

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

CIVIL APPEAL NO. ABU 0078 of 2014
[High Court Civil Action No. 40 of 2010]

BETWEEN : SAIFUN DIN

Appellant

AND :

1. ABDUL IRSHAD KHAN
2. RAJENDRA SHARMA
3. ATTORNEY GENERAL OF FIJI
4. DR. JAOJI VULIVECI

Respondents

Coram : Dr. Almeida Guneratne, P

Counsel : No appearance for the Appellant
Ms R Devi for the 1st Respondent
No appearance for the 2nd Respondent
Ms S. Kapoor for the 3rd and 4th Respondents

Date of Hearing : 1st August, 2023

Date of Decision : 18th August, 2023

DECISION

Brief background to the present application

[1] By judgment dated 30th November, 2017, the Court of Appeal decreed as follows:

“Orders:

1. *The appeal against the judgment of the High Court in so far as the Third and Fourth Respondents are concerned is dismissed with costs fixed at \$2,500.00 to be paid by the Appellant to the said Respondents. This shall be in addition to the costs of \$2,500 ordered by the High Court in favour of the third and 4th Respondents.*
2. *The appeal against the judgment of the High Court in so far as the First Respondent (the plaintiff in the original action) is concerned is partly allowed to the extent that, the award of \$54,600 for future loss of earnings is reduced to \$43,680.*
3. *In consequence of Order 2 above, the Judgment entered in favour of the First Respondent by the High Court in the sum of \$164,028.70 is altered to a sum of \$153,108.70.*
4. *In addition to the costs of \$3,000.00 awarded to the First Respondent in the Court below, the Appellant is ordered to pay \$1,500.00 as costs of this Appeal to the First Respondent.”*

[2] In appeal the Supreme Court by its judgment dated 31st August, 2018 affirmed the judgment of the Court of Appeal.

“Orders of Court:

- (1) *Application for leave to appeal is refused and the application of the Petitioner is dismissed.*
- (2) *The judgment of the Court of Appeal affirmed.*
- (3) *The Petitioner is directed to pay costs in a sum of \$2,500.00 to the 1st Respondent in addition to the costs awarded in his favour in the lower courts.”*

[3] Thereafter, the 1st Respondent (successful plaintiff in all three Courts) filed a summons dated 30th January, 2022 seeking an order for payment of interest on the damages due to him.

[4] The matter of the said summons having come-up before me on the 30th January, 2023, the Court, finding that notice had not been served on the appellant, directed summons to be served on the appellant’s personal address.

- [5] Consequently, upon a fresh summons being filed on 16th March, 2023 in compliance with the order of Court made on the 30th January, (as per the relevant Affidavits of Service filed of Record), the appellant being absent and unrepresented, on 1st August, 2023 when the matter was taken for hearing, the 1st Respondent moved that the Court make an order on the said re-filed summons filed on the 16th March, 2023.

The Terms of the Re-filed summons (dated 16th March, 2023)

***“THAT** the Appellant/2nd Defendant be ordered to pay interest on General Damages and Costs from the date of Judgment of the High Court of Fiji (HC) to realization as per the Judgment of the Fiji Court of Appeal dated the 30th day of November, 2017.*

***THAT** the Appellant/2nd Defendant be ordered to pay the sum of \$53,316.42 (Fifty – Three Thousand Three Hundred and Sixteen Dollars and Forty – Two Cents) which sum was short paid as interest payable on General Damages and Costs as per the Judgment.*

***THAT** the Appellant/2nd Defendant does pay the cost of this application as ordered by the Honourable Court.*

***THAT** any other relief this Honourable Court deems just and expedient.*

*The 1st Respondent/Plaintiff intends to read and rely upon the grounds contained in the Affidavit in Support of **ABDUL IRSHAD KHAN** of Korowiri, Labasa, Unemployed sworn and filed herein.*

*This application is made pursuant to **Section 17 and 20 of the Court of Appeal Act[1949].**”*

Determination

- [6] Although, initially I had some doubt as to whether a single judge could make the orders sought in the 1st Respondent’s said re-filed summons or whether the matter needed to be fixed before the full Court, I was convinced that, a single judge has jurisdiction to make the orders so sought in pursuance of Section 20(1)(k) of the Court of Appeal Act (the Act) as the matter being “*incidental*” to the Appeal or even “*ancillary*” thereto.

- [7] Having given my mind to the submissions made by the 1st Respondent and the terms of his re-filed summons where Section 20 of the Act has been expressly referred to, I was able to resolve whatever doubt.
- [8] In that regard I also derived guidance from the thinking in the High Court ruling in **Silimaibau & Another v. Minister of Sugar Industry & 2 Others** [2004] HBC 155/01L, 5th March, 2004 per Gates, J which I adopt for this Court.
- [9] Accordingly, I proceed to make my orders as follows.

Orders:

- 1) *Orders sought in terms of the 1st Respondent's (present applicant's) re-filed summons filed on 16th March, 2023 (dated 28th April, 2023) are allowed.*
- 2) *The Registrar is directed to send notice to the appellant of this decision both to his solicitors that appear on Record and to his personal address.*



Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL