IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL ABU 6 OF 2015
(High Court HBC 230 of 2000)

BETWEEN	:	**iTAUKEI LAND TRUST BOAD**
		Appellant
AND	:	**SHANTI LAL**
		First Respondent
AND	:	**APISAI AND BANSI**
		Second Respondents
Coram	:	**Calanchini P**
Counsel	:	**Mr I Lutumailagi for the Appellant** **Mr R. Prakash for the Respondents**
Date of Hearing	:	**26 March 2015**
Date of Ruling	:	**14 May 2015**

RULING

[1] This is an application for an enlargement of time to appeal an assessment of damages judgment by the High Court delivered on 2 January 2015. In that decision the High Court had awarded to the First Respondent (the Plaintiff in the Court below) the sum

of $370,640.00 by way of damages, interest and costs part of which was payable by the Appellant and part of which was payable by the Second Respondents.

[2] The Appellant filed the application on 17 February and subsequently served the documents on the First Respondent on 26 February 2015. As the decision brought the High Court proceedings to a conclusion the decision was a final judgment of the High Court (**Goundar –v- The Minister for Health** unreported ABU 75 of 2006; 9 July 2008). The Appellant was required to file and serve the notice of appeal within 42 days of the date of pronouncement of the decision. Therefore the notice was required to be filed and served by 13 February 2015. Although the delay is not substantial, it would ordinarily be necessary for the Appellant to demonstrate that it would be just in all the circumstances to allow the appeal to proceed by enlarging the time for filing and serving the notice of appeal.

[3] However in this case there is a preliminary question relating to jurisdiction that arises in this way. The trial of the action in the High Court initially was heard by Phillips J who delivered judgment on 11 July 2008. Although partially successful in the High Court, the First Respondent filed an appeal to this Court. The Court of Appeal delivered its judgment on 1 June 2011. The Court set aside the orders made in the High Court and ordered amongst others that damages be paid by the Appellant for breach of his entitlement to quiet enjoyment with such damages to be assessed by the Master of the High Court. The Court also ordered that damages be paid by the Second Respondents for trespass to land and conversion of goods, such damages to be assessed by the Master of the High Court.

[4] It would appear that the parties appeared before the Master of the High Court at Lautoka on 23 and 24 May 2012. As indicated earlier the Master's written decision was handed down on 2 January 2015. It is not disputed that the Master was appointed a puisne judge of the High Court on 12 August 2013.

[5] The right to appeal a decision of the Master of the High Court is regulated by Order 59 Part II of the High Court Rules. Under Order 59 Rule 8 an appeal from a final order or judgment of the Master lies to a single judge of the High Court. There is no doubt that had it not been for the later appointment of the Master as a puisne judge,

the Appellant's appeal against the assessment of damages should have been to a single judge of the High Court and not to the Court of Appeal. Therefore the only issue is whether the appointment of the Master as a puisne judge subsequent to the hearing of the parties but prior to the delivery of the decision alters the position as set out in Order 59 Rule 8. In the event that the assessment of damages remains a decision of the Master although delivered after his appointment as a judge, then the Court of Appeal has no jurisdiction under section 12 of the Court of Appeal Act to hear the appeal. Furthermore, in any subsequent appeal to the Court of Appeal from the High Court appeal decision, the Appellant is restricted to grounds of appeal, if any, that raise questions of law only. If the position is altered and the assessment of damages decision is now regarded as a decision of a judge of the High Court, then the Appellant will have lost a right to an intermediate appeal.

[6] In my view the starting point is the earlier decision of the Court of Appeal. The Court ordered that the assessment of damages was to be made by the Master. It was for that reason that the proceedings came before the Master in the High Court at Lautoka in May 2012. The subsequent decision setting out the assessment of damages should therefore be regarded as a decision of the Master, even though he had been appointed a judge by the time he belatedly delivered the decision.

[7] The jurisdiction to assess damages where liability has been determined is given to the Master under Order 59 Rule 2(d). Under Rule 2 the Master has and exercises all the power, authority and jurisdiction which a judge exercises in respect of the causes and matters listed in the Rule. Were it not for the existence of Part II of Order 59 an appeal from the Master's decision, as with a judge's decision may have been to the Court of Appeal.

[8] However both section 21 B (2) of the High Court Act Cap 13 and Order 59 Part II of the High Court Rules clearly give a right of appeal from a Master's decision to a single judge of the High Court. In my view that right cannot be lost after the hearing of a matter before the Master simply because the Master has, after the hearing but before judgment, been appointed a judge. In the event that the Master had been appointed to the Court of Appeal, it could surely not be suggested that his decision

would have been that of a justice of appeal after having heard the assessment of damages as the Master.

[9] Finally, it seems to me that the situation has arisen in this case as result of the delay in handing down the decision. The parties were heard in May 2012. The Master was appointed a puisne judge in August 2013. In the normal course of events the decision would have been delivered before August 2013. It would be manifestly unfair for one or other of the parties to lose an intermediate right of appeal on account of the delay (for whatever reason) by the judicial officer in delivering his assessment of damages decision. This is a case where the maxim *"actus curiae neminem gravabit"* (the act of the court shall prejudice no one) can be applied.

[10] For all of the above reasons I have concluded that this Court has no jurisdiction under section 12 of the Court of Appeal Act to hear an appeal from the decision of the Master. In view of the novel issue raised by the application there will be no order as to costs.

Orders:

(1) Application dismissed.

(2) No orders as to costs.

COURT OF APPEAL FIJI

W. Calanchini

Hon. Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL