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

CIVIL APPEAL NO. ABU118 OF 2005
[High Court HBC84 of 2002]

BETWEEN:

SATISH CHAND f/n Ram Charan

Applicant

AND:

RAM DUTT

Respondent

AND:

LABASA TOWN COUNCIL

Respondent

R. Singh for applicant
D Sharma for respondents

Hearing: 10 March 2006

Ruling: 14 March 2006

RULING

This is an appeal against the order of the Deputy Registrar in which he fixed security for costs at \$2,000.00 following application under rule 17(1) of the Court of Appeal Rules.

In the High Court, the applicant/plaintiff sought damages for injuries caused by the negligence of the respondents. The claim against the first respondent/defendant was

withdrawn during the hearing and the claim against the second respondent/defendant was dismissed.

Notice of appeal was filed and an application made under rule 17(1). A hearing date of 2 February 2006 assigned.

At that hearing, counsel appeared for the respondents but there was no appearance for the applicant. The Deputy Registrar then fixed the security in the sum suggested by the respondents. It appears that counsel for the applicant arrived late and after the order was made. The Deputy Registrar's note then states:

“Order has been issued and the respondent is saying that if need to be withdrawn by consensus, she does not have instructions to do so and should be done formally.”

An appeal from that order was lodged under rule 10 and a figure in the region of \$500 – 750 was suggested to have been appropriate. The applicant's affidavit in support states that his solicitors, who are in Labasa, had advised him that they had instructed Suva agents to appear but those agents overlooked the matter.

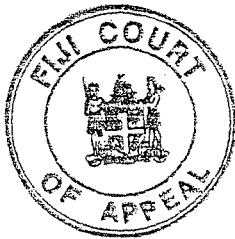
The applicant deposes that he would not be able to pay the sum ordered but would be able to pay a more modest sum which he suggests would be more in accordance with the figures usually ordered. At the time of the accident which gave rise to the claim, he was a labourer with the respondent Council but I have no information about his present employment, if any. However, it would appear unlikely that he will be in receipt of anything more than the most basic wage.

At the hearing before me, counsel for the respondents opposed the lower figure of security on the grounds that the claim had been dismissed by the learned trial judge and, if the appeal should fail, it is unlikely the applicant would be able to pay any costs for the same reason why he cannot pay the present sum of security. It appears that no order for costs was made in the High Court.

The Court must always be careful not to fix security at a level which will mean that an appellant is prevented from exercising his right of appeal purely because of his inability to pay it. That may be the case here. On the other hand, the chance of success in the appeal does not appear high and the Council is also entitled, should it successfully oppose the appeal, to its costs.

In all the circumstances, I consider that the order made by the Deputy Registrar should be set aside and a sum of \$500.00 security substituted. I further order, under rule 17(1)(b), that the security shall be paid within 14 days of the date of this ruling

I make no order for costs of today.



A handwritten signature in cursive script, appearing to read "Gordon Ward".

[GORDON WARD]
President
FIJI COURT OF APPEAL

14TH MARCH, 2006