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

MISCELLANEOUS ACTION 17 OF 2010

BETWEEN: **FAIYAZ ALI**

Appellant

AND:

1. ZAHID AFWAZ ALI
2. PATTERSON BROTHERS SHIPPING COMPANY LIMITED
3. PRASAD HOLDINGS LIMITED
4. SABIR HUSSEIN

Respondents

Date of Hearing: **Monday, 30th August 2010**

Counsel: **Ms R.S.S. Devan for the Appellant**
Mr Daniel Singh for the 1st Respondent
Mr Semi Leweniqila for the 2nd and 3rd Respondents
4th Respondent not Represented

Date of Ruling: **Thursday, 9th September 2010**

RULING

1. So far as I am aware the facts show that a trial took place at the High Court in Labasa before the Honourable Mr Justice Hettiarachchi in July 2010. It was a personal injury action in which the Plaintiff was a passenger in a bus which was allegedly involved with another bus and forced off the road into an electrical installation. The other driver did not defend and judgment in default of defence was entered against him before the trial started. The bus company is a defendant as is the ferry company operating between Viti Levu and Vanua Levu.
2. Friday 23rd July 2010 was the fifth day of the trial. In the afternoon neither Faiyaz Ali a bus driver and the 4th Defendant and his subpoenaed witness Mr Joseva Serunisiga appeared when called to give evidence. An application for a warrant in the case of the subpoenaed witness Mr Serunisiga was refused. An application for an adjournment was made. But after some waiting and delays the Honourable Mr Justice Hettiarachchi refused an adjournment.
3. Counsel for Faiyaz Ali says that the 4th Defendant was deprived of his defence. Apparently the evidence has been closed and judgment is awaited from the Court. She applies to the Court of Appeal for leave to appeal.
4. I set out the legal framework for applications from Interlocutory Judgments for leave in a ruling of South Sea Cruises Limited and Samsul Mody – Miscellaneous Action 13 of 2010. It is clear from my reading of Section 12(2) of the Court of Appeal Act and Rule 26(3) of the Court of Appeal Rules, that unless there is an application made, heard and adjudicated upon by the High Court Judge and the High Court refuses leave, I, as the Single Judge of the Court of Appeal, have no jurisdiction in respect of a leave application.
5. The affidavit of Satendra Kumar sworn on 11th August 2010 says inter alia :
"19. An application for leave to appeal was filed in the Labasa High Court on the afternoon of 4th August 2010.

20. On the morning of 5th August 2010 the Deputy Registrar took the application to the Trial Judge.

21. In the afternoon of 5th August 2010 the Deputy Registrar advised that the Trial Judge had directed that the application be put before a Judge at the next Labasa civil sessions.

22. A further request was made for the application for leave to be issued for an early date in Suva (letter dated 6th August 2010 annexed hereto marked "C"). The Deputy Registrar faxed a reply on the morning of Tuesday 10th August 2010 (annexed hereto marked "D")."

6. In the letter the Acting Deputy Registrar/Labasa writes :

"I am directed to inform you that the trial has already been concluded. Therefore your application cannot be entertained, and you have to file proper application before the Court of Appeal."

7. Therefore Ms. R.S.S. Devan makes this application and clearly I have no option but to dismiss it without a hearing because I have no jurisdiction to hear it.

8. Ms Devan submits relying on Section 20 of the Court of Appeal Act Cap 12 that I have a relevant power to give a direction to resolve the impasse that has come about.

9. Section 20(1)(k) says that a Single Judge of Appeal may exercise the following powers of the Court :

"(k) generally to ... give any direction that is incidental to an appeal or intended appeal."

10. In my opinion I have power to make a direction under Section 20(1)(k).

11. There will be no order as to costs of today's hearing. I make the following orders.

(1) Application for leave to appeal dismissed unheard on account of lack of jurisdiction.

- (2) Direction that the Honourable Mr Justice Hettiarachchi to hear and decide the application for leave to appeal filed on 5th August 2010 of Faiyaz Ali.

DATED at Suva this 9th day of September 2010.



A handwritten signature in black ink, appearing to read "William R. Marshall".

.....
William R. Marshall
Resident Justice of Appeal