IN THE FIJI COURT OF APPEAL

Civil Appeal No. 96 of 1985

Between:

MOHAMMED ALI s/o Parbat Ali — Appellant

- and -

1. JAGDEO s/o Ram Jiwan
2. SAHADEO s/o Ram Prasad
3. SHIU PRASAD s/o Jagdeo — Respondents

- and -

1. THE ATTORNEY-GENERAL OF FIJI
2. NATIVE LAND TRUST BOARD — Third Party

Mr. S.M. Koya for Appellant
Dr. A.S. Singh for Attorney-General
Mr. E. Tavai for Native Land Trust Board

Date of Hearing: 21st July, 1986.

Delivery of Judgment: 23rd July, 1986.

JUDGMENT OF THE COURT

Roper, J.A.

On the 24th May 1985 Scott A.J., refused an application by the Appellant's counsel for an adjournment of the hearing of an action in which the Appellant was the Plaintiff. There is some doubt whether the learned Judge subsequently refused the Appellant leave to discontinue the action but it is clear that he entered judgment for the Second Defendant against the Appellant, with "all other

applications arising from the order" adjourned to a date to be fixed. What other applications, required resolution has never been decided.

This is an appeal against the refusal of the adjournment.

The Appellant's action was commenced as long ago as 1978. After the joinder of Third Parties attempts were made from time to time to have the matter set down for hearing, and finally on the 8th March 1985, at a meeting attended by all parties, it was agreed that the trial would commence on the 27th May. Ten days were allocated for the hearing. On the 24th May, a Friday, the Appellant's solicitor sought an adjournment, pursuant to an application filed two or three days earlier, on the ground that Appellant's counsel would not be available on the 27th, he being engaged in another case following which he was required to attend Parliament. There was no very spirited opposition to the adjournment from the Respondents but the learned Judge thereupon refused the application for adjournment with the intimation that he would give his reasons for so doing within the next seven days. The case was not called on the 27th and on the 31st May Scott A.J., delivered his reasons for his decision to refuse the adjournment. On that same day he refused the application to discontinue, if made, and entered judgment in favour of one of the Respondents.

In his decision Scott A.J., referred to the serious problem posed for the Court by the backlog of cases awaiting hearing; the undesirable practice of last minute adjournments, and the ten days of wasted Court time that would result in the instant case. He then considered the grounds commonly advanced in support of applications for adjournment and proceeded to lay down guidelines which Counsel and solicitors would be expected to follow in the future. There is no point in elaborating on that part of the decision for it is not attacked.

The first ground of appeal reads:-

> "1. THAT on the 24th May, 1985 the Learned Trial Judge erred in refusing the Plaintiff's Application for adjournment of the trial of this action having regard to all the circumstances. Consequently there has been substantial miscarriage of justice."

We see no merit in that ground and the appeal could not succeed upon it alone. A firm fixture had been made over two months before the hearing date, and what is more it was made specifically to suit the convenience of Appellant's Counsel. The application for adjournment is then made virtually at the last minute when it must have been known long before that Counsel's parliamentary obligations would prevent his appearance. Had reasonable notice been given other cases could have been set down and much of the learned Judge's ground for objection to the adjournment removed, particularly as the other parties to the action were not overly concerned.

Order 35 rule 3 of the Supreme Court Rules provides that a Judge may, if he thinks it expedient in the interests of justice, adjourn a trial upon such terms as he thinks fit. Mr. Koya submitted that the primary concern of the Court in applying that rule should be justice between the parties to the action, and that in the present case the learned Judge had over emphasised the effect of the adjournment on the Court's administration of justice. Dr. Singh for the Attorney-General and Mr. Tavai for the Native Land Trust Board, rather surprisingly, supported that submission. The "interests of justice" is a term that should not be interpreted narrowly. It is not in the interests of justice that litigants in other cases should be deprived of an early hearing and Scott A.J., had been sent to Labasa for the express purpose of clearing a backlog.

We see no fault in the learned Judge's exercise of his discretion in refusing the adjournment.

This is the second ground of appeal:-

> "2. THAT having dismissed the Plaintiff's said Application for adjournment on the 24th May, 1985 as aforesaid, the Learned Trial Judge erred in not holding the trial on Monday the 27th May, 1985 as listed before this date. The Plaintiff's application was dismissed and the Learned Trial Judge therefore had no jurisdiction power or authority to adjourn the Court for the purpose of pronouncing his reasons for refusing the said application to a date beyond the date fixed for the trial of this action. Consequently there has been a substantial miscarriage of justice."

It is this ground that concerns us. Having refused the application for adjournment made on the 24th May there was no arrangement made for the case to be called on the 27th May - the date of hearing, and indeed there was no hearing on that day at which the parties including the Third Parties could have sought the relief to which they believed they were entitled. As a result there has been confusion as to the effect of Scott A.J.'s order of the 31st May. It has come before Govind J., for final resolution without result.

We are satisfied that the parties were entitled to their day in Court on the 27th when all parties could have sought relief. We are further troubled by the contention of the Appellant that he sought leave to withdraw the proceedings and was refused such leave. The record before us on appeal does not make it clear whether such an application was made or refused. In any event it was a draconian step to enter judgment for even one of the defendants when an adjournment had been sought on the grounds of unavailability of counsel. It would have been just to have permitted the plaintiff to withdraw and start again with a suitable impost as to costs rather than have final judgment entered against him.

However, having refused the adjournment there was an administrative oversight in not ensuring that the case was

called on the day set for hearing.

The learned Judge was rightly concerned with the effect that last minute adjournments were having on the administration of justice and we applaud his stance, but the oversight nullified the wisdom of his decision.

We therefore allow the appeal and order that the order of the ~~24th~~ May be set aside and that the action (116/1978) be set down for trial at the earliest possible time, and that the costs of all parties in the application for adjournment be costs in the trial.

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~~Vice~~ President

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Judge of Appeal

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Judge of Appeal