

IN THE FIJI COURT OF APPEAL

CIVIL APPEAL NO. 58 OF 1992

(High Court Civil Action No. 1124 of 1984)

BETWEEN:

SURESH SUSHIL CHANDRA CHARAN

ANURADHA CHARAN

Applicants/Appellants

and

SUVA CITY COUNCIL

Respondent

Mr Suresh Charan 1st named Applicant/Appellant

Ms T. Jayatilleke for the Respondent

D E C I S I O N

(In Chambers)

This is an application for leave to appeal against the decision of Justice Scott given on 27th October, 1992 whereby he dismissed the Applicants' motion of 10/5/88 (as later amended) to set aside an allegedly unsigned judgment of Justice Sheehan in Civil Action No. 1124 of 1984 delivered by the Deputy Registrar Mr M. Hassan on 14/12/87. The main ground for the application was that the judgment was irregularly delivered by

Mr Hassan as he had no power to do so. On 6/11/92 Judge Scott declined to give leave to appeal against his dismissal of the Applicants' motion.

The Court records clearly show that Sheehan J.'s judgment was taken out by the Applicants/Plaintiffs themselves and sealed on 9/3/88. Two days later the judgment debt of \$300.00 was paid by the Defendant Suva City Council and accepted by the Applicants. The application to set aside the judgment was not made until 20th May 1988. It came before Fatiaki J. on 27/5/88 and adjourned to 24th June , 1988. On this day the Applicant, Suresh Charan, asked Fatiaki J. to set aside the judgment and 2 other actions.

Counsel for Suva City Council objected saying that the application should be refused as the Applicants had failed to disclose in their affidavit that they had received \$300 and agreed costs on the basis that they had perfected the judgment and collected the monies.

Fatiaki J.'s notes made on 24th June, 1988 merely read as follows: *"Order that the defendants application for costs is refused."* It has been argued that this disposed of the matter but since the application was formally dismissed by Scott J. only on 27th October, 1992 I will proceed on the basis that the application was not finally disposed of until 27th October, 1992.

It will be recalled that Court services were greatly disrupted from the time of the two coups in 1987 till the end of 1988. In the meantime the Applicants applied to the High Court

on 16/11/88 to alter Sheehan J.'s judgment by adding interest on the sum of \$300 awarded by the Judge against Suva City Council. This was refused by Palmer J. on 30th June, 1989, holding that he had no jurisdiction to do so. The Applicants/Appellants then appealed to the Fiji Court of Appeal against Palmer J.'s decision. The Court of Appeal in dismissing the appeal on 19th June, 1990 held inter alia - *"Palmer J. did not err in holding he had no jurisdiction. This Court likewise has no jurisdiction to entertain an appeal to vary a judgment in an action in which judgment has been entered and fully satisfied"*.

On 6th September, 1991 the Applicants filed an amended motion asking that in addition to setting aside Sheehan J.'s judgment the order of 9/3/88 sealing his judgment be also vacated. As indicated at the outset this motion was refused by Scott J.

There is no doubt that the Applicants have received the judgment sum and agreed costs in full and that they have acted on the judgment as regular in that they adopted it to first apply to the High Court to vary the judgment by adding interest thereon and then later by appealing to the Fiji Court of Appeal against Palmer J.'s refusal. The Applicants did not disclose either to Palmer J. or to the Fiji Court of Appeal that an action to set aside Sheehan J.'s judgment was pending in the High Court.

The Applicants having acted on Sheehan J.'s judgment as regular, having adopted it after sealing it and having received the full judgment debt and costs cannot now be allowed to abuse the Court process by being given leave to appeal against the

order dismissing the motion to set aside Sheehan J.'s judgment.

Furthermore, nothing has happened since Scott J.'s decision to persuade me to take a different stand. In any case the Applicants' prospects of succeeding in the Court of Appeal is manifestly remote.

This application is, therefore, dismissed with costs.

Moti Tikaram

Sir Moti Tikaram
Resident Justice of Appeal

Suva
2/2 February, 1993.