ABU 0017 of 2017

BETWEEN	:	**FORMSCAFF (FIJI) LIMITED**
		Petitioner
AND	:	**RAJESH NAIDU**
		First Respondent
AND	:	**AMBE CONSTRUCTION LIMITED**
		Second Respondent
Coram	:	**The Hon. Justice Anthony Gates** **Judge of the Supreme Court**
		The Hon. Justice Terence Arnold **Judge of the Supreme Court**
		The Hon. Justice Lowell Goddard **Judge of the Supreme Court**
Counsel	:	**Mr. S. J. Stanton and Mr. A. Kumar for the Petitioner** **Ms. S. Devan for the First Respondent** **No appearance for Second Respondent**
Date of Hearing.	:	**10 April, 2024**
Date of Judgment.	:	**26 April, 2024**

JUDGMENT

Gates, J

[1] I have had the advantage of reading in draft the following judgment of Arnold J. I agree with its reasons and orders.

Arnold, J

Introduction

[2] The Petitioner, Formscaff (Fiji) Ltd, was contracted by the Second Respondent, Ambe Construction Ltd, to provide scaffolding at a four or five storey building that Ambe was renovating, inside and outside. On 30 September 2008, Formscaff's employees were dismantling the scaffolding by passing scaffold poles and other equipment by hand from man to man stationed on each level of the scaffolding to a truck on the ground. In the course of this, an angle iron slipped from a Formscaff employee's grasp and fell and struck the first Respondent, Rajesh Naidu. He was an Ambe employee who was working with four or five fellow Ambe employees at the foot of the scaffolding.

[3] The falling angle iron hit Mr Naidu on the head, causing him serious, life-changing injuries. He issued legal proceedings against both Formscaff and Ambe promptly, claiming that each had breached its duty of care to him and seeking damages against both, and in the case of Ambe, seeking (in the alternative) compensation under the Workmen's Compensation Act.

[4] After a convoluted procedural history, the trial commenced on 29 January 2013 before Kotigalage J. Oral evidence was heard on 29-30 January and 16-17 October 2013.[1] The parties then filed detailed closing submissions − Mr Naidu in December 2013, Formscaff in February 2014 and Ambe in March 2014.

[5] Judgment was given on 25 November 2016. It was not, however, given by Kotigalage J, but rather by Amaratunga J.[2]

[1] The reason for this was that the Court's recording equipment broke down on 30 January and it took some time to re-schedule the remaining oral evidence.
[2] *Naidu v FORMSCAFF (Fiji) Ltd* [2016] FJHC 1089.

[6] Counsel for Mr Naidu explained the background to this in her written submissions. When, after two years, no judgment had emerged, Mr Naidu's solicitors made enquiries of the High Court Registry. They were told that Kotigalage J was no longer a member of the Fijian judiciary, his warrant having expired and not been renewed. On learning this, Mr Naidu's solicitors wrote to the then Chief Justice to seek directions. The Chief Justice advised that another Judge had been assigned to the matter and had access to the full court record. There were then further communications from the Registry to all parties advising when judgment was likely to be delivered.

[7] Amaratunga J delivered judgment on 25 November 2016. The Judge held that both Formscaff and Ambe had been negligent, and that each had contributed equally to Mr Naidu's injuries; as well, Mr Naidu had been contributorily negligent. The Judge apportioned liability 40 per cent to Formscaff, 40 per cent to Ambe and 20 per cent to Mr Naidu. The Judge summarised his assessment of damages as follows:[3]

> b. The Plaintiff is granted general damages of $125,000 and interest of 6% per annum from 30.9.2008 to 25.11.2016.
> c. For the future care a sum of $67,600-00 is awarded.
> d. For loss of earnings in future a sum of $68,411.20 is awarded.
> e. For special damages $6868-44 is granted with interest from 2.4.2008 (date of incident) to 25.11.2016 at 3% per annum,
> f. The cost of this action is summarily assessed at $6,000.

[8] Formscaff filed a timely notice of appeal, but it lapsed because security for costs was not provided. Formscaff then filed a further notice of appeal, which also lapsed for the same reason. Finally, on 28 April 2017 (about five months out of time), Formscaff filed a further notice of appeal, coupled with an application for an enlargement of time. A single Judge of the Court of Appeal heard this application on 26 February 2019 and, in a ruling dated 27 June 2019, granted the enlargement of time.[4]

[9] The Court of Appeal heard the appeal in September 2022. In a short judgment,[5] the Court:

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[3] See "Final Orders".
[4] *Formscaff (Fiji) Limited v Naidu* [2019] FJCA 137.
[5] *Formscaff (Fiji) Limited v Naidu* [2022] FJCA 117.

a. refused to order a new trial;

b. directed that another High Court Judge be assigned to give judgment in the matter within three months on the basis of oral (and perhaps written) submissions relating to matters raised by Formscaff in its application for leave; and

c. made no order for costs.

[10] Formscaff then filed a petition for leave to appeal to this Court.

Basis of Petition

[11] Under s 7(3) of the Supreme Court Act, the Supreme Court may not grant leave in a civil case unless it raises:

a. a far-reaching question of law;

b. a matter of great general or public importance;

c. a matter that is otherwise of substantial general interest to the administration of civil justice.

[12] The Petition in this case was supported by a verifying affidavit filed by an employee of the New India Assurance Company Pte Ltd as Formscaff's insurer.[6] The principal grounds raised were:

a. The High Court judgment was against the weight of the evidence.

b. The High Court judgment was delivered by a Judge who had not conducted the trial, without any notice to, or consent of, the parties.

c. The claim was "a contested negligence based action with serious conflict on evidence and where only the trial judge (Kotigalage J) and not Amaratunga J had the benefit of observing the demeanour of witnesses and drawing the necessary inferences on credibility therefrom and making findings on liability apportionment of contributory negligence and the award of damages".

[6] New India insured Ambe as well and arranged separate representation for each at trial.

d. The order that a further High Court Judge be assigned to give a decision within three months on the basis of further submissions was inadequate. What was required was an order for a new trial before a Judge "who will have the benefit of observing the demeanour of the witnesses and drawing inferences based on assessment of the evidence adduced during trial".

The law

[13] As in many other common law jurisdictions, the general rule in Fiji is that civil causes in the High Court are heard by a Judge alone.[7] Occasionally, a judge is unable to complete a trial or to deliver judgment following a hearing, for example, as a result of ill health or death. In some jurisdictions, there are legislative provisions dealing with such situations. In New Zealand, for example, if a Judge sitting alone becomes incapable of giving judgment or dies, the matter must be retried.[8]

[14] New Zealand legislation also deals with situations such as arose in the present case by providing that where judges retire with uncompleted judgments, their warrants can be extended to allow them to complete the outstanding work. Sections 177(1) – (3) of the Senior Courts Act 2016 (NZ) provide:

> (1) This section applies to proceedings in a senior court, another court, or a tribunal.
> (2) A judicial officer whose term of office has expired or who has retired may continue in office for the purpose of completing the hearing of a matter, or determining or giving judgment in proceedings, that the judicial officer has heard either alone or with others.
> (3) A judicial officer must not continue in office under subsection [(2)] for longer than 3 months without the consent of the nominating Minister.

[15] There is a provision in Fiji dealing with the situation where a Magistrate is unable to complete a proceeding. Section 47 of the Magistrates Courts Act 1944 permits a Magistrate to complete processes, causes or matters started by a predecessor Magistrate, except that (subject to an irrelevant exception) "the [new] Magistrate shall commence the trial of any such cause or matter *ab initio*". In other words, where the previous Magistrate has not completed a trial, the new Magistrate must start it afresh.

[7] See High Court Act 1875, s 13(1).
[8] High Court Rules 2016 (NZ), r 11.8(3); District Court Rules 2014 (NZ), r 11.8(2).

[16] There is also a relevant provision in relation to the Supreme Court. Section 10(1) of the Supreme Court Act 1998 deals with the continuation of an appeal where a judge who participated in the proceedings dies or is unable for some reason to complete the proceedings. In that event, if there are at least two remaining judges and the parties consent, the remaining judges may complete the proceedings. If the parties do not consent, the appeal must be reheard (s 10(3)).

[17] However, there does not appear to be an equivalent provision where a High Court judge in Fiji does not complete a proceeding by issuing judgment. Rather, it has been held that the common law governs the position. I will give four examples of cases where this situation has arisen, three involving the summary dismissal of all members of the judiciary by the President of Fiji on 10 April 2009 and one additional, more recent, example.

[18] First, in *ANZ Banking Group Ltd v Vikash*[9] there had been a one-day trial in August 2008, but no judgment had been delivered by 10 April 2009 (partly because of the late filing of submissions), when the trial Judge was dismissed and not re-appointed. The plaintiff's solicitors applied for an order that a new Judge deliver judgment based on the trial Judge's notes and the submissions of the parties; the defendant opposed this course and sought a trial de novo, on the basis that the credibility of witnesses was critical to the resolution of some issues.

[19] The Judge dealing with the application, Inoke J, said that as there was no relevant statutory provision, the common law applied. Under the common law, the Judge held that he had a discretion as to whether the matter should be heard de novo or not.[10] The Judge referred to *R (on the application of Hitch) v Commissioners for the Special Purposes of the Income Tax Acts*,[11] where Evans-Lombe J said:[12]

> In my judgment the balance of authority leads to the conclusion that the common law position is that the death or incapacity of a judge in the middle of a case … does not mean that there is no jurisdiction for a second judge to take over the case in mid-trial and complete it. It will be open to him, particularly under modern rules of evidence, so to order the trial that costs

[9] *ANZ Banking Group Ltd v Vikash* [2010] FJHC 3.
[10] At para [6].
[11] *R (on the application of Hitch) v Tax Commissioners* [2005] EWHC 291 (Admin).
[12] At para [12].

> thrown away are minimised. In a case not involving witnesses this will be relatively easy. However in the majority of cases, and in particular where witnesses are involved it will be necessary, as a matter of case management, to try the matter de novo.

Inoke J considered that there was no material difference between a situation where a trial was part heard and where the trial had been completed, but judgment had not been delivered.[13]

[20] Inoke J determined that he would deal with the matter on the basis of the trial record but would give the parties the opportunity to make further oral submissions. In exercising his discretion, the Judge took into account (i) the delay that had occurred to date, and would occur if he were to order a trial de novo – at least a further year before the matter would be resolved; (ii) the modest amount at stake in the proceedings ($11,074.23); (iii) the fact that the memories of witnesses would have dimmed over time; and (iv) the fact that the Judge's notes were comprehensive and the parties had filed written submissions.

[21] Second, in *Lata v Limamaka*[14] the plaintiff had brought a claim against a truck driver and his employer for damages arising from an accident caused, it was alleged, by the truck driver's negligent driving. The trial was held on 2 and 3 February 2009 but before judgment was given, the President's decree of 10 April 2009 took effect. In July 2009, the Registrar wrote to the parties seeking their views on how the Court should deal with the outstanding judgment, ie whether another Judge could give judgment on the basis of the trial record or whether a trial *de novo* was required.

[22] The parties took different views. The defendants argued that a trial de novo was required because the outcome of the case depended on the credibility of witnesses; the plaintiff argued that a decision on the trial record was appropriate, especially given that the accident had occurred in 2000, the plaintiff was poor and unable to pay for a further trial and the main witness, an independent eyewitness, was by this stage dead.

[23] Inoke J was again the Judge who considered the matter. After referring to the principles discussed in the *ANZ Banking Group Ltd* case, the Judge determined that

[13] At para [6].
[14] *Lata v Limamaka* [2010] FJHC 2.

the matter should not be heard de novo but dealt with on the basis of the material before the trial Judge. Inoke J noted that (i) the evidence and submissions at trial had been recorded, so that the audio tapes could be transcribed and transcripts provided to the parties; (ii) this would include the evidence of the now dead principal witness; and (iii) ordering a new trial would add further delay to a matter that had already taken far too long.

[24] The third case I mention is *Lok v Singh*,[15] another decision of Inoke J. I mention it simply as an illustration of a case where both parties agreed that the Judge should deliver judgment based on the evidence and submissions that had been before the former Judge who had presided over the trial. The case involved a claim on a promissory note, the principal issue being whether the amount secured by the promissory note had been repaid, as to which there was a contest on the evidence.

[25] The final example is *Airports Fiji Ltd v Aerolink Air Services Pty Ltd*.[16] In that case, the action was commenced in February 2015 and involved a claim for some $77,000 and a substantial counterclaim. There was a three-day trial in October 2016, after which the parties were ordered to file written submissions. The submissions were not filed before the trial Judge retired in June 2017. The matter was allocated to Mohammed Mackie J, who held a hearing to determine whether he could deal with the matter on the basis of the transcript of evidence before the trial Judge or whether he should order a new trial. The Judge referred to the *ANZ Banking Group* case and noted that some of the considerations to which Inoke J had given weight were not present in the case before him. Mohammed Mackie J emphasised the importance of seeing and hearing the witnesses and ultimately concluded that the prudent course in the particular circumstances was to order a new trial.

[26] I accept that at common law there is a discretion whether or not a new trial should be ordered in circumstances where the trial judge is unable to complete a judgment through death, incapacity or retirement. While it will depend on the particular circumstances, where evidence has been given orally and the resolution of the issues in the case depends on findings as to the credibility of witnesses who give conflicting

[15] *Lok v Singh* [2010] FJHC 7.
[16] *Airports Fiji Ltd v Aerolink Air Services Pty Ltd* [2017] FJHC 766.

accounts, it is probable that a new trial will have to be ordered. But there will be cases, even cases where there has been oral evidence, which can fairly be dealt with on the basis of the material before the trial Judge, without a trial de novo. In my view, the present case falls within this latter category, as I now explain.

Analysis

[27] Appearing for Formscaff, Mr Stanton argued that the administration of justice was at stake in this case. He emphasised that the decision to give judgment on the basis of the trial record was made without notice to the parties, so that they did not have an opportunity to make submissions on the matter. He submitted that a Judge determining the case would need to make findings as to the credibility of witnesses, which the Judge could only do by seeing and hearing the witnesses, assessing their demeanour and so on.

[28] I say immediately that I agree that both parties should have been given an opportunity to make submissions to the Judge who took the matter over on the two available options, that is, whether judgment could be delivered on the basis of the trial record or whether it was necessary to have a new trial. This was the process adopted by Inoke J in the cases discussed above.

[29] However, I do not accept that the failure to take that step means that a substantial injustice has occurred. In the *ANZ Banking Group* and *Lata* cases discussed above, the parties did not agree on which of the two available options should be adopted. I consider that had the two options been raised with the parties in this case, the same difference of view would have emerged, with Mr Naidu seeking a judgment as soon as possible[17] and Formscaff and Ambe arguing for a new trial. Given that disagreement, and given also the particular circumstances of this case discussed below, I consider that a decision to give judgment on the basis of the trial record was inevitable.

[30] To explain this conclusion, I will examine first what occurred at trial and then consider the practicalities of ordering a new trial.

[17] It seems that Mr Naidu's solicitors appreciated that the Judge assigned to deal with the case would issue judgment on the basis of the trial record. They raised no objection to this.

(i) The High Court trial

[31] Although the trial was initially scheduled to take place in October 2011, it did not in fact begin until 29 January 2013. It is important to emphasise that the oral evidence was recorded and transcribed, and that all parties filed extensive written submissions following the taking of the evidence.

[32] There were three witnesses for the plaintiff – Mr Naidu himself, one of his workmates, and his medical specialist, Dr Arun Murari. In terms of the issues raised by the present petition, there are three important features of the evidence of Mr Naidu and his colleague.

[33] The first is that both began work around 7.30am, which was before the Formscaff workers arrived to dismantle the scaffolding. Both said that they were instructed by Ambe's site foreman, whom they named, to dig a ditch in front of the building at the foot of the scaffolding. Four to six people were engaged in this work, and it was expected to take all day.

[34] It is not clear exactly when the dismantling of the scaffolding began, but it was sometime shortly after 10am. At approximately 1.30pm, the Formscaff worker lost his grip on the angle iron and it fell and injured Mr Naidu. Both witnesses said that their supervising foreman at no stage told them to stop their work for safety reasons, nor were they given any safety instructions. There was no safety netting, hoist, straps, ropes or other mechanisms to assist with the dismantling of the scaffolding or to prevent falls. Other evidence did establish, however, that there was what was described as a "barricade" at the foot of the scaffolding, consisting of poles with tape stretched between them and some signs, apparently warning of the need for hardhats.

[35] The second is that both men accepted that there was a risk in working at the foot of the scaffolding as it was being dismantled and that they were aware of this risk. Both accepted that they had not pursued this with their supervising foreman. They said that had they done so, or stopped work out of concern for their safety, they would have been sent home. Mr Naidu did say he commented about the risk to his foreman, but was told to keep working – he said the foreman did not take it seriously.

[36] Third, neither man was wearing a hardhat (or helmet, as referred to at trial). Both explained why. They said that their employer did not provide sufficient suitable hardhats to go around. One of Mr Naidu's tasks each morning was to distribute hardhats to his fellow employees. He said that some no longer had straps, which meant they were not suitable for use when digging. He said he had run out of suitable hardhats by the time he started work.

[37] When the trial resumed on 16 October 2013, Mr Naidu gave further evidence about an updating report concerning his condition prepared by Dr Murari. Dr Murari then gave his evidence.

[38] Each defendant then called one witness.

[39] Formscaff called a senior supervisor who was present at the site when the accident occurred. He said that when he arrived with his gang to dismantle the scaffolding at around 9am, there were Ambe employees working inside the barricade at the foot of the scaffolding. He said that Ambe's foreman asked him to wait a while before starting the dismantling. He also said that he spoke to Ambe's managing director, who was on-site, about the Ambe employees working at the foot of the scaffolding. He said he was told not to worry and that the Ambe workers would be cleared from the area.

[40] The supervisor said he told his workers to begin dismantling the scaffolding around 10am. At that time, he said, there was no-one working beneath the scaffolding.

[41] Formscaff's supervisor said that he saw the accident. He said that one of Formscaff's workers "took out the steel" and passed it down to another; the recipient was unable to hold the item and it fell on Mr Naidu's head. He said the accident happened inside the barricade area.

[42] The only witness called by Ambe was its managing director. He said that he had not been at the building in the morning and did not know what had happened before his arrival. He denied that he had had a discussion with Formscaff's supervisor at around 10am.

[43] The director said that he was on the roof of the building when the accident occurred, although he did not see it but rather learnt what had happened later. He said that Mr Naidu should have been wearing a hardhat, but accepted that even if he had been, he would still likely have been injured. When taxed about whether there were sufficient suitable hardhats for all the workers, he said there were, and that he kept records concerning hardhats. When pressed about this, he said the records had been destroyed because no-one had told him to keep them.

[44] The director said that he was not informed about the digging that was being carried out beneath the scaffolding – work allocation was the responsibility of Ambe's foreman. In relation to Formscaff, he said:

> I agree it should have been hoisted. It should have been loading gear would have been used. They were using unsafe method. I didn't tell them to stop work but I told [Formscaff's] staff to take precautions. The ground floor person I told. I knew the danger and that's why I advised. I didn't tell them to stop work they did it earlier and there was no issue. Rajesh Naidu was not wearing a helmet. I saw him lying on the ground without a helmet. Foreman had other work to do. He was taking care of employees.

[45] Following the close of the evidence, the parties filed detailed written submissions, which traversed both the facts and the law.

(ii) Relevance of what occurred at trial to exercise of discretion

[46] There are certain critical facts that were not effectively challenged in the evidence given at trial. In my view, this means that the case is not, as Formscaff claimed, one where there was a serious conflict on the evidence that could only be resolved by a judge making findings as to credibility based on an assessment of individual witnesses.

[47] The first significant uncontested fact was that having people working at the foot of the scaffolding while the scaffolding was being dismantled by the manual process Formscaff used involved significant risks. This explained, at least in part, the so-called barricade. It was also why the Formscaff supervisor did not allow his gang to start work immediately they arrived on site. Mr Naidu said that scaffold-dismantling was usually carried out on a Sunday, when the Ambe employees were not working.

On the evidence, the inescapable conclusion was that it was reasonably foreseeable that an accident of the type that did occur would occur.

[48] The second point is that the evidence of the plaintiff's witnesses that they were instructed to work at the foot of the scaffolding while it was being dismantled was unchallenged. This was because Ambe did not call as a witness Ambe's foreman, who gave the Ambe workers their instructions. Ambe's sole witness, the managing director, gave evidence that he was not at the site in the morning and that the foreman was responsible for allocating work on-site.

[49] The third point is that Formscaff's sole witness, its on-site supervisor, saw that there were Ambe employees working at the foot of the scaffolding when he arrived at the site with his gang around 9am to undertake the dismantling. He said he raised this with Ambe's managing director and was told to carry on. Ambe's managing director denied this conversation; but whether or not it occurred, the supervisor's evidence shows that he was aware that Ambe's employees were working at the foot of the scaffolding, and appreciated the risks involved. Although the supervisor said that the Ambe employees were not working when the dismantling of the scaffolding began, clearly they were continuing to work in the area throughout the day while the scaffolding was being dismantled. The fact that the accident occurred confirms this. It is apparent, then, that Formscaff's supervisor continued with the dismantling of the scaffolding despite the fact that Ambe's employees were continuing to work within and around the area of the barricade and were therefore at risk of injury from a falling scaffold component.

[50] The fourth point is that neither Mr Naidu nor his fellow employee were wearing hardhats at the time of the accident. They explained that there were no suitable hardhats left by the time they started work. Ambe's managing director disputed this and said records were kept. When asked about those records, he said they had been destroyed as no-one had told him to keep them. However, the records were obviously relevant to the issues in the trial and should have been discovered and preserved. The fact that they were not undermines this aspect of the director's evidence.

[51] In the result, the evidence given at trial supports the conclusion that both Formscaff and Ambe were negligent and that their negligence contributed to Mr Naidu's injuries.

The evidence in support of the finding of contributory negligence on the part of the Mr Naidu is much less clear-cut, but the conclusion that he was contributorily negligent was open on the evidence.

(iii) A new trial?

[52] In this Court, Mr Stanton continued to press for an order that there be a new trial. In my view, this was a surprising stance in the circumstances.

[53] First, Ms Devan advised the Court that Ambe has been wound up, so would not be represented in a new trial. Presumably Formscaff's solicitors were aware of this since New India insured both Formscaff and Ambe and was involved on behalf of both companies at trial. It is not clear when Ambe was wound up, but its winding up may explain why Ambe did not seek to appeal Amaratunga J's judgment when Formscaff did.

[54] Second, Ms Devan also advised that Mr Naidu's medical expert, Dr Murari, has left Fiji for parts unknown, so is unlikely to be able to participate in a new trial.

[55] Third, when asked about these matters, Mr Stanton said that Dr Murari had prepared a written report at the time, and this could be relied upon at the new trial. He also said that if there were witnesses who were unavailable for a new trial, the transcripts of their evidence at the original trial could be relied upon. Given that a significant element of Mr Stanton's submission to this Court was that reliance on the written record by Amaratunga J was not appropriate in the circumstances, this was a particularly surprising submission.

[56] Apart from these considerations, there is the passage of time. Mr Naidu was injured on 2 April 2008. He issued his proceedings in September 2008. For various reasons the trial did not begin until end of January 2013 and was not completed until March 2014, when Ambe filed its written submissions. Judgment was delivered on 25 November 2016. Formscaff was five months out of time in filing its appeal in 2017. Time was extended by a single Judge of the Court of Appeal in June 2019, and the appeal was not dealt with until September 2022. On any view of it, this lapse of time to deal with a significant personal injury claim is unconscionable. Moreover, it is

improbable that any witnesses who are available for a new trial would be able to recall the details of a work accident which occurred 16 years ago in sufficient detail to be helpful to a judicial decision-maker.

[57] In summary, then, I consider that ordering a new trial is neither viable nor justified.

Outcome

[58] I have set out the grounds raised by Formscaff in its petition at para [12] above. I summarise my response to them as follows:

a. The High Court judgment was not against the weight of the evidence, as I have indicated above. This ground of appeal is without substance.

b. The views of the parties should have been sought on the question whether judgment could be given on the basis of the record before the trial Judge or whether a new trial was needed. However, the fact that this does not appear to have been done is not fatal, given that it was improbable that the parties would have agreed as to the appropriate course. This means the Judge assigned to the matter would have been required to exercise his discretion one way or the other, as Inoke J was required to do in the cases mentioned earlier.

c. For the reasons set out in the body of the judgment, I consider that Judge would have exercised his discretion to determine that judgment should be given on the basis of the record before the trial Judge. This was not a case where a judgment could only have been given by a Judge who had heard the viva voce evidence and, in any event, it is difficult to see that a new trial was a viable option in the circumstances.

d. The order of the Court of Appeal that a High Court Judge be assigned to give judgment within three months on the basis of further submissions from the parties, while innovative, was both unnecessary and wasteful of resources.

[59] Accordingly, I would:

a. grant leave to appeal, but only for the purpose of quashing the Court of Appeal's order concerning the assignment of a further High Court Judge to consider further submissions;

b. order that immediate effect be given to the judgment of the High Court; and

c. order the Petitioner to pay costs of $12,000 to the First Respondent.

Goddard, J

[60] I have read the judgment of Arnold J in draft and agree with its reasoning and with the orders proposed.

[61] ***Orders of the Court***

1. *The application for leave to appeal is granted.*

2. *The order of the Court of Appeal that a further High Court Judge is to be assigned to give judgment in the matter within three months on the basis of oral (and perhaps written) submissions relating to matters raised by the Petitioner is quashed.*

3. *Immediate effect is to be given to the judgment of the High Court.*

4. *The Petitioner is to pay costs of $12,000 to the First Respondent.*

The Hon. Justice Anthony Gates
Judge of the Supreme Court

SUPREME COURT FIJI

The Hon. Justice Terence Arnold
Judge of the Supreme Court

The Hon. Justice Lowell Goddard
Judge of the Supreme Court