

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 107 of 2020
(High Court Civil Action No. 27 of 2018)

BETWEEN : **USENIA CIBA**
ANASEINI DIROKO
ROSA RAIVUKICI TUNABUNA aka ROSA TUNABUNA

APPELLANTS

AND : **BALE FRANCIS**

1st RESPONDENT

AND : **GORDON LEEWAI**

2nd RESPONDENT

AND : **THEN INDIA SANMARGA IKYA SANGAM**

3rd RESPONDENT

Coram : **Dr. Almeida Guneratne, P.**

Counsel : **Ms R. Devi for the Appellants**
No Appearance for the 1st and 2nd Respondents
Ms. S Kumar for the 3rd Respondent

Date of Hearing : **13th April 2023**

Date of Judgment : **12th June 2023**

DECISION

Brief Recount of the background to this case

[1] In the action before the High Court which was an action based on negligence arising out of a road accident, the learned High Court Judge by his judgment dated 7th August, 2020

awarded general and special damages to the plaintiff-appellants. The appellants filed an appeal within time putting in issue the quantum of damages awarded. The Appeal bore the number ABU/72/2020.

- [2] Due to the Appellants' failure to pay security for costs of the appeal as required by Rule 17(2) of the Court of Appeal Rules, the Appeal had been "*deemed abandoned.*" Thereafter, the Appellants filed a fresh appeal as provided in Rule 17 (2) (b) of the Court of Appeal Rules with the assigned (new and current) number ABU/107/2020. In consequence, the Appellants paid security for costs of appeal followed by the lodging of the Copy Record for vetting and certification.

The Genesis of the present dispute

- [3] It is when the Appellants sought the consent from the Respondents to file and serve the Copy Record as required by the Rules of Court that, the 3rd Respondent's solicitors had objected to "*certain documents.*"

The Events that followed

- [4] It is in that background that the matter "*came up*" before me for consideration and a determination.
- [5] If I may by-pass some mention dates which had even prompted me to make a Ruling of an interim nature on 10th May 2021, ultimately on 13th April, 2023 I gave directions for parties to tender written submissions concurrently on the matter in dispute by the 30th May, 2023 to which directions only the Appellants responded by the end of the judicial day on that date.
- [6] Be that as it may, I proceed to address my mind to the matter in dispute in the ensuing discussion.

Discussion

- [7] The matter in dispute (“*the issue*”) lies fairly and squarely within the framework of Rule 18 of the Court of Appeal Rules and the interpretation that needs to be placed thereon.
- [8] No doubt, “*the primary responsibility for the preparation of the record on the appeal rests with the appellant*” Rule 18 (1) (a)

What does the Record consist of

- [9] That is spelt out in Rule 18 (2) (a) to (g), the provisions of which, at least, the Appellant has prima-facie complied with and had submitted for certification by the Registrar as envisaged in Rule 18 (3). The Registrar did not point out to any errors or deficiencies as contemplated in Rule 18 (4). Thus, for all intents the Appellants had prepared “*the record*” and consulted the Respondents as required by Rule 18 (5).

Relative duties cast on parties in an appeal

- [10] As articulated above, the duties cast on an Appellant, the appellant in this case has discharged. That shifted the responsibility to the Respondent as laid down in Rule 18 (6) of the Rules of the Court of Appeal *viz*:

“Any documents which a party objects to being included must be so indicated in the record for the purpose of adjustment of Costs.”

Determination

- [11] On the 13th April, 2023 (supra, paragraph (5) above, the 3rd Respondent did not spell out the documents that were being objected to as required by the said Rule 18 (6)

[12] However, that is why I felt inclined to give the 3rd Respondent an opportunity to supply that omission by filing a written submission which opportunity also, the 3rd Respondent has not availed of.

The Resulting Position and the Ensuing Orders

[13] In the result, there being no basis to object to any documents as compiled by the Appellants as constituting “*the Copy Record*” and there being no lapse on the Appellants part as contemplated in Rule 18 (4) of the Court of Appeal Rules which might have otherwise triggered in Rule 18 (7), I proceed to make the following Orders.

Orders of Court:

1. *The 3rd Respondent’s objections to the Appellants’ appeal are overruled.*
2. *The 3rd Respondent shall pay to the Appellants as costs of this application a sum of \$3,500.00 within 21 days of notice of this decision.*
3. *The Registrar is directed to certify “the copy record as being correct effective from the date of this order (decision).”*
4. *The Registrar is further directed to take steps in accordance with Rule 18 (9) of the said Rules of Court.*



A handwritten signature in purple ink, reading "Ida A. Guneratne", is written over a horizontal line.

Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL

Solicitors:

Swastika Legal for the Appellants
No appearance for the 1st and 2nd Respondents

Mitchell Keil for the 3rd Respondent