

IN THE COURT OF APPEAL, FIJI  
[APPELLATE JURISDICTION]

Civil Appeal No. ABU 137 of 2018  
(HBC No. 249 of 2016)

BETWEEN : SHIVANI NAIR  
*Appellant*

AND : GANESH SAMI  
*1<sup>st</sup> Respondent*

AND : SHIVNESH SAMI  
*2<sup>nd</sup> Respondent*

AND : I-TAUKEI LAND TRUST BOARD  
*3<sup>rd</sup> Respondent*

AND : RATU TAITO LOU NALUKUYA  
*4<sup>th</sup> Respondent*

Coram : Almeida Guneratne, JA

Counsel : Mr. N. R. Padarath for the Appellant  
Mr. K. Patel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents  
Ms. L. Komaitai for the 3<sup>rd</sup> Respondent  
4<sup>th</sup> Respondent Absent and Unrepresented but has filed  
Affidavit in Opposition.

Date of Hearing : 08 May 2020

Date of Ruling : 29 May 2020

**RULING**

- [1] On 8 May, 2020 when this matter was taken before me, being a leave to appeal against the decision of the High Court and a Stay of Proceedings thereof; I prevailed on learned Counsel for the Appellant after he made his submissions on the reliefs he was seeking to address me on the scope and content of the “Slip Rule” *vis a vis* the principle “Actus Curie Neminem Garavabit” to enable me to make a determination on the matter.
- [2] As undertaken by him, learned Counsel, by submissions dated 15 May 2020 complied with that order made by me on 8 May 2020.
- [3] In that background of the proceedings, I now proceed to make my Ruling on the matter.

### **Ruling**

- [4] This is a matter where the High Court had in the initial round had refused to amend its impugned judgment that had led to it being subsequently amended the same applying (it would appear) the “Slip Rule”.
- [5] Learned Counsel for the Appellant submitted at the hearing before me that the impugned amendment which was allowed by the learned High Court Judge though *prima facie* related to a misdescription of an allotment of land (lease given by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents), the said Amendment affected his client’s property rights in as much as the said amendment had the effect of amending the very initial claim of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Consequently, Counsel argued that, to have the initial order given by the High Court in refusing an amendment of the claim of the Respondents, the Respondents’ remedy was to move the Court of Appeal in appeal and not to move the High Court. Accordingly, Counsel argued that the High Court had wrongly assumed Jurisdiction when it made its second amendment order, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purporting to have invoked the jurisdiction of the High Court which was the wrong procedure.

- [6] If I were to pause at this point, I do not agree with the Appellant Counsel's contention that, there was an "abuse of process of Court" when the 1<sup>st</sup> and 2<sup>nd</sup> Respondents invoked the jurisdiction of the High Court in that second round though it may be regarded as "the wrong procedure" that had been adopted.
- [7] However, the contention of Appellant's Counsel that remained for me to consider was as to whether, the wrong procedure had been adopted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents which the High Court had condoned leading to its impugned Order.
- [8] In that regard the 1<sup>st</sup> and 2<sup>nd</sup> Respondents Counsel relied on the decision in Mishra v DPP [2012] [FJCA 40] and the principle emanating from it. Counsel for the Appellant in counter submitted that, he too agrees with the principle enunciated therein but that it stood distinguished from his client's case on the facts.
- [9] The answer appeared to lie in the context of the scope of the "Slip Rule" vis a vis the principle "Actus Curiae Neminem Gravabit" the reason why I called upon Appellant's counsel to address me on that aspect.
- [10] Counsel for the Appellant having complied with that directive, I proceed to make my determination.

#### Determination

- [11] On the factual aspect, it is evident from the Record that, the amendment which was allowed by the High Court was in relation to a misdescription of an allotment of land (lease given by the IITLTB). The amendment, as submitted by Counsel for the Appellant affected his client's property rights.
- [12] He submitted further that, given that the said amendment in effect amended his client's very claim the "Slip Rule" could not have been invoked in that kind of situation and further that it was incumbent on the Respondent to have moved the

Court of Appeal if the Respondent saw reason to put the initial order given by the High Court in issue.

- [13] Learned Counsel for the Appellant accordingly contended that, the wrong procedure had been adopted by the Respondent in the present case. He submitted, while, he agrees with the principle enunciated in Mishra v DPP (supra) that case stood distinguished from the instant case.
- [14] Having considered the oral submissions made as well as the written submissions tendered on behalf of the parties, I am inclined to grant leave in this application so that the full Court may go into the matter and make a final determination on the following question which I raise and formulate as follows:-

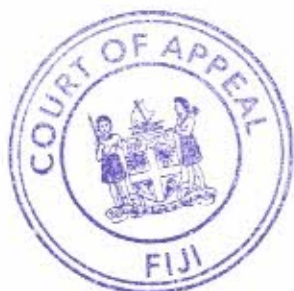
“Having regard to the Scope of “the Slip Rule” as against the principle “Actus Curiae Neminem Gravabit”, had the High Court wrongly assumed jurisdiction when it entertained and gave Judgment allowing the said amendment to its initial ruling”.

### Conclusion

- [15] Before I part with this Ruling, I must acknowledge the coherent and precise submissions made by both Counsel for the Appellant and the 1<sup>st</sup> to 2<sup>nd</sup> Respondents. Counsel for the 3<sup>rd</sup> Respondent submitted that, she will abide by whatever decision handed down by the Court.
- [16] For the aforesaid reasons, I see a question of jurisprudential importance for the full court to determine for which reason I am inclined to grant leave to appeal against the impugned Judgment of the High Court.

**Orders:**

1. Leave to Appeal against the Judgment of the High Court under review is allowed.
2. Appellant may advise himself to take steps as prescribed by law to prosecute the appeal for which leave has been granted as per Order 1 above.
3. Given the circumstances of the case, raising as the matter does the scope and content of the “Slip Rule” vis a vis the principle “Actus Curiae Neminem Gravabit”, I make no order as to costs.



*Almeida Guneratne*

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**Almeida Guneratne**  
**JUSTICE OF APPEAL**