

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0033 OF 1995
(High Court Civil Action No. 659 of 1985)

BETWEEN:

SURESH SUSHIL CHANDRA CHARAN
AND ANURADHA CHARAN APPELLANTS

-and-

SUVA CITY COUNCIL RESPONDENT

Mr. Suresh Charan for the Appellants
Mr. R. Gopal for the Respondent

Date and Place of Hearing : 22 November 1996, Suva
Date of Delivery of Judgment : 29 November 1996

JUDGMENT OF THE COURT

This is yet another appeal involving the same parties arising out of an unlawful distress on 29 June 1985 by Respondent upon certain goods of the Appellants. The issues before us turn largely on the wording of an order of Rooney J in the High Court of Fiji, wherein His Lordship on 13 November 1985 held:

- (1) that on 18 September 1985 the Appellants (Plaintiffs) obtained a regular interlocutory default judgment for damages for unlawful distress;
- (2) that the application by the Respondent (Defendant) to set

aside the judgment should be refused and in so doing, he ordered:

(3) that "in view of the above I dismiss this application. The reasonable expenses of the Plaintiffs in resisting the application must form part of the costs of the action to be taxed and paid by the Defendant".

The arguments on this appeal turn largely upon the words quoted and in particular this part thereof,

"The reasonable expenses must form part of the costs of the action to be taxed and paid by the defendant."

As the male Plaintiff appeared in person, his costs, expenses, etc in so resisting the application, were, at that time limited by law to the Plaintiffs' "reasonable expenses". This was radically changed by the High Court Rules 1988 (O.62 r.27). Prior to the 1988 Rules, a litigant in person was limited as to what was recoverable by him, by the provisions of O.62 r.18 as set out in the White Book. (See notes under that Rule in the 1988 White Book for the possible origin of "reasonable expenses" in the Order of Rooney J).

The short question before us relates to the meaning of "the action".

As is not unusual in litigation in these Courts involving the male Plaintiff, a final answer to this question was not obtained until Scott J gave judgment on 4 May 1995 on an application by the Plaintiffs to set aside a decision of the Deputy Registrar refusing to tax what must have been "the reasonable expenses" ordered by Rooney J., she having held that the bill was presented out of time.

On the appeal before Scott J to set aside the decision of the Deputy Registrar, His Lordship held that the time prescribed for presenting a bill of costs ran from the date of the order granting the costs (in this case, the "reasonable expenses" order of 13 November 1985 duly sealed on 21 January 1986) and consequently was out of time. In the circumstances he ruled that time should not be extended to save the Bill of Costs.

In the result, he was of the view that the "Deputy Registrar reached the correct conclusion and accordingly the Plaintiffs' appeal is dismissed".

From this decision the appellants purported to appeal to this Court, seeking:-

"That the said decision of Scott J of 4.5.95 be set aside with costs of the Court below and of this appeal with the direction the bill of the costs of the appellant be taxed forthwith by the Registrar in person."

We are of the opinion that His Lordship's judgment did proceed upon a wrong basis and that time ran from the date of the final determination by the High Court of the issues in the Plaintiffs' action (659 of 1985). This included the damages finally assessed for the unlawful distress by Scott J in the proceedings for assessment which was made by him on 3 January 1992.

In our opinion the Order as to costs made by Rooney J was perfectly regular and by no means unusual. The learned Judge could equally have said that the costs of the application be the Appellants' (Plaintiffs') costs in the cause. Indeed that is the sense in which we read His Lordship's Order. Whether he used the term "action" or "cause" it was clearly the process that commenced the suit, namely the Writ of Summons issued on 17 July 1985 claiming injunctions to prevent the distress (which at the time of the hearing of the application before Rooney J would have been of little or no effect) and damages for the unlawful distress. It was in respect of the latter that the judgment by default was obtained and against which the application to set it aside, was made by the Defendant (Respondent).

In our view the "action" to which Rooney made reference, was the action commenced by the Writ of Summons. When that was finally resolved and order or orders made (including Orders for

costs), then the appellants' "reasonable expenses" could be assessed or taxed along with any other Orders made in the suit and if thought necessary, a final balance struck on costs.

To rule, as did the Deputy Taxing Officer and also Scott J, that the "action" was merely the application to set aside the default judgment, flies in the fact of the usual practice consequent upon the usual order made in interlocutory proceedings and certainly, in those where costs of one or other party are ordered to be "his costs in the cause".

In our opinion, the "action" referred to in the Order of Rooney J terminated with the assessment of damages and giving of judgment by Scott J on 3 January 1992. Time for presenting the Bill of Costs ran from that date. Consequently the Appellants' Bill of Costs was out of time. As no appeal was made against the Order of Scott J refusing an extension of time for presenting the bill, this point was not before us. In any event, we would be averse to granting any such extension.

Arguments addressed to us on the effect of Ss.12(1)(c) and (2)(e) of the Court of Appeal Act need not be dealt with.

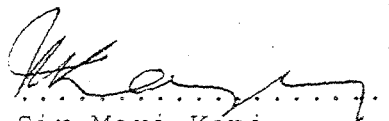
On the view we have taken:

- (1) the appeal before us was competent, in that it did not require leave;
- (2) Scott J arrived at the correct result in holding the right to present the Bill of Costs had lapsed albeit for the wrong reasons;
- (3) in the circumstances we make no Order for costs of this appeal.

The appeal is accordingly dismissed.



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Sir Edward Williams
Judge of Appeal



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Sir Mari Kapi
Judge of Appeal



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Sir Maurice Casey
Judge of Appeal