

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

CIVIL APPEAL NO. ABU 137 of 2018
(Suva Civil Action No: HBC 249 of 2018)

BETWEEN : SHIVANI NAIR
Appellant

AND : GANESH SAMI
SHIVNESH SAMI
ITAUKEI LAND TRUST BOARD
RATU TAITO LOU NALUKUYA
Respondents

Coram : Almeida Guneratne, AP

Counsel : Mr N R Padarath for the Appellant
Mr S Nand for 1st and 2nd Respondents
Ms L Komaitai for 3rd Respondent

Date of Hearing : 2 September, 2021

Date of Ruling : 10 September, 2021

RULING

- [1] This is a matter in which I made a Ruling granting leave to appeal the Judgment of the High Court.
- [2] Pending appeal the parties filed a joint “consent motion” dated 5th August, 2021 seeking orders that:

- “1. *The Amended orders in Civil Action No. HBC 249 of 2016 granted on 4th June 2018 be set aside and dismissed.*’
2. *The Judgment dated 23rd August 2017 pronounced by Honourable Judge, Justice M H Mohammed Ajmeer be set aside wholly.*
3. *The matter be reverted to the High Court for determination.*
4. *Each party shall bear their own costs of this appeal.*”

- [3] Section 20(1)(f) of the Court of Appeal Act (the Act) confers on a single Judge the power to “*give judgment by consent or make an order by consent*”.
- [4] Although the said section undoubtedly vests power to give judgment in favour of a party with the consent of the opposing parties (in this instance setting aside the judgment of the lower Court) nevertheless, I was left in doubt as to whether, in interpreting the section in question, I could condone a consent order that “The matter be reverted to the High Court for determination.”

The Competing Considerations in that regard

- [5] On one end of the spectrum there is the public policy factor that there should be an end to litigation. On the other, there is the consideration that justice must be done to individual concerns.
- [6] Taking those competing considerations into reckoning, had the consenting parties merely agreed to have the appeal allowed and the judgment of the High Court set aside, that would have brought an end to the litigation between them. But item no.3 goes beyond that.
- [7] It is in view of the aforesaid concerns that I had the matter listed for submissions on which occasion Mr Padarath (Counsel for the Appellant) undertook to tender a written submission. Counsel for the 1st to 3rd Respondents stated to Court that they would abide by the said submission.

- [8] In his said written submission (re-iterating what he submitted in his oral submissions) Mr Padarath has submitted the reasons for seeking item 3 in the consent motion.

Reasons for seeking item 3 in the Consent motion

- “2. *The setting aside of the order dated 23rd August 2017 will ultimately not bring an end to the legal issues. The Orders of 23rd August 2017 was entered under Order 19 of the High Court Rules. Subsequently its amendment on 4th June 2018 was the catalyst for this appeal.*
3. *The granting of the amendment created an order which dramatically affected the rights of the appellant. Prior to the granting of the amendment, no cause of action was pleaded against the appellant nor was there any order which affected the Appellant rights.*
4. *Once the orders are set aside the issues of the pleadings and the cause against the Appellant will remain. Unfortunately, the scope of this appeal cannot remedy this. The appeal before the court was limited to the legality of granting the amendment and the entering of order dated 27th August 2017. In addition, the entire evidential matters were not considered by the High Court as evidence from all parties were not heard and recorded.”*

- [9] Having given my mind to the said reasons adduced as being the basis for seeking the said item No. 3 and being satisfied as to the said reasons I proceed to make orders as follows.

Orders

1. Judgment is entered in terms of the Consent Motion dated 5th August, 2021.
2. No Costs.
3. The Registrar of this Court is directed to remit this case to the High Court.



Ides Almeida Guneratne

Hon. Justice Almeida Guneratne
ACTING PRESIDENT, COURT OF APPEAL