

HAN SIN CONSTRUCTION LIMITED -v- WESTPAC BANKING CORPORATION

HIGH COURT OF SOLOMON ISLANDS
(F. O. KABUI, J.)

Civil Appeal Case No. 003 of 2002
(Appeal from Civil Case No. 141 of 2001)

Date of Hearing: 2nd August 2002
Date of Ruling: 6th August 2002

No appearance for the Appellant
Mr A. Radclyffe for the Respondent

RULING

(F. O. Kabui, J.) The Appellant filed a Notice of Appeal on 28th June 2002 against my judgment delivered on 30th May 2002. The parties were called up for a hearing on 17th May 2002 by a notice of hearing issued by the Registrar dated 1st July 2002. The purpose of the call up was for directions to be made following the filing of that appeal. At the hearing, the application of Order 38, rule 7 of the High Court (Civil Procedure Rules) 1964 "the High Court Rules" was canvassed by Counsel for the Respondent. The Registrar decided to set down the appeal before a single judge for a hearing to decide whether or not the appeal was indeed an application under Order 38, rule 7 of the High Court Rules above or indeed an appeal under the Court of Appeal Act (Cap. 6). The Notice of Appeal was therefore set down for hearing before me at 10:30 am on 2nd August 2002. At the hearing, Mrs. Tongarutu, who was Counsel for the Appellant withdrew from the appeal? Counsel explained that she had informed the Appellant of her intention to do this at the hearing before me. That is, the Appellant had been made aware of the date and time of the hearing. The Appellant however was not in Court at the hearing. Counsel for the Respondent then proceeded in the absence of the Appellant.

Does the Registrar have the jurisdiction to call up the Notice of Appeal for directions in a civil case?

The Registrar does have extensive powers under rule 11 of the Court of Appeal Rules to make or otherwise orders imposing special conditions precedent pending the determination of an appeal. The Court of Appeal or a single also has concurrent jurisdiction to exercise the same powers as the Registrar. See **Clement Tori, Jack Wale, Bradley Boeni, Foli & Edna Jeffrey and Others v. Wayne Frederick Morris & Benjamin ST. Giles Prince (as special managers of the estate of Rex Fera, Receiver and special managers appointed & Others, Civil Case No. 007 of 2001).**

The Registrar also has powers under rule 12 to deal with matters to do with appeal fees and security for costs. As to the preparation of record, the Registrar has the power to do that under rule 19. I can find no provision either in the Act itself or in the rules, which gives the Registrar the power to call up any Notice of Appeal in a civil case for the purpose of making orders for directions. Any defects in the Notice of Appeal filed by an Appellant are matters for the Respondent to rise for the dismissal of the appeal. The Registrar may however assist the appellant by pointing out that leave is necessary before an appeal on costs can be allowed to proceed.

Does a single judge have the jurisdiction to make orders for directions on a Notice of Appeal in a civil case?

Section 19 of the Act stipulates the matters upon which a single judge may act. The list of matters in that section is specific and restrictive in nature. The restriction is that whatever the judge does which may be incidental to the powers conferred under this section must not result in deciding the appeal. None of the matters listed in this section gives the judge power to decide anything that may arise from a decision of the Registrar, if any. I do not think I do have the power as a single judge of the Court of Appeal to dismiss this appeal as was requested by Mr. Radclyffe. I make no orders than simply to leave the appeal to lie in the File awaiting the next step in the appeal to be taken by the Registrar or any of the parties. I make no order as to costs.

F. O. Kabui
Judge