

IN THE COURT OF APPEAL FIJI
[CIVIL APPELLATE JURISDICTION]

CIVIL APPEAL NO. ABU 003 of 2015
(High Court Case No. HBC 0014 of 2014)

BETWEEN : 1. **JOSEPH FOON**
2. **WINNIE YOO**
3. **KWAIN SUE**

Appellants

AND : **JOANA WAINIQOLO RAIDRIWA**

Respondent

Coram : Basnayake, JA
Lecamwasam, JA
Guneratne, JA

Counsel : Mr. C. B. Young for the Appellants
Mr. K. Tunidau for the Respondent

Date of Hearing : 11 November 2016

Date of Judgment : 29 November 2016

JUDGMENT

Basnayake, JA

[1] I agree that the appeal should be dismissed.

Lecamwasam, JA

- [2] Being aggrieved by a Judgment of the High Court judge of Fiji at Lautoka, this matter has been referred to this Court presumably by way of an appeal albeit I do not see any appeal papers or any grounds of appeal urged by the Appellant, in the appeal brief.
- [3] On a perusal of the Copy Record of the High Court I find that the original application as well as the hearing had been made before the Master of the High Court but subsequently when he made the Order on the 19th November 2014 he had made the Order as a Puisne Judge. The entirety of the copy record to the date of delivering the judgment, makes reference to the ‘**Master of High Court**’ although it is apparent that the learned Master who had initially presided over the case had been promoted to the High Court before the judgment was delivered.
- [4] However, in essence this judgment is a judgment of the Master, therefore when this matter came up for argument, we enquired from the counsel for the Appellant, Mr Young, about the legal implications involved in this case as to jurisdiction. Mr Young strenuously argued, though the hearing had been taken up before the Master, as the judgment was delivered by the High Court Judge (Master on promotion as High Court Judge), he argued that there is no legal impediment in entertaining the appeal before the Court of Appeal.
- [5] However, High Court Rules, Order 59 r.8.1 states as follows:
- “PART II – APPEAL FROM THE MASTER**
- Appeal from Master’s decision (O.59, r.8)*
- 8. (1) An appeal shall lie from a final order or judgment of the Master to a single Judge of the High Court”.*
- [6] In view of these provisions, I am compelled to dissociate myself from the submission of Mr. Young and I hold that in view of the provisions of High Court Rules 59 r.8.1 this Court has no jurisdiction to entertain an appeal directly from the Master.

- [7] In arriving at the above decision, I am fortified by the observations made by Justice Calanchini, P in **I-Taukei Land Trust Board v Shanti Lal & Apisai and Bansi**; ABU 6 of 2015 (14 May 2015), where His Lordship observed thus:

“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 the matter before the Master simply because the Master has, after 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...”

- [8] In view of the above position, I do not wish to delve into facts of the case and as the appellant has filed this appeal before the wrong Court. I dismiss the appeal.

- [9] In view of the close relationship between the parties, [though estranged] I order both parties to bear their own costs.

- [10] I caution the counsel to closely follow the latest developments in the legal sphere before filing appeals. Not only must counsel be more vigilant but the presiding officers of the original courts must also clearly state their correct official position, as to their office in their judgments. That will help to avert such a situation as is currently before us, not to let litigants be at the receiving end of the brunt of legal blunders.

Guneratne, JA

- [11] I agree with the reasoning and conclusions of Lecamwasam JA.

Orders of the Court:

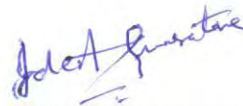
1. Appeal dismissed.
2. Parties to bear their own costs.



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



.....
Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL



.....
Hon. Justice A. Guneratne
JUSTICE OF APPEAL