

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

CIVIL APPEAL NO. ABU0031 OF 2001S
(High Court Civil Action No. HBC306 of 1992S)

BETWEEN:

REGISTRAR OF TITLES

Appellant/Respondent

AND:

SHARDA PRASAD

Respondent/Applicant

Coram:

Reddy, P
Barker, JA
Davies, JA

Hearing:

Wednesday, 12th February 2003, Suva

Counsel:

Mr. J.J. Udit for the Appellant\Respondent
Mr. A.K. Singh for the Respondent\Applicant

Date of Judgment: Friday, 14th February 2003

JUDGMENT OF THE COURT

This is an application for leave to appeal to the Supreme Court from orders pronounced by the Court on 15 November 2002. Section 122 (2) of the Constitution permits this Court to grant leave to appeal "on a question identified by it to be of significant public importance."

By its judgment, this Court reduced the damages awarded by a judge of the High Court from \$326,250 to \$25,250. The learned trial Judge had calculated damages in these terms:

"I am satisfied that if the Plaintiff had been able to build his house on the land he would have sold it and would have been likely to obtain a price of \$225,000".

The \$225,000 was the estimated value at the date of trial of a certain block of land assuming that a two-storey home had been erected on it. The trial Judge failed to take into account the cost of the land, the cost of building, the cost of finance and so on. His Lordship also allowed interest at the rate of 6% from the date of the writ, notwithstanding that the \$225,000 was calculated as at the date of trial, not as the date of the writ.

The only point which has been raised as to the variation of the award of damages is that certain grounds of appeal were not filed within the time stipulated in the Court of Appeal Rules and that no adjournment was allowed to enable further consideration of those grounds of appeal.

However, this Court did not act upon any late filed materials. The errors in the judgment were patent on the face of the judgment itself. Counsel for Mr. Prasad was given an adequate opportunity to put whatever he wished to put with respect to the trial Judge's

assessment of damages. Necessarily, there was no answer to the point that his Lordship had erred and that the evidence did not support the award.

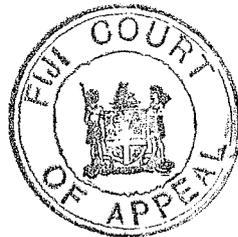
The Counsel also ordered that interim payments of damages totaling \$155,000 made by the Registrar of Titles to Mr. Prasad should be repaid in so far as they exceeded \$25,250 and 3% per annum thereon from 26 January 2000, the date of Judgment in the High Court.

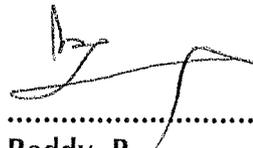
In this application, it has been submitted that the order for repayment should not have been made as the moneys had been paid under orders of the High Court and had been disbursed by Mr. Prasad for his own purposes. It was further submitted that the Court of Appeal had no jurisdiction to make the order for repayment as the interim payments were not the subject of the appeal.

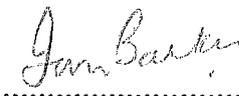
In our opinion, these issues raise no question of "significant public importance." The payments were interim payments, not final payments, and necessarily had to be adjusted when the award of damages was varied. Counsel for Mr. Prasad submitted that "the interim payments were allowed as compensation to (Mr. Prasad) for all the delay on the part of (the Registrar of Titles)". However, the payments were not ordered as "compensation". The payments were interim payments pending the final resolution of the dispute. Delay was merely a factor which was taken into account as a reason why the interim payments should be made. The issues as to Mr. Prasad's expenditure of the moneys and as to the time required

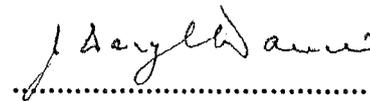
by him to repay are not issues of public importance.

We refuse the application for leave to appeal Mr. Prasad must pay the costs of the Registrar of Titles which are fixed at \$500.




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Reddy, P


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Barker, JA


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Davies, JA

Solicitors:

Office of the Attorney General, Suva for the Appellant
A.K. Singh Law, Nausori for the Respondent