

IN THE FIJI COURT OF APPEAL

(At Suva)

Civil Jurisdiction

CIVIL APPEAL NO. 12 OF 1988

BETWEEN:

SURESH SUSHIL CHANDRA CHARAN

Applicants

ANURADHA CHARAN

and

SUVA CITY COUNCIL

Respondent

The Applicant S.C. Charan for both applicants

Mr I. Khan for the Respondent

JUDGMENT

This is an "application for leave to appeal" against an order made by the Taxing Officer of this Court. Rule 9 of the Court of Appeal Rules provides that "The Registrar shall be the Taxing Officer." Rule 10 is as follows:-

"Any person aggrieved by anything done or ordered by the Registrar, other than anything ordered or done under the direction of the President, may apply to have the act, order or ruling complained of set aside to a judge of the Court of Appeal who may give such direction or make such order thereon as he thinks fit. Such application shall be made by notice of motion supported by affidavit."

It does not appear that any leave is required and I shall treat this as an application under Rule 10.

This application arises from Action 1173 of 1984 which went to the Fiji Court of Appeal as Civil Appeal 3 of 1988. On the 19th of September, 1988 the Court of Appeal ordered a re-hearing of one of the issues and made certain other orders including one "that the Respondent pay to the Appellants all disbursements incurred by the appellants in this appeal which they have paid to this Court."

Following this the applicants, who are vigorous pursuers of what they perceive to be their rights, applied to a Judge of the Court of Appeal for leave to apply to the Fiji Court of Appeal for a re-hearing of the appeal herein before mentioned. This came before Sir Moti Tikaram, J.A. The appellants have a tendency, when faced with an adverse decision to ask the Court concerned to re-hear it, or as Sir Moti Tikaram put it, to have a second bite at the cherry. On the 7th of October 1988, His Lordship dismissed that application with costs to the Respondent.

The applicants filed their bill of disbursements pursuant to the Order of 19.9.88 on 16.11.88. The Deputy Registrar taxed the same on 1.12.88.

He allowed the sum of \$528.40 for the applicants' disbursements, however, he ordered the sum of \$328.40 only to be paid forthwith, the balance of \$200 to be withheld until taxation of the Respondent's bill under the Order of Sir Moti Tikaram of 7.10.88.

By the time when the Deputy Registrar taxed the disbursements of the appellants, the Respondent had filed its bill of costs pursuant to the order of Sir Moti Tikaram of 7.10.88. That bill was drawn in the sum of \$342.00 and it was obviously in that knowledge that the Deputy Registrar ordered the sum of \$200 to be retained on the basis of setting off of costs.

It is this last order which is being challenged in the present application on the grounds that it is "erroneous and wrong in principle "and" inconsistent with the practice of the Court."

After hearing the first applicant and Counsel for the Respondent, the Deputy Registrar ruled as follows:-

"In view of the fact that the defendant's bill of costs is pending and is to be taxed on 14/12/88 I have informed the parties that the said bill of costs is not for mention but will be taxed on the above date. I am aware that a Receiving Order is made against the Plaintiff. To secure the defendant's costs if allowed I order that certificate be issued for \$328.40. Certificate for balance sum of \$200 not to be issued until the defendant's bill is taxed."

The Court of Appeal Rules make no provision on the subject except for Rules 9 and 10 already noticed. However, Rule 6 makes the high Court Rules applicable to proceedings in the Court of Appeal in civil causes. Therefore Order 62 Rule 17 of those Rules applies to the present proceedings.

Order 62 Rule 17 of the High Court Rules, 1988 provides as follows:-

"Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may:-

- (a) Tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay."

The Deputy Registrar acted perfectly properly and within his powers in making the order he did. The applicants' complaint is totally without merit.

The 1st applicant conceded before me that the Respondent's bill had been pending on 1.12.88, that it was taxed on 14.12.88 in the sum of \$113, and that the difference between that sum and the \$200 withheld had been paid to him. That being so there is no order of any practical utility that I could make in any event.

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The applicants raised some other matters including the allegation that they have another bill pending for taxation and a judgment against the Respondent in another action, which however, are not within the ambit of the present application.

I record the Court's displeasure that its time should be taken up with such a frivolous application.

The application is dismissed with costs.

30th June, 1989

H. D. Palmer
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(Judge of Appeal)