

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

CIVIL APPEAL NO. ABU0029 OF 1999S
(High Court Civil Action No: HBC 84 of 1997)

BETWEEN:

SOUTH PACIFIC AGRICULTURE DEVELOPMENT LIMITED

Appellant

AND

YOUNG TAE KIM

Respondent

Coram: Sheppard, JA
Gallen, JA
Scott, JA

ADDENDUM TO THE JUDGMENT OF THE COURT DATED 16 JULY 2004

At the conclusion of the hearing of the appeal on 12 July 2004 we indicated that we would deliver Judgment on 16 July at 3p.m.

On 15 July at about 4p.m. and after our judgment had been prepared we received a document entitled "Urgent request for re-opening of hearing for fair trial." The document was signed by Mr. I.K. Chin Kang who described himself as the managing director of the Appellant Company.

The document suggests that Mr. Matawalu who appeared as counsel for the Appellant Company at the hearing of the appeal had no authority from the Company to do so, that the Company was unaware that he would be appearing on their behalf and that by his appearance the Company had been deprived of the opportunity to place important fresh evidence before the Court which would decisively have affected the outcome of the

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appeal. The document concluded by requesting this Court to re-open the appeal in order that "a fair trial" might be held.

We arranged for copies of this document to be served on both Mr. Matawalu and on Messrs. Raza and Associates, solicitors for the Respondent.

On the morning of 16 July we heard Mr. Matawalu, Mr. Raza on behalf of the Respondent, and Mr. Kang in person.

Mr. Matawalu sought leave to withdraw as counsel. He however told us that whether or not the Appellant Company would be withdrawing its instructions from its solicitors Messrs. Muaror & Co, a firm with which he was a consultant, was not clear. The provisions of RHC Order 67 had not been complied with.

We explained to Mr. Kang that a Company may not, by virtue of the Rules of the Court appear to argue an appeal save by a legal practitioner (RHC O 12 r 1(2)) and that accordingly he was not in a position formally to address us on behalf of the Company. We however agreed informally to hear him.

Mr. Kang repeated what he had written in the document we received on 15 July. He wished the appeal to be reopened in order that counsel of his choice would have an opportunity to present further evidence to the Court.

Mr. Raza objected to the course proposed by Mr. Kang.

As pointed out in our Judgment the Judgment of the High Court was delivered over 5 years ago. After lying dormant for 4 years the appeal was set down for hearing on 12 July in April 2004. An application for an adjournment on the ground that Mr. Kang was overseas was refused. On 16 July Mr. Kang told us that he had never been overseas this

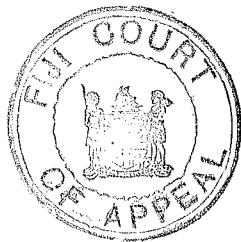
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year and that accordingly the information contained in a letter from Muaror & Co dated 15 June 2004 was incorrect.

In our view the Appellant Company was given the fullest opportunity to place its grounds of appeal before us on 12 July. If in fact Mr. Matawalu was appearing without the authority of the Appellant Company then that is a matter between the Company and its solicitors, Muaror & Co.

It is apparent from the annexures to his document that the additional materials which Mr. Kang wished to have considered were available to him at the time of the hearing in the High Court. It seems unlikely that they would have been admissible as additional evidence at the hearing of the appeal.

In view of the time that has elapsed since the delivery of the Judgment in the High Court and of the manner and the stage in the proceedings at which the request was made we do not think that any reopening of the appeal can be justified. Mr. Kang's request must therefore be refused.



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Sheppard, JA

A handwritten signature in black ink, appearing to read "R. J. Gallen", written over a horizontal dotted line.

Gallen, JA

A handwritten signature in black ink, appearing to read "M. J. Scott", written over a horizontal dotted line.

Scott, JA

16 July 2004