

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

**CIVIL APPEAL NO. ABU 104 of 2019**  
Winding Up Action No. 42 of 2019

**BETWEEN** : **ONE WORLD FLIGHT CENTRE LIMITED**  
*Appellant*

**AND** : **TELECOM FIJI LIMITED**  
*Respondent*

**Coram** : Almeida Guneratne, JA

**Counsel** : Mr S R Valenitabua for the Appellant  
Ms P Narayan and Mrs T Rabuku for the Respondent  
Ms S Taukei for Official Receiver

**Date of Hearing** : 16 July, 2020

**Date of Ruling** : 3 September, 2020

## RULING

- [1] This is an application by the Respondent Company to strike out the Appellants' appeal against a winding up order made by the High Court.

### Basis of the striking out application

- [2] The application to strike out is based on the ground that, the Appellant Company cannot appeal against a 'winding up order' without having first obtained the consent of the provisional liquidator.

- [3] The Respondent relied on the following provisions of the Companies Act (2015);

*"S.531 When a winding up order has been made or a provisional liquidator has been appointed under Section 537, no action or proceeding must be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.*

*S.537 The Court may appoint the Official Receiver to be the liquidator provisionally at any time after the presentation of a winding up application and before the making of a winding up order."*

- [4] Apart from those provisions the Respondent also placed reliance on Section 543 which I shall refer to later, should I think it to be necessary.

- [5] It is to be noted that, a winding up order was made against the Appellant Company on 7<sup>th</sup> November, 2019 and an official receiver was appointed as the Provisional liquidator of the company on that date.

### Appellant's position in resisting the Striking out application

- [6] The Appellant's submissions in opposition to the Striking out application may be summarized as follows:

(i) *Appeals against decisions of the Master on Company winding-up matters should be from the Master to the Court of Appeal pursuant to “Section 572” of the Companies Act (2015).*

(ii) *Section 572 – Subject to this Act, an appeal must be to the Court of Appeal from any decision or order given or made by the Court in the exercise of the jurisdiction conferred upon it by this Part.*

*“The Master” made the winding up Order as a Judicial Officer of the High Court, the “relevant Part” being Part 39 and the jurisdiction conferred on “the Master” being under Order 59 Rule 2 of the High Court (Amendment) Rules 2006 particularly Rule 2(g) concerning applications for winding up of Companies).*

*O.59 Rule 2(g). The Master shall have and exercise all the power, authority and jurisdiction which may be exercised by “a judge” in relation to ... .. applications for winding up of Companies.*

(iii) *The judgments in Vivek Investments Pte Ltd, In re [2017] FJHC 696, September, 2012 and Fiji Daily Post Co. Ltd. -v- Westpac Banking Corporation [2018] FJHC 244, 28 March, 2018 and [2018] FJHC 589, 13 July, 2018 do not warrant consideration in the context of the present case.*

(iv) *In as much as on 17.11.201, the Master was exercising powers as a Judge of the High Court pursuant to Order 59 Rule 2(g), the ensuing order of winding up was “a final order”, (and) by virtue of section 572 of the Companies Act (2015) an appeal lay to the Court of Appeal.*

(v) *Given the fact that, in terms of Section 543(1) of the Companies Act (2015), it is the liquidator who has the power under “(a) to bring or defend any action or other proceeding in the name and on behalf of the Company (thus) resulting in the Appellant not being able to proceed any further.*

[7] I have given my best consideration to the submissions made on behalf of parties and proceed to make my determination with reasons therefor as follows:

**Determination**

[8] I shall begin by looking at the provisions of S.531 of the Companies Act (the Act) of 2015.

[9] On the application of the literal test of statutory interpretation, to my mind, it is clear that, that provision has no relevance and/or cannot have any application to “an appeal” made against the winding up order that is appealed against.

[10] Furthermore, whatever may have been the legal position prior to the present ‘Act’ (2015), on a plain reading of the provisions of Section 572 of the Act read with Order 59 Rule 2(g) of the High Court Rules, the Appellant was entitled to invoke the jurisdiction of “the Court of Appeal” against the “winding up order” of “the Master” dated 17 November, 2019.

[11] At this point I hasten to say that, I agree with the submissions made on behalf of the Appellant which I have recapped at paragraph [6] above.

[12] Accordingly, I dismiss the Respondent’s application to strike out the Appellant’s appeal.

[13] Consequently, having given my mind to what the Appellant has urged at paragraph [6] above, in the light of the well-entrenched principles relating to “stay proceedings” and having regard to the provisions of Section 541 onwards and indeed to the provisions of Section 531 I have no hesitation in granting a “stay of all proceedings” in “the High Court” until the final hearing and determination of the Appellant’s appeal against the impugned “winding up order” in which regard I looked at the grounds of appeal dated 19<sup>th</sup> November, 2019 as well.

[14] I now proceed to make my orders as follows.

Orders of Court

1. *The Respondent's application to strike out the Appellant's appeal is dismissed.*
2. *All proceedings consequent to "the winding up order" made by "the Master" are stayed until the hearing and determination of the Appeal.*
3. *The Respondent shall pay to the Appellant a sum of \$2,500.00 as costs of this Application.*
4. *The Registrar of this Court is directed to list this matter on a convenient date to enable this Court to fix a date for the hearing of the Appeal.*



*Almeida Guneratne*

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**Almeida Guneratne  
JUSTICE OF APPEAL**