

IN THE SUPREME COURT OF FIJI

APPELLATE JURISDICTION

CIVIL PETITION NO. CBV 0020 OF 2024

[Court of Appeal No. ABU 107 of 2020]

[High Court [Labasa] Civil Case No. HBC 27 of 2018]

BETWEEN : **THEN INDIA SANMARGA IKYA SANGAM** trading as **SANGAM INSTITUTE OF TECHNOLOGY/SANGAM SCHOOL OF NURSING**
of Park Street, Nadi

PETITIONER

AND : **USEBIA CIBA** of Vunivau, Student Nurse, **ANASEINI DIROKO** of Namara, Labasa, Student Nurse and **ROSA RAIVUKICI TUNABUNA** aka **ROSA TUNABUNA** of Vunivau, Labasa, Student Nurse.

FIRST RESPONDENT

AND : **BALE FRANCIS** of Namara, Labasa, Driver.

SECOND RESPONDENT

AND : **GORDON LEEWAI** of Mudaliar Place, Namara, Labasa Town.

THIRD RESPONDENT

Coram : **Chief Justice Salesi Temo**
President of the Supreme Court

Counsels : Mr. A. Sudhakar for the Petitioner
: Mr. S. Prasad and Mr. M. Hussein for the Respondent
: Second and Third Respondents not present.

Date of Hearing : 26 May 2025

Date of Ruling : 27 June, 2025

RULING ON NON-COMPLIANCE WITH THE RULES

1. On 8 November 2024, the Petitioner filed his Petition for Special Leave to appeal to the Supreme Court pursuant to Section 98 (3) and 98 (4) of the 2013 Constitution, against the judgment of the Fiji Court of Appeal dated 27 September 2024.

2. Rule 4 of the Supreme Court Rules 2016 reads as follows:

“...4.—(1) An application to the Court for leave to appeal under section 98(4) of the Constitution must be by way of Petition.

(2) A Petition under paragraph (1) must— (a) state succinctly and clearly all facts it may be necessary to state relating to the Petition; (b) deal with the merits of the case only so far as is necessary to explain the grounds upon which leave to appeal is sought; and (c) be signed by the Petitioner’s legal practitioner or by the party if the party appears in person.

(3) A Petition must be supported by an affidavit verifying the allegations made in the Petition.

(4) For the purposes of this Rule, Forms 6 and 7 set out in Atkin’s Encyclopedia of Court forms (Second Edition) Volume 5 (1984 issue) at page 189 et sequentes must be used with any modifications or variations the circumstances of the particular case may require. These forms are set out in Schedule 1...”

3. In filing their *“Petition for Special Leave to Appeal”*, in my view, the Petitioner duly complied with Rules 4 (1) and (2) of the Supreme Court Rules 2016.

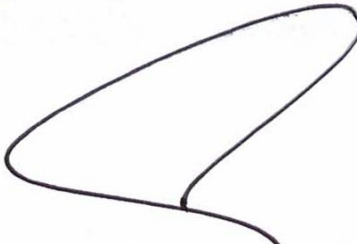
4. On 26 May 2025, Mr. M. Hussein for the First Respondent, objected to the Petitioner filing an affidavit in support of the *“Petition for Special Leave to Appeal”*, which they submitted, violated Rule 4 (3) and 4 (4) of the Supreme Court Rules 2016. Mr. Hussein submitted, the affidavit was from Jai Narayan of Nadi, who was the Chief Executive Officer employed by the Petitioner. It appeared he was not a solicitor, engaged by the Petitioner.

5. Mr. Hussein appear to submit that, under Rule 4 (3) and 4 (4), the form of the affidavit was prescribed in Schedule 1 of the Rules, that is, Form 2. According to Mr. Hussein, the affidavit must be signed by a solicitor engaged by the Petitioner. He submitted that, because

the affidavit was not signed by a solicitor, the Petitioner had violated Rule 4 (3) and 4 (4), thus his petition must be dismissed.

6. In my view, it was difficult to reject Mr. Hussein's submission, because the rule said the affidavit must be signed by a lawyer. Any deviation from the above must be supported by reasonable grounds. In this case, no reasonable ground had been shown to justify the Petitioner's Chief Executive Officer to sign the affidavit.
7. Because of the above, I dismiss the Petitioner's petition for non-compliance with the rules as to the form of the affidavit required under Rule 4 (4) of the Supreme Court Rules 2016.
8. The Petitioner is at liberty to re-lodge his petition pursuant to Rule 17 (3) of the Supreme Court Rules 2016, once the supporting affidavit is properly filled out by a legal practitioner.




Salesi Temo
Chief Justice

Solicitor for the Petitioner : Krishna & Co, Lautoka
Solicitor for the Respondent : Sarju Prasad Esq, Labasa