

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0014 OF 1998S
(Original Lautoka High Court Action No.
HBC0249 of 1994/L)

IN CHAMBERS

BETWEEN:

THE NATIONAL INSURANCE
COMPANY OF FIJI LIMITED

Applicant
(Original Defendant)

and

PREMIER APPARELS LIMITED

Respondent
(Original Plaintiff)

Mr Suresh Maharaj for the Applicant
Mr A.K. Singh for the Respondent

Date and Place of Hearing: 12 March 1998, Suva
Date of Decision: 19 March 1998

DECISION

This is an application for leave to appeal to the Fiji Court of Appeal and for a stay order pending determination of the appeal if leave is granted.

On 9 March 1998 Sadal J. refused the Applicant's application to vacate the dates fixed by him for the hearing of Lautoka Civil Action No. HBC0249 of 1994L, i.e. 17 and 18 March 1998. He also refused an application for a stay

order pending Applicant's proposed appeal to the Court of Appeal. The hearing dates were fixed by him on 6 February 1998. The Applicant immediately addressed a letter to the Deputy Registrar protesting against the manner in which the hearing dates were fixed. The application to vacate the dates was filed on 25 February 1998 and set down for hearing on 6 March 1998. The Applicant filed 2 affidavits in support of its application and the Respondent also filed 2 affidavits in opposition in the Court below.

The Learned Judge gave a written ruling setting out the chronology of events and his reasons for the refusal.

Immediately after the delivery of Sadal J.'s decision the Applicant's faxed a letter to the Registrar of the Court of Appeal advising him of its intention to seek, ex parte, leave to appeal and a stay order. It asked that the Lautoka High Court file be sent for because of the urgency of the matter and the need to refer to certain matters in the Court file. An ex parte summons was filed in this Court on 11 March 1998 and I fixed the hearing for 9.30 am on 12 March 1998. I also ordered short service on the Respondent as I felt it was desirable to hear both parties.

The Respondent was served and it was represented at the hearing before me by Mr A.K. Singh of G.P. Shankar and Co. Mr Singh did not seek an adjournment nor did he wish to ask for time to file an affidavit in opposition. He came prepared to oppose the application. In addition to oral argument in reply he also tendered his written submissions as to why the applications before me should not be granted.

Because of my other prior commitments and because the next day (Friday 13 March) was a public holiday I was not in a position to give a substantive Ruling the same day or before 17 March 1998. However having read the affidavits filed in support of the application and bearing in mind the oral arguments for and against the application I formed a preliminary tentative view that unless I gave interim stay the proposed appeal could be rendered nugatory and an injustice could result.

I therefore granted an interim stay until delivery of my substantive decision. I did this with the full knowledge that the Applicant would probably achieve its objective of a postponement of the hearing date but I had no option in the circumstances bearing in mind the long weekend which intervened and my own prior commitments.

In granting the interim stay I was influenced by the following factors, primarily on the uncontradicted affidavit evidence before me -

- (i) That the Applicant's Counsel and his colleague appeared to me to be in genuine difficulties by reason of their prior commitments.
- (ii) That out of the 40 defence witnesses that the Applicant intends to call, 4 were from overseas. Of these 4, 2 appeared to be vital witnesses who like the other 2 witnesses were not available to come for the hearing as set down.
- (iii) That there appeared to be at least two undisposed of applications pending before the High Court relating to service of documents and interrogatories.
- (iv) That it was officially known that the primary judge had been posted to Suva with effect from the mid of April 1998. If the hearing had started as per schedule, complications could have arisen especially if another application was made by the Applicant for an adjournment to enable it to call its overseas witnesses at a later date.
- (v) That prima facie the Applicant was likely to suffer an injustice if no interim stay was granted pending its intended appeal or pending my decision.

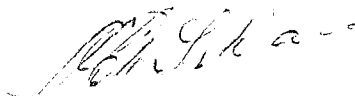
The need for leave to appeal arises because the order or decision which is sought to be appealed is an interlocutory one. It is now well established that it is only in exceptional circumstances or where a serious question needs to be determined by an appellate Court, that leave is normally granted. Appellate Courts do not normally interfere with the lower Court's exercise of discretion especially with matters of practice and procedure. Furthermore Courts do not function to suit the convenience of Counsel only but a reasonable approach is taken to accommodate both sides if there are genuine difficulties involved. The Court's own resources and its lists have also to be kept in mind.

Now that the scheduled hearing on 17 and 18 March 1998 could not take place the Applicant has achieved its ultimate objective namely the vacation of the hearing dates. In these circumstances there is no point in my subjecting the opposing arguments to close scrutiny with a view to coming to reasoned

decision on the applications filed. Furthermore to grant leave to appeal in fact would mean further unnecessary delay in the hearing of the action in the Court below. In the circumstances the application for leave to appeal is dismissed and the stay order lapses.

The Registrar of the Court of Appeal is directed to forthwith return the Lautoka High Court file to Lautoka so that the Deputy Registrar there may place the file before the primary judge for such directions as he may consider appropriate in the light of the decision herein.

There will be no order as to costs in the proceedings before me.



Sir Moti Tikaram
President, Fiji Court of Appeal