IN THE FIJI COURT OF APPEAL

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CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0011 OF 1994S
(High Court Civil Appeal No. 23 of 1992)

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD. APPELLANT

-and-

MERCHANT BANK OF FIJI RESPONDENT

Mr. B. C. Patel for the Appellant
Mr. R. A. Smith for the Respondent

Date and Place of Hearing : 21st November, 1994, Suva
Date of Delivery of Judgment : 24th November, 1994

JUDGMENT OF THE COURT

The appeal in these proceedings is against a judgment of Fatiaki J. dismissing with costs the appellant's originating summons by which it sought an order that a specified motor vehicle be released to the appellant by the respondent or either of two other persons, Mr G.F. Koi and Mr M.L. Mutch, named as defendants in the action in the High Court.

Mr Koi had executed a bill of sale in respect of the motor vehicle in favour of the appellant. Subsequently, it was alleged, he had defaulted in arrangements which he had made with the appellant to repay moneys loaned to him under the terms of the bill of sale and had failed to comply with the demand made under the bill of sale for payment of all that was due. The appellant had then instructed their solicitors to have the motor

vehicle seized under the terms of the bill of sale. The appellant asserted that Mr Koi had purported to sell the vehicle to Mr Mutch without informing the appellant. It commenced proceedings against the respondent, Mr Koi and Mr Mutch by originating summons for an order that the motor vehicle be "released" to it by whichever of the defendants had possession of it.

The bill of sale was executed on 17 April 1991 by Mr Koi. However, on 1 March 1991 he had entered into an agreement with the respondent, called by the respondent an Asset Purchase Agreement, in respect of the motor vehicle. Until 28 February 1991 or thereabouts the motor vehicle had belonged to a person named Farida Bibi. Fatiaki J. held that the respondent obtained property in the motor vehicle by buying it from Farida Bibi and that the agreement was a hire-purchase agreement, so that Mr Koi could not grant a valid bill of sale in respect of the motor vehicle to the appellant. He dismissed the originating summons with costs.

When the notice of appeal in these proceedings was lodged, the appellant's solicitors stated three grounds of appeal. Subsequently in July 1994 they lodged an amended notice of appeal and stated the grounds of the appeal as follows:-

> "1. *The learned Judge failed to appreciate that the true nature, not the form of the transaction, must be regarded, and that the supposed hiring and purchase agreement (the*

Asset Purchase Agreement) was really intended to create a security for a loan, in that:

1.1 the Respondent was in the business of financing purchase of vehicles and not of selling vehicles.

1.2 Koi had approached the Respondent for a loan to purchase the vehicle from Farida Bibi.

1.3 the Respondent was seeking security for the loan to Koi.

1.4 the vehicle was delivered by Farida Bibi to Koi without the Respondent having possession in the interim.

1.5 the "charge" of $3,736.90(THREE THOUSAND SEVEN HUNDRED THIRTY SIX DOLLARS AND NINETY CENTS) under the Asset Purchase Agreement was in truth interest payable by Koi on his loan of $11,007.50 (ELEVEN THOUSAND SEVEN DOLLARS AND FIFTY CENTS).

and as such the Asset Purchase Agreement is a sham document, being in reality a Bill of Sale, and void for non registration against subsequent bona fide mortgagee for valuable consideration.

2. The learned Judge failed to appreciate that by virtue of S.60(4) the provisions of the Sale of Goods relating to contracts of sale do not apply to a transaction which is in the form of a contract of sale but which is intended to operate by way of mortgage, pledge, charge or other security.

3. The learned Judge was wrong to conclude that Koi was not the true owner of the vehicle and that he could not grant a valid Bill of Sale to the Appellant."

On 19 October 1994, after the hearing of the appeal had been set for 21 November 1994, the appellant gave notice of its intention to apply at the hearing for leave to adduce by affidavit further evidence on questions of fact and in particular

to read and present as evidence in the appeal proceedings an affidavit sworn by Mr Koi on 19 October 1994. He stated the grounds of that application as follows :

> *"(a) The evidence which the Appellant now seeks leave to adduce will be sufficient to enable the Court to discover the true nature of the transaction and to determine the real controversy between the parties.*
>
> *(b) The nature of the evidence which the appellant now seeks to adduce is such that had it been before the court below the Respondent could not have rebutted it."*

The application was stated to be made in reliance on r.20 of the Court of Appeal Rules. That rule relates to the amendment of notices of appeal and respondent's notices. The power to receive further evidence on questions of fact is given in the Court by r.22(2) which provides:

> *"(2) The Court of Appeal shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner:*
>
> *Provided that in the case of an appeal from a judgment after trial or hearing of any cause or matter upon the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds."*

R.22(4) is as follows:

> *"(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of*

appeal or respondent's notice has been given in respect of any particular part of the decision of the Court below or by any particular party to the proceedings in that Court, or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties."

Those provisions are substantially the same as the provisions made by O.59 r.10(2) and (4) of the Rules of the Supreme Court of England. In England fresh evidence is generally not admitted unless three conditions laid down by the Court of Appeal in **Ladd v Marshall [1954] 3 All ER 745** are satisfied. The conditions are:-

"(1) It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial.

(2) The evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive.

(3) The evidence must be such as is presumably to be believed, or, in other words, it must be apparently credible though it need not be incontrovertible."

In **Coir Industries Ltd.v Louvre Windows Ltd. (Civ. App. No.18 of 1984)** this Court referred to the three conditions propounded in **Ladd v Marshall**. It observed that a number of English cases had emphasised that, where there had been a full hearing, it would in most instances work a grave injustice if a successful party were deprived of his judgment by the emergence of material which should have been before the Court originally.

However, the appeal in **Coir Industries** was against judgment which had been entered under O.14, where the matter had been dealt with in Chambers in a summary way. The Court took the view that in those circumstances a more lenient approach could be adopted. It said:-

> *"We are aware that parties, particularly defendants, sometimes have not had much time to marshal their evidence at that stage."*

It then noted that the supplementary affidavit which the appellant was seeking to have admitted **"traversed matters which had in part already been put forward in the counterclaim and we thought that in the interest of justice we should allow their additional evidence and the amended defence."**

Mr Patel urged upon us that what was said in **Coir Industries** was applicable in this appeal. We do not agree. The hearing before His Lordship was, of course, in chambers; but the plaintiff had had ample opportunity to prepare its case. The originating summons had been taken out on 11 May 1992; the matter did not come on for hearing until 21 September 1992. The notes of the learned trial judge read :

> *"Mr H. Lateef: Facts not in dispute. Only a question of law prefer if we file written submissions with Court's approval. Very important as plaintiff is challenging M.B.F.'s asset purchase agreement validity and has far reaching consequences. Need 2 weeks to prepare submissions."*

Counsel for the third defendant (the respondent in this appeal) agreed. Fatiaki J. then ordered the filing of written

submissions. So, although the actual hearing was brief by choice of the parties, in view of the agreement for the submissions to be made in writing, there was a full hearing. The written submission of the plaintiff (the appellant in this appeal) is dated 5 October 1992, i.e. two weeks after the hearing.

In Mr Koi's affidavit it is stated that he is "of Suva". There is no assertion that he was not available to swear an affidavit before the originating summons was heard or to provide factual information to Mr Lateef between 11 May 1992 and 5 October 1992. The appellant has not tendered any evidence whatsoever to show that Mr Koi's evidence could not have been obtained with reasonable diligence for use at the hearing. Indeed, Mr Patel conceded that reasonable diligence was not used. The Courts in England adopt a strict approach to the admission of fresh evidence on appeal. We are satisfied that r.22(2) of the Court of Appeal Rules requires this Court to do likewise.

Mr Patel submitted that the appellant should not be made to suffer for a failure by his counsel at the trial to adduce available evidence. However, we have no knowledge why counsel did not adduce the evidence; there is no affidavit from him before us. It may be that he considered whether evidence should be given by Mr Koi and having done so, decided that the appellant's case might be jeopardised rather than enhanced if reliance were placed on the evidence of a witness of such apparent dishonesty. Whatever the reason may have been for his evidence not being presented in the High Court, Mr Patel informed

us that it had been difficult for the appellant to get the affidavit sworn by Mr Koi recently and that it would have been difficult to trace Farida Bibi and obtain an affidavit from her. The respondent would be faced with similar difficulties obtaining evidence at this time, as its Manager has deposed to by affidavit; in our view, it would be quite unfair to the respondent to allow the appellant to adduce fresh evidence now. We rejected the appellant's application for leave to adduce the further evidence because the first condition in **Ladd v Marshall** was not met. We would add, however, that, in view of Mr Koi's apparently dishonest conduct in executing the bill of sale in spite of having signed the asset purchase agreement and then apparently subsequently purporting to transfer the vehicle to Mr Mutch, we might well have come to the conclusion that the third requirement in **Ladd v Marshall** was also not met.

It is convenient to consider together the first and second of the amended grounds of appeal. Mr Patel argued in the alternative that the Asset Purchase Agreement was not a hire purchase agreement but either merely created security for a loan to Mr Koi to purchase the motor vehicle, the property in which, Mr Patel submitted, had passed to him when he took possession of it, or was an agreement to sell the motor vehicle to Mr Koi, with the consequence that, as he had possession of it, by virtue of section 26(2) of the Sale of Goods Act (Cap.230) he was able to pass the property in it to the appellant. His Lordship examined in detail the terms of the agreement and, as stated above, came to the conclusion that it was a hire purchase agreement.

Limbs 1.1 and 1.4 of the first ground appear to be based on a misapprehension that when a person obtains a motor vehicle from another person, usually a dealer in motor vehicles, and enters into a hire purchase agreement, the agreement is between those two persons. It is not. It is between the first of them and a company which provides the finance and which buys the motor vehicle from the person who is to provide it and then hires it to the person with whom it has entered into the agreement, under terms which give that person the option of buying it **from the company** at some time in the future. Such companies do sell vehicles; they do so each time a hirer exercises his option under his hire purchase agreement to buy the motor vehicle. Usually they are not motor vehicle dealers, offering motor vehicles for sale to the public generally. But, once a customer has selected a vehicle offered for sale by a dealer, the hire purchase company buys the vehicle itself from the dealer and then hires it to the customer under a hire purchase agreement. However, the dealer usually delivers it directly to the customer, on instructions from the company. Those are facts of such common knowledge that judicial notice can be taken of them.

So far as limbs 1.2 and 1.3 are concerned, there was no evidence before the Court that Mr Koi sought a loan, as distinct from seeking to obtain possession and use of a motor vehicle by entering into a hire purchase agreement or that the respondent made a loan to him for which it would want security.

The **"charges"** referred to in limb 1.5 were shown simply as

such in the Schedule to the Asset Purchase Agreement. The Schedule showed what was referred to as the **"entire hiring amount"**; it is calculated by adding the cost of comprehensive insurance ($1,007.50) to the total price paid by the respondent for the vehicle ($15,000.00), by deducting the deposit paid by Mr Koi ($5,000.00) from that sum and then by adding $3,736.90 in respect of **"charges"**. The **"entire hiring amount"** ($14,744.40) was the amount to be paid by Mr Koi at the rate of $491.18 per month over a period of 30 months, commencing one month after the date of the Asset Purchase Agreement. Although the manner in which the **"charges"** were calculated, or indeed what they represented, was not stated in the agreement, it is, we believe, clear that they represented the amount by which, if the hiring ran its full term, the respondent was to profit from having entered into the agreement. It may well have been calculated by reference to the interest which might have been obtained upon the capital if the capital had been lent to a borrower. In other countries it is common for hire purchase providers, when advertising their services, to state their charges by reference to such notional rates of interest. However, the fact that that may well be the manner in which the respondent calculated its **"charges"** did not have the effect of turning the transaction into a loan at interest.

The first ground also contains an assertion that the Asset Purchase agreement **"is a sham document being in reality a bill of sale"**. Mr Patel referred to several provisions of the agreement in an endeavour to show that by its terms it was not a hire

purchase agreement. However, there was no evidence that it was a sham document, that is to say one that is not what it appears on its face to be; we understood Mr Patel to concede that, after we had rejected his application to present fresh evidence.

In **Helby** v **Matthews** [1895] A.C. 471 the House of Lords distinguished between a hire purchase agreement under which the hirer has an option to purchase the goods hired and an agreement to sell. In the former the hirer has no obligation to buy the goods whereas in the latter he does. Mr Patel submitted that the Asset Purchase Agreement required Mr Koi to pay the entire price of the motor vehicle, even if he returned it to the respondent, and that in consequence he was under an **obligation** to pay its full purchase price. Effectively, Mr Patel argued, Mr Koi had no option not to buy the car and so the agreement was an agreement to sell.

Mr Patel brought to our attention the following provisions of the agreement:

> *"4. The hirer agrees:-*
>
> *(p) to pay, subject to the provisions of the Agreement, to the Owner the entire hiring amount described in the Schedule at the times and in the manner therein provided for the whole period described in the Schedule.*
>
> *6(i) The Owner and Hirer agree that the Hirer's agreements set out in clauses 4(a)(ii) and 4(1) and 4(p) and 7(ii)(b) are essential conditions of this Agreement so that any breach thereof shall entitle the Owner by notice in writing to the Hirer to forthwith*

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terminate this Agreement for breach and to damages for loss of this Agreement as a whole.

6(ii)In the event that the Owner shall exercise its right of termination:-

(a) in addition to Hiring Instalments and the charges then overdue there shall forthwith fall due and payable (by way of indemnity for the capital loss sustained in respect of Hiring Instalments not then accrued due) by the Hirer a liquidated debt equal to the sum of the present values of each of the Hiring Instalments not then accrued due but which would have thereafter accrued if the Agreement had not been terminated, such present values being ascertained by applying to such Hiring Instalments a discount factor being the Rebate Rate specified in the Schedule to this Agreement over the period by which the date of payment thereof is brought forward by virtue of this clause together with an amount equal to the stamp duty (if any) on the amount so payable.

11(i)The Hirer shall have an option to terminate the hiring of the goods at any time prior to making payment of the last hiring instalment provided for in the Schedule to this instrument.

(ii)The option in clause 11(i) shall be exercised by the Hirer returning at the Hirer's expense the goods to the Owner or its nominee at a place nominated by the Owner during the ordinary business hours of the Owner, by paying to the Owner the Discharge Amount calculated as at the date of the payment of the same and by fulfilling all his other obligations under this Agreement.

(iii)If the Hirer exercises the option in clause 11(i) and returns the goods to the Owner, the Owner shall sell the goods for the best price reasonably obtainable and the gross proceeds of sale actually received by the Owner less all costs and expenses of or incidental to such sale shall be set off against the amount then due and payable by the hirer to the owner and, if the gross proceeds of sale actually received by the

Owner less all costs and expenses of (sic) any incidental to such sale exceed the amount then due and payable by the Hirer to the Owner, the excess shall be paid to the Hirer."

The expression **"the Discharge Amount"**, so far as is relevant in the agreement between the respondent and Mr Koi, was defined in clause 10(ii) of the agreement as an amount calculated in the following manner:-

"(iii) (a)If the entire hiring amount is payable by no more than sixty (60) equal monthly instalments in arrears, the Hirer will forthwith pay to the Owner the entire hiring amount less the following amounts:

(i) all moneys previously paid to the Owner by the Hirer by way of hiring instalments; and

(ii) a rebate of the charges specified in the Schedule to this instrument as at the date of such payment being the amount derived by multiplying the Charges by the sum of all the whole numbers from one to the number of complete months still to elapse until the date contemplated for the payment of the last hiring instalment (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months from the date on which payment of the first hiring instalment is due to the date contemplated for the payment of the last hiring instalment (both inclusive); together with an amount equal to the stamp duty (if any) and financial institution duty (if any) on the amount so payable;"

Clause 13 of the agreement provided that at the end of the period of hire specified in the Schedule, if Mr Koi had paid all the moneys due under the agreement, **"property in and title to the**

goods" would vest in him. That was consistent with the agreement being an agreement to sell, with property passing only on completion of the payment of the total price by instalments. But to regard it as such an agreement would, in our view, ignore the provisions of Clauses 10 and 11.

Clause 10(i) gave Mr Koi an option to terminate the hiring at any time and to purchase the vehicle forthwith. If he exercised that option, he had to pay **"the Discharge Amount"**, as defined in Clause 10(ii) by reference to Clause 10(iii). That was the same amount as he would have had to pay if instead he had returned the goods. However, it was less than the unpaid balance of the entire hiring amount, because of the rebate. Further, if Mr Koi had returned the vehicle, he would have been entitled to be paid by the respondent any amount by which the price for which it sold the vehicle exceeded **"the Discharge Amount"**. Those facts distinguish the agreement from that with which the House of Lords was concerned in **McEntire v Crossley Bros. Ltd** [1895] A.C. 457, where the amount payable on return of the goods was the total of the hiring amount less any instalments. We are unable to accept Mr Patel's argument that the agreement was an agreement to sell or, in the terms used by Mr Patel, an agreement to buy.

Mr Patel drew to the attention of the Court the provision in the interpretation section (section 3) of the Bills of Sale Act (Cap.225) that:-

> *""apparent possession" of personal chattels is deemed to be such possession as may be*

> *had by the person making or giving the bill of sale, so long as such chattels remain or are in or upon any house, plantation, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person;"*

He suggested that it might empower a person in possession of a chattel but not having title to it to execute a bill of sale in respect of it. We are satisfied that that is not so.

The provision relating to "apparent possession" is essentially similar to a provision contained in section 4 of the Bills of Sale Act 1878 (England). In the English Act the expression was included in section 8. That section applied where the person who had given a bill of sale had become bankrupt or assigned his estate to his creditors. It provided that, if the bill of sale was not registered, it was to be deemed to be fraudulent and void in respect of the chattels to which it related if they were in his possession or apparent possession. As the Fiji Act was made as an Ordinance in 1879, we think it likely that it originally contained a provision similar to section 8 of the English Act. The English Act was amended in 1882; thereafter, although section 8 of the 1878 Act remained unamended, it ceased to apply to bills of sale given by way of security for the payment of money. Section 8 of the 1882 Act rendered any such bill of sale void simply if it was not registered. The Fiji Act provides that all bills of sale are to be deemed to be fraudulent and void, if not registered. If in

1879 it contained a provision similar to section 8 of the 1878 English Act, it has clearly been amended since so as to remove that provision but without the provision in the interpretation section relating to apparent possession being removed also, so that it now remains without serving any purpose. Alternatively (but less likely) the Fiji Act may not have contained from the start a provision similar to section 8 of the 1878 Act; if so, the inclusion of the provision in the interpretation section relating to apparent provision was a drafting error. In either event it certainly does not have the effect suggested by Mr Patel. The judgment of Lord Herschell L.C. in **McEntire** (supra) at p.462 makes it clear that for a person to be able to give a valid bill of sale in respect of any chattel he must have title to that chattel.

Mr Patel submitted in the alternative that the agreement created a mortgage or charge. For that to occur, the property in the vehicle would have had to pass to Mr Koi before the agreement was made or to do so upon its being made. The documentary evidence before the High Court, which was not contradicted by, or inconsistent with, any of the other evidence, showed, at least on the balance of probabilities, that Farida Bibi sold the vehicle to the respondent on the day when, or the day before, the agreement was signed. It showed also, that Mr Koi paid $5,000 to the respondent and not to Farida Bibi and that the respondent paid to her the whole of the price for which she was selling the vehicle. There was no evidence outside the agreement of any transfer of property in the vehicle to Mr Koi. The agreement

was in terms of Mr Koi hiring the vehicle until he should either exercise the option to terminate the hiring and purchase it, or return it, or acquire title to it by paying all the instalments of the entire hiring amount as and when due. Property did not pass to him at any time; so he could not mortgage it or create a charge in respect of it.

Nor, for the same reason, was the Asset Purchase Agreement a bill of sale requiring registration. Even if the agreement had been an agreement to sell, a bona fide agreement in writing for the bailment of goods which are not to become the property of the bailee unless and until the last instalment of the payment of the price as provided in it is made is not a bill of sale. The respondent's right under Clause 7(i) of the agreement to recover possession of the vehicle was based on the fact that, as property in it had not passed to Mr Koi, the respondent was the owner of the vehicle. (See Halsbury's Laws of England, 4th Ed., p.35, para. 38 and the cases cited there).

For the above reasons we have concluded that the amended grounds 1 and 2 of the appeal, both as formally stated in the amended notice of appeal and as more broadly argued by Mr Patel, must be rejected.

We turn now to ground 3 of the amended grounds of appeal. All the evidence before the learned trial judge was presented by way of affidavits. However, none of the deponents had any personal knowledge of the circumstances in which the respondent

and Mr Koi entered into the Asset Purchase Agreement. The evidence of those circumstances consisted of only Farida Bibi's invoice, which was exhibited to the first affidavit of the respondent's Manager-Credit. Otherwise the circumstances had to be inferred from the terms of the agreement. On that basis there was, in our view, only one conclusion to which His Lordship could properly have come, that is to say that Mr Koi was not the true owner of the vehicle and could not give a valid bill of sale. He properly rejected an argument put to him by counsel for the plaintiff (the appellant in this appeal) that, as **"owner"** is defined in section 2 of the Traffic Act (Cap 176) as including a person in possession of a vehicle which is the subject of a hiring agreement or a hire purchase agreement, Mr Koi had the power to grant a valid bill of sale to the appellant. His Lordship correctly held that that definition, which was **"for the purposes of"** the Traffic Act, did not affect the proprietary right of the respondent or Mr Koi so as to make Mr Koi the owner at common law. Accordingly we find that the third ground of appeal is not made out.

The appeal must, therefore, be dismissed with costs.

However, we consider that, before concluding this judgment we should make a number of observations about the state of the law, the title given by the respondent to the agreement with which we have been concerned in this appeal and the procedures in the High Court.

First, we draw attention to the fact that there is no legislation in Fiji controlling hire purchase agreements. It appears that, at least until recently, those who financed the purchase of motor vehicles usually lent the purchase price and required the borrower to execute a bill of sale. We understand that it is usual for those who buy second hand vehicles or lend money to the owners on the security of their vehicles to search the register of bills of sale. In the absence of any statutory provision for the registration of hire purchase agreements, those who deal with persons who are hirers under such agreements cannot ascertain that fact, and so protect their proper interests, by searching any register. All they can do is to rely on the honesty of the hirers. The situation is exacerbated in the case of motor vehicles by the fact that the Traffic Act, as noted above, specifically requires that, where there is a hire-purchase agreement, the vehicle must be registered in the name of the hirer. That can easily mislead those dealing with hirers if they are not aware of the requirement.

Legislation to control hire purchase transactions may be designed to protect three different classes of persons, the providers of the finance, the hirers and persons dealing with them. Mr Patel suggested that under the terms of the respondent's agreement what Mr Koi would have had to pay the respondent if he had returned the goods was excessive. Whether that was so or not, hire purchase agreements may, if the law does not prevent it, contain provisions that impose harsh and unconscionable obligations on hirers that are frequently not

easily recognised by a layman. There may well be a need for the public to be protected from that.

The second observation which we have to make is that the appellant's choice of the title "Asset Purchase Agreement" was not appropriate for a hire purchase agreement. Although any misunderstanding caused by the title could not justify a course of dishonest dealings such as that allegedly engaged in by Mr Koi, it may lead to some hirers innocently acting in breach of their agreements, to their own detriment and to the detriment of others dealing with them. If the respondent does not want that to occur, as we would hope is the case, it should cease to use such a misleading title for its hire purchase agreements. If legislation is enacted, consideration might be given to including provision to prevent the use of such misleading titles.

Our final observation concerns the length of time which elapsed between the hearing and delivery of judgment, over 15 months. We should not be understood as intending to criticise His Lordship, whose judgment was as usual full and well-reasoned. We believe, however, that steps need to be taken to ensure that judges are able to prepare and deliver their judgments quickly. The practice of closing addresses being presented in writing undoubtedly contributes in many cases to delay in the delivery of the judgment. In our view, the practice should be abandoned and, as elsewhere, closing addresses should normally be presented orally before the completion of the hearing. We consider that, when it is necessary to reserve a judgment, the normal practice

should be for the judge to reserve it to a fixed date, rather than on notice; we would suggest that it would be only in rare cases that it would be necessary or desirable for a date more than a month ahead to be fixed. Otherwise the parties in many cases will be denied justice by reason of the delay in obtaining the remedies to which they are entitled.

Decision

The appeal is dismissed.

The appellant is to pay the respondent's costs of the appeal.

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Sir Peter Quilliam
Judge of Appeal

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Mr Justice Gordon Ward
Judge of Appeal

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Mr Justice Ian R. Thompson
Judge of Appeal