

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0042 OF 1999S
 (High Court Civil Action No.HBA0018 of 1997)

BETWEEN:

SURESH CHARAN

-Appellant-

AND:

BANS RAJ

-Respondent-

Coram:

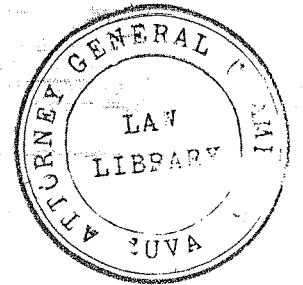
Eichelbaum JA, Presiding Judge
 Sheppard JA
 Smellie JA

Hearing:

Friday 16 November 2001, Suva

Counsel:

Appellant in Person
 Mr D. Sharma in Person for the Respondent



Date of Oral Judgments: Friday 16 November, 2001

ORAL JUDGMENTS OF THE COURT

Eichelbaum JA, Presiding Judge

The origin of these applications is a decision of the Small Claims Tribunal in 1996 ordering the applicant to pay \$2,000 to the respondent for arrears of rent. The applicant's principal complaint throughout has been that the hearing proceeded in his absence despite his request for an adjournment and despite what he maintained was an inadequate notice of the hearing, in breach of the rules of the Tribunal. Since then the case has taken many twists and turns. The applicant appealed but was out of time, and the Magistrate's Court, in a full and careful ruling, declined his application for leave to appeal out of time. The applicant's appeal against that judgment was dismissed by Scott J. The applicant contends that the merits of the appeal were not before Scott J. When the appeal came before Byrne J he stated that what purported to be an appeal was in fact "a brazen attempt by the appellant to have a Judge of this Court review the decision of one of his brothers." Byrne J. dismissed the appeal as an abuse of process.

When the applicant's appeal against Byrne J's decision came before this Court the Court held that Scott J. had jurisdiction to deal with the appeal, that he had dealt with it and dismissed it, and that Byrne J. was correct to dismiss the purported second appeal.

The first matter before the Court today is an application for stay of the order made by the Court of Appeal for the payment to the respondent of the sum of \$2,000 and interest which had been paid into court pursuant to a previous direction. When the application for stay was received the Registrar had already made payment pursuant to the direction given by this Court. The application for stay being futile I would dismiss it.

Secondly, there is an application for leave to appeal to the Supreme Court under section 122 (2) (a) of the Constitution whereby the Court of Appeal may give leave to appeal on a question certified by it to be "of significant public importance." Although the applicant has advanced a number of matters which he maintains are of significant public importance I am satisfied there are none. The particular matters which he articulated in response to repeated questions from the Bench were first, that the rules of Court, meaning in this instance the rules of the Small Claims Tribunal, must be obeyed; secondly, that Scott J. did not "hear" the appeal but only indicated that he would do so, and thirdly that the court should not allow an error of law to remain on the record. In regard to the first ground, the question of obeying rules of court is the subject of ample authority and does not require a further decision of the Supreme Court. As to the second matter, this turns entirely on the facts of the case, which are set out in sufficient detail in the judgment of this Court dismissing the appeal against Byrne J's judgment. There is no question of significant public importance involved but solely a decision on the particular facts. As to the third ground, if there was merit in this it would mean that in any instance where an applicant was dissatisfied with a decision on a question of law, this would give grounds for leave to appeal to the Supreme Court. Clearly this is not how section 122 is worded, and the question of law itself must be one falling within that section. Thus in my judgment the grounds required under section 122 are not made out and I would dismiss the application for leave also.

Sheppard JA

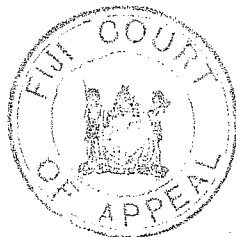
I agree that both applications should be dismissed for the reasons given by the Presiding Judge.

Smellie JA

I also agree.

Eichelbaum JA

In accordance with the unanimous opinion of the Judges both applications are dismissed. We order the applicant to pay the respondent costs in the sum of \$250.



~~Robert Smellie~~
.....
Eichelbaum JA, Presiding Judge

[Signature]
.....
Sheppard JA

[Signature]
.....
Smellie JA