

IN THE COURT OF APPEAL, FIJI
(AT SUVA)

CIVIL JURISDICTION

CIVIL APPEAL NO: ABU0031/2000S

IN CHAMBERS

BETWEEN:

THE ATTORNEY GENERAL OF FIJI - Appellant

AND

WAISALE VAKALOLOMA - Respondent

For Appellant : Mr Sunil Kumar

For Respondent : Mr Ramesh Prakash

R U L I N G

This is an appeal by the Attorney-General's office against a decision of Mr. Justice Bryne dated the 2nd of May 2000.

On 23 May 2000, the Attorney-General's office filed a Notice of Appeal. An Affidavit of Service of that Notice of Appeal and Summons to fix Security for Costs was filed on the 23 November 2000. The Summons was called before me on 7th December 2000.

On 07/12/00, Mr.Sunil Kumar for the Appellant and Mr. Ramesh Prakash for the Respondent appeared before me. Mr. Prakash informed me that the Notice of Appeal had first been served on 25th May 2000, and sought leave to file an Affidavit deposing to that service. I granted Mr. Prakash leave to file the Affidavit and Mr. Kumar leave to file an answering Affidavit.

On 07/12/00, Affidavit of Kailash Nadan was filed by Messrs. Mishra Prakash & Co. A Notice of Appeal showing that service had been accepted on 25/05/2000 was annexed to that Affidavit. On 24 January 2001, the Attorney-General's office filed an Affidavit in reply stating that the Officer who first served the Notice of appeal had left the employ of their office, hence the need to re-serve the Notice of Appeal.

I had set down the Appellants application for Security for Costs for hearing on 11th January 2001, but due to my absence, the case was taken off the list and a Notice of Adjourned hearing was sent to both parties for the 1st of February 2001.

On the 01/02/01, there was no appearance for the Attorney-General's chambers whilst Mr. Prakash together with Ms. Sen appeared for the Respondent.

The Respondents had prepared skeleton submissions and also made oral argument.

I am satisfied by the Affidavits of Kailash Nadan and Ajay Singh that the Notice of Appeal dated 23 May 2000 had in fact been served on the Respondent on 25th May 2000. Pursuant to Rule 17(1), the Appellants were then obliged to file evidence of service and summons to fix Security for Costs within 7 days. This was not done. Instead, the Appellants waited over 6 months to file the Summons to fix Security.

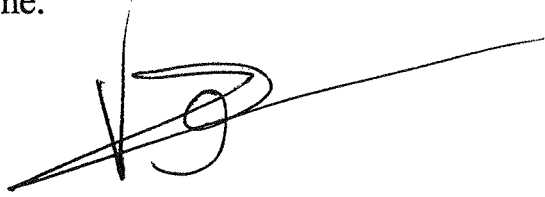
Rule 17(2) clearly states that where an appeal is deemed to be abandoned by virtue of non-compliance with Rule 17(1), the Appellant has 42 days to file a new Notice of Appeal. This Appeal was deemed to be abandoned 7 days from 25th May 2000, i.e. on 2nd June 2000 to file fresh Notice of Appeal. They failed to do so. Pursuant to Rule 17(3), the Appellants are therefore not entitled to file any further Notice of Appeal without the leave of the Court.

Further, even if the service of the Notice on 25th May is ignored, and it is found that service on 21st November 2000 was effective service, pursuant to Rule 16, the Appellants are out of time in serving their Appeal.

Its stated by the Supreme Court of Appeal in Venkatama -v- Bryan Charles Ferrier-Wilson & Ors, CBV0002/92 :

"We now stress, however, that the Rules are there to be obeyed. In future practitioners must understand that they are on notice That non-compliance may well be fatal to an appeal....."

The appeal is deemed to be abandoned. The Appellant may seek the Court's leave to appeal out of time.

A handwritten signature in black ink, appearing to be 'V. Narayan', written over a horizontal line.

V. NARAYAN [Ms]
Deputy Registrar - Legal
High Court of Fiji

2nd February 2001