

**IN THE COURT OF APPEAL FIJI**  
**[CIVIL APPELLATE JURISDICTION]**

**CIVIL APPEAL NO. MISC ACTION 01 of 2016**

**BETWEEN** : **CHIEF REGISTRAR**  
*Applicant*

**AND** : **LEENA GOUNDAR**  
*Respondent*

**Coram** : **Calanchini, P**  
**Basnayake, JA**  
**Almeida Guneratne, JA**

**Counsel** : **Ms. V. Prasad for the Appellant**  
**Ms. L. Goundar for the Respondent (In Person)**

**Date of Hearing** : **10 November 2016**

**Date of Judgment** : **29 November 2016**

**JUDGMENT**

**Calanchini, P**

[1] I agree that the Court should decline to hear and determine the questions referred to it by way of a case stated for want of jurisdiction.

**Basnayake JA**

[2] I agree with the reasoning and conclusions of Almeida Guneratne JA.

## Almeida Guneratne JA

### Nature of the Present Matter

- [3] This matter comes up before this Court consequent to a reference by the present Commissioner of the Independent Legal Services Commission (hereinafter referred to as the Commissioner) appointed under the Legal Practitioners Decree, 2009 (hereinafter referred to as the Decree) as a case stated for determination pursuant to Section 15 of the Court of Appeal Act Cap 12 to be determined by this Court.
- [4] Upon such reference being made the President of the Court listed the reference for hearing to determine whether, first the Commissioner had jurisdiction to make such a reference to this Court and secondly as to whether this Court in turn has jurisdiction to state a case upon the said reference.

### Background to the Matter

- [5] The Respondent had been charged under Section 108 of the Decree to which she had pleaded guilty. Being afforded an opportunity on mitigation of sentence the Commission passed sentence publicly reprimanding the Respondent along with an imposition of a fine of \$1,500.00 which was complied with by her.
- [6] The Ruling of the Commission was made on 25<sup>th</sup> November, 2015 by the then Commissioner in the exercise of the jurisdiction vested in him under the Decree who resigned from office on 30<sup>th</sup> November, 2015.
- [7] Subsequently, the Respondent had moved the current holder of the office of Commissioner for an order to have her name suppressed and to withhold the publication of the Ruling made by the former Commissioner, her attempts to arrive at a consent Order in terms of Section 121 (5) of the Decree with the Applicant (the

Chief Registrar) in the meantime having failed. The Applicant had taken-up the stance that, the Commission had become “*functus officio*” after 30<sup>th</sup> November, 2015.

- [8] That is the background in which the present Commissioner made the reference for determination by this Court.

**A fundamental issue relating to jurisdiction**

- [9] That fundamental issue (recounted in paragraph [4] above) stems from a consideration of several provisions of the statute law in Fiji.

**Section 15 of the Court of Appeal Act**

*“Section 15 – In addition and without prejudice to the right of appeal conferred by this Part, a judge of the [High Court] may reserve for consideration by the Court of Appeal, on a case to be stated by him any question of law which may arise on the trial of any cause or matter, and may give any judgment or decision, subject to the opinion of the Court of Appeal, and the Court of Appeal, shall have power to hear and determine every such questions.”*

- [10] The legislative decree in that Section is plain and simple. Only the High Court has the right to refer to the Court of Appeal a question of law for determination as a case stated.
- [11] Unlike the common law courts the Court of Appeal is a statutory creature and derives jurisdiction from both the Constitution and the Court of Appeal Act Cap 12. Section 15 of the Court of Appeal Act does not confer jurisdiction on this Court to entertain a reference made by the Commissioner appointed under the Decree for determination as a case stated.

### **Definition of Judge**

- [12] The High Court Act Cap 13 (the Act) which defines “a judge” is confined to a High Court Judge (vide: Section 2).
- [13] The Decree under which the Commissioner is vested with jurisdiction to function does not define “a judge”.
- [14] The Constitution of Fiji defines “judge” and makes a distinction between “judge” and “a judicial officer” in Section 163 (1) thereof.
- [15] I also looked at Section 85 (2) and Section 118 of the Decree to which the Respondent referred to see whether there is anything there that could put a different complexion on the matter but I could see none. Those provisions touch on the immunity affordable to a Commissioner under the Decree in the discharge of his functions and the qualifications applicable to the appointment of a Commissioner.
- [16] Those provisions do not make a Commissioner under the Decree in question “a judge”.
- [17] This brings me to a consideration of the general principles of Construction.

### **The Primary Rule: Literal Construction**

- [18] The rule of Construction is “to intend the Legislature to have meant what they have actually expressed” (see: Maxwell on Interpretation of Statutes 12<sup>th</sup> ed, p. 28). The object of all interpretation is to discover the intention of Parliament, “but the intention of Parliament must be deduced from the language used (vide: Cooper v. Baldwin [1965] 2QB 53, per Lord Parker C. J. at p. 61.

### **Corollary to the primary rule of literal construction**

- [19] This corollary demands that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. (See: Lord Mersey in Thompson v. Goold and Co. [1910] AC 409, at p420.
- [20] “We are not entitled,” said Lord Loreburn L.C, “to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.” (vide: Vickers Sons and Maxim Ltd v. Evans [1910] AC 444, at p. 445).
- [21] The Respondent’s submission based on Sections 85 (2) and 118 of the Decree was to the effect that, by reason of treating the Commissioner appointed under the Decree on par with a High Court Judge there is no good reason why he should not be regarded as coming within Section 15 of the Court of Appeal Act in its reference to a High Court Judge.

### **Omissions by the Legislature are not to be inferred by Courts**

- [22] This is another principle that I felt I was bound to follow. “A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional.” (See: the judicial precedents cited by Maxwell in that regard at p. 33 supra).

### **Conclusion**

- [23] For the afore-stated reasons I would hold that, this Court has no jurisdiction to extend the meaning of “a judge” to cover “the Commissioner” appointed under the Decree in question to make a determination as a case stated for the guidance of the Commissioner.

- [24] While that puts the final lid on the matter I felt it necessary to say something more and that is in regard to a consideration of Section 126 (1) of the Decree and the applicability of what is referred to in the judicial annals as “the slip rule”.

**Re: Section 126 (1) of the Decree**

- [25] Section 126 (1) of the Decree states as follows:

*“The Commission shall publicise and make public any order made against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm in an application for disciplinary proceeding, in any way the Commission considers appropriate; provided that the Commission may withhold the publication of any order if the Commission is of the view that there are exceptional circumstances which warrant against any publication.”*

**Who had the jurisdiction to withhold such publication?**

- [26] True, the Commission had that power under Section 126 (1) which had not been exercised (that is, the then Commissioner who had made his sentencing Ruling referred to earlier). There had been no application before him by the Respondent for him to have exercised that power.

- [27] **Another aspect that Warrants Consideration. *Fait Accompli***

On the Respondent’s own showing following the then Commissioner’s ruling wherein he had publicly reprimanded her, that had become the subject of a legal workshop (vide: paragraph 1.8) of the Respondent’s written submissions. Thus, the matter had become a *fait accompli*.

- [28] Apart from all that, the Respondent’s argument that, in terms of Section 126 (1) the present Commissioner still has the power to withhold publication of the said Ruling in Paclii (the official website in which case law of Fiji is published), is an argument the Respondent could place before the present Commissioner and obtain a Ruling thereon.

[29] Should such a Ruling be made by the Commissioner, either way, it would be the subject of an appeal to this Court and the same cannot be pre-empted by way of a case stated for determination by this Court.

[30] Viewing the matter in that perspective neither Section 86 (3) nor Section 121 (4) of the Decree assist the Respondent's lament. The same applies in the context of Section 121 (5) and 121 (1) (9) of the said Decree. I do not see the need to reproduce in this judgment the said provisions.

#### **Respondent's reliance on the "Slip Rule"**

[31] Purporting to derive assistance from the aforesaid provisions referred to above, the Respondent sought refuge in the slip rule.

#### **Scope and Content of the Slip Rule**

[32] What constitutes an accidental slip or omission has generated a large body of case law. The essence of the Rule commonly referred to as the "slip rule" is that it is a rule permitting the correction of any accidental slip or omission in judgments and orders. Correction can be made only of typographical or clerical errors or other careless mistakes. (See: Lautoka City Council v. Ambaram Narsey et al and Others, Civil Appeal No. ABU 0019 of 2012, CA Minutes of 30<sup>th</sup> May, 2014.

[33] It can be used to correct a minute of order that fails to implement the intention of the Court. (Bristol Myers Squibb v. Baker Norton Pharmaceuti [2001] EWCA Civ 414.

- [34] In contrast, it cannot be used where the Court left the parties to agree on the precise terms of an Order as to interest. (Leo Pharma (a/s Leo Laboratories Ltd. v. Sandoz Ltd [2009] EWCA Civ 1188. See also [2010] EWHC 1911.
- [35] Again, it cannot put right a mistake made by a party's legal representative (Smith Line Becham and Others v. Apotex Europe Limited and others [2006] WLR 872.
- [36] On the other hand, though not specifically making reference to the slip rule, a single judge of the Supreme Court (Gates, P. (C.J) made a re-tabulation of an award of damages. (See: Shell Fiji Ltd. v. Sushil Chand [2012] FJSC16.
- [37] It is clear from the foregoing survey that the attempt on the part of the Respondent to employ the "slip rule" is totally misconceived.

### **Conclusion**


- [38] On account of the view I have expressed on the jurisdiction issue I shall not say anything on the submissions made by counsel on the principle of *functus officio* for if I were to express a view on that, I would be responding to the Commissioner's reference to this Court in regards to which this Court has no jurisdiction "to state a case."
- [39] Accordingly, I decline to express an opinion as a case stated for determination on the questions referred to this Court by the Learned Commissioner which questions have been recounted in the written submissions of the Respondent dated 10<sup>th</sup> November, 2016.




[40] Before parting with this Judgment, I wish to acknowledge the assistance given to this Court by Ms Prasad on behalf of the Applicant and Ms. L. Goundar (the Respondent who appeared in person).

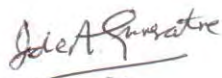
**Orders of the Court**

*The determination sought from this Court by the Reference made by the Independent Legal Service Commission as a case stated is declined.*

  
.....  
**Hon. Justice W. Calanchini**  
**PRESIDENT, COURT OF APPEAL**



  
.....  
**Hon. Justice E. L Basnayake**  
**JUSTICE OF APPEAL**

  
.....  
**Hon. Justice Almeida Guneratne**  
**JUSTICE OF APPEAL**