

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

CIVIL APPEAL ABU 51 OF 2012
(High Court HBC 36 of 2007)

BETWEEN : iTAUKEI LAND TRUST BOARD

Appellant

AND : VILIAME SOGARI
SHIU RAJAMMA
REGISTRAR OF TITLES
ATTORNEY GENERAL OF FIJI

Respondents

Coram : Calanchini P

Counsel : Ms. L. Komatai for the Appellant
Mr. N. Vere for the 1st Respondent
Mr. J. Pickering for the 3rd and 4th Respondents

Date of Hearing : 1 June 2017

Date of Ruling : 22 June 2017

RULING

[1] On 26 February 2016 the Court of Appeal delivered its judgment in this appeal. The Court made the following orders:

- “1. *Appeal is allowed.*
2. *Damages awarded in the Court below are reduced by \$220,175.00 = \$282,652.36.*
3. *Parties to bear their own costs.*”

[2] By summons filed on 21 December 2016 the First Respondent applied for the following orders:

- “1. *The Appellant to pay the interest of 4% per annum to the 1st Respondent on the sum of \$282,652.36 ordered by the Court of Appeal on 30 March 2016.*
2. *The interest of 4% to be paid is effective from the 13th day of July 2007, the date when the writ of summons was filed until the date of payment as ordered by the Honourable trial judge at Labasa High Court Civil Action No HBC 36 of 2007.*”

[3] The application arises as a result of the judgment of the High Court having included an order for the payment of interest “*on special damages and general damages at 4% per annum from the date of filing of the action until the date of payment*”. The Court of Appeal did not include in its final orders any reference to the payment of interest. It should be noted that the award of interest in the abovementioned terms was not itself challenged by the Appellant in the notice of appeal that contained some 28 grounds of appeal.

[4] The dispute is between the Appellant and the First Respondent. The third and fourth Respondents appeared as nominal Respondents to the application and did not file any material.

[5] There are issues relating to the jurisdiction of both the Court of Appeal and a judge of the Court to hear and determine the application. The problem for the applicant First Respondent is that when the Court of Appeal delivered its final judgment on 26 February 2016 the Court’s jurisdiction came to an end. The Court of Appeal is said to be “*functus officio*”. The effect of the rule is that when the Court of Appeal makes final orders those orders cannot be subsequently altered or varied by the Court of Appeal. The exception to this position is the “*slip rule*”. This rule permits the correction of clerical mistakes

arising from any accidental slip or omission in judgments or orders. Such errors can be corrected at any time by the Court on application without an appeal.

- [6] Whether the orders sought by the First Respondent call for the application of the slip rule or relate to enforcement is a matter for the Court of Appeal. The application does not come within the jurisdiction of a single judge of the Court under Section 20(1) of the Court of Appeal Act.
- [7] The application should be placed before the Full Court for its consideration and will be listed for callover on a date to be fixed for hearing in the November session of the Court.
- [8] It should be noted that neither counsel addressed the issue of jurisdiction in their submissions. For that reason costs will be costs in the application before the Full Court.

Orders:

(1) *The application is to be listed for callover on a date to be fixed for hearing in the November session.*

(2) *Costs in the application.*



W. Calanchini

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