

IN THE COURT OF APPEAL, FIJI  
CIVIL APPELLATE JURISDICTION

Civil Appeal No.ABU 0050 of 2014 & 0051 of 2014  
(High Court Case No. HBC 02 of 2006)

BETWEEN : MOHAMMED ALAM (Plaintiff -Appellant in ABU 50 of 2014 & 1<sup>st</sup> Respondent in ABU 51 of 2014)

AND : QUEENSLAND INSURANCE (FIJI) LIMITED (2<sup>nd</sup> Defendant-Appellant in ABU 51 of 2014 & 2<sup>nd</sup> Respondent in ABU 50 of 2014)

AND ; COLONIAL NATIONAL BANK (1<sup>st</sup> Defendant & 1<sup>st</sup> Respondent in ABU 50 of 2014 & 2<sup>nd</sup> Respondent in ABU 51 of 2014)

AND : REGISTRAR OF TITLES ( 3<sup>rd</sup> Defendant & 3<sup>rd</sup> Respondent in both appeals)

AND : MOHAMMED SHAHEEM AIRUD KHAN (4<sup>th</sup> Defendant & 4<sup>th</sup> Respondent in both appeals)

Coram : Basnayake JA  
Lecamwasam JA  
Hamza JA

Counsel : Mr. R. Harper for the Plaintiff-Appellant (Mohammed Alam)  
Mr. J Apted for the 2<sup>nd</sup> Defendant-Appellant (QBE)  
Ms. S. Devan with Ms J. Lal for the 1<sup>st</sup> Defendant-Respondent (Colonial National Bank)  
Ms. R. Pranjivan for the 3<sup>rd</sup> Defendant-Respondent (Registrar of Titles)  
4<sup>th</sup> Defendant-Respondent absent and unrepresented on 29 November 2016. He was present on 2 December 2016

Date of Hearing : 29 November & 2 December 2016

Date of Ruling : 19 December 2016

RULING

**Basnayake JA**

- [1] This is with regard to an application made by the fourth defendant/fourth respondent (fourth defendant) in this case. The fourth defendant by letter dated 22 November 2017 (it should be 2016) complained to court that a hearing took place without him being heard.
- [2] The appeal in this case was heard on 10 & 14 November 2016 and judgment has been reserved to be delivered in due course on notice. At the hearing the fourth defendant was absent and unrepresented.
- [3] The Court of Appeal Record bears that the Notice of Appeal in ABU 50 of 2014 has not been served on the fourth defendant. Hence the court fixed this case for inquiry for 29 November 2016. On 29 November 2016, the fourth defendant was absent and unrepresented. Apparently, notices were not issued to be served on the fourth defendant due to lack of time. On 29 November, the court ordered to issue notices on the fourth defendant for 2 December 2016 and to have the case mentioned before His Lordship the President.
- [4] When this case was mentioned before His Lordship the President on 2 December 2016, all the parties including the fourth defendant were present in court. The learned President having heard all the parties has referred this matter to the Members of the Panel that heard the appeal for an order concerning the fourth defendant:- That is either to have the appeals re-fixed for hearing or to have the judgment pronounced.
- [5] The appeal concerning the fourth defendant is No. 50/2014. The appellant in No. 50/2014 is the plaintiff (plaintiff). He was the mortgagor. The mortgagee was Colonial National Bank, the first defendant. The plaintiff had mortgaged his property which is the subject matter of this case with the first defendant. The plaintiff having defaulted payment the property was sold on the mortgage. At the sale the fourth defendant purchased the property. However the plaintiff obtained an injunction against the sale restraining the first defendant Bank.

- [6] One of the orders of the learned High Court Judge in the judgment was to discharge the injunction allowing the first defendant Bank to proceed to finalize the mortgage sale. The plaintiff appealed against this order. The plaintiff *inter alia* moved to have this order set aside. In the event of allowing this appeal that would be prejudicial to the rights of the fourth defendant, being the purchaser at the sale.
- [7] Admittedly the fourth defendant was not served with notices in No. 50/2014. In terms of Rule 15 (4) of the Court of Appeal Rules all the affected parties are required to be served with notices. Rule 15 (4) is as follows: “*A notice of appeal shall, in addition to being filed in the Court of Appeal, be served upon the Chief Registrar and **upon all parties to the proceedings in the Court below who are directly affected by the appeal**; and subject to the provisions of Rule 21 it shall not be necessary to serve the notice on parties not so affected*” (emphasis is added).
- [8] I am of the view that the fourth defendant is directly affected by this appeal and is a party to whom notices need be served as per Rule 15 (4). The complaint of the fourth defendant is that the hearing of this appeal was done without him being notified. His application is to have this case heard afresh. Considering the fact that (1) the fourth defendant is entitled to be notified, (2) he has not been notified, and (3) he moved for a fresh hearing, these appeals should be heard afresh.

**Lecamwasam JA**

- [9] I agree that the appeals should be heard afresh.

**Hamza JA**

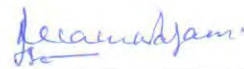
- [10] I also agree that the appeals should be re-heard.

**Orders of the Court:**

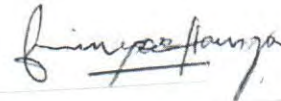
1. *Vacate the appeal hearing.*
2. *Appeals to be listed for re-hearing at the next call over.*



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



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



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**Hon. Mr. Justice R. Hamza**  
**JUSTICE OF APPEAL**