

IN THE COURT OF APPEAL, FIJI

[On Appeal from the Employment Relations Court of Fiji at Suva]

CIVIL APPEAL NO: ABU 0086 of 2023

[Employment Relations Court Case No. 03 2021]

BETWEEN : **THE LABOUR OFFICE FOR AND ON BEHALF OF**
THE WORKER VILIAME NAVARA

Appellant

AND : **CLABBS PACIFIC LIMITED**

Respondent

Coram : **Qetaki, JA**
Andrews, JA
Winter, JA

Counsel : **Ms. N Narayan for the Appellant**
Respondent in person

Date of Hearing : **12 and 21 November 2024**

Date of Judgment : **28 November 2024**

JUDGMENT on ADJOURNMENT

- [1] One of the most significant topics in employment law in recent times has been the employee, contractor distinction. If a worker holds the status of an employee, they enjoy a suite of statutory minimum employment entitlements, such as the minimum wage, superannuation, protected hours of work, sick leave, a right to paid holidays, rights not to be dismissed, and entitlements to workers compensation. Contractors do not have any of these rights.
- [2] This appeal is about that distinction. While working at the respondent's (Clabbs) yard grinding a steel gantry, Mr Navara, injured and some months later lost his index finger and so claimed workers compensation. Clabbs refused the claim. The Employment Tribunal found Mr Navara was a Clabbs employee at the time of the injury and ordered the company to pay the workers compensation. The Employment Relations Court on appeal, disagreed and found Mr Navara was a self-employed contractor so quashed the Tribunal's order. This is an appeal from that Employment Relations Court decision.
- [3] For an appeal to succeed a party must convince the Court that the Judge that heard the case, under appeal, made an error of law and that the error was of such significance that the decision should be overturned.
- [4] The Court of Appeal does not conduct a complete rehearing but only reviews the decision of the judge below. Generally, the appeal court will not hear any new evidence and will not re-hear any of the witnesses who gave evidence in the tribunal or courts below, instead relying on a written transcript.
- [5] The Court of Appeal considers each side's arguments and determines whether the law was applied correctly. The Court hearing the appeal:
- does not consider any new evidence or information that was not presented in the original case (except in special circumstances).
 - does not call witnesses to give evidence.
 - does read all the relevant documents filed by the parties for the original case.
 - does read the relevant parts of the transcript of the original case.

- does listen to legal argument from both parties to the appeal.

Court of Appeal judges have significant legal knowledge and experience, and their published judgments stand as important legal precedents guiding decision-making across all levels of the justice system in Fiji. The obligation on counsel and the registry to prepare and then certify a complete, accurate and well organised ‘record,’ for their judges of appeal to consider, is crucial. This most serious duty is emphasised in the Act, Rules of Procedure and Practice Directions. These provide invaluable guidance on matters of practice in Fiji courts. The objective of both Rules and Directions is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.¹

- [6] Discussing the purpose of the High Court Rules and rules of procedure in New Zealand, Jeffries J, in *Schmidt v BNZ Ltd*, observed:²

“Procedural rules are the servants of Court proceedings to achieve just, speedy and at the least cost, expedition of cases. The construction of Court rules should always be approached with care but with a readiness to apply them to meet the justice of the case which is manifest before a Court...”

- [7] People have fundamental rights to fair trials. In Fiji, the right to procedural justice (or natural justice) is a fundamental right contained in the Constitution of the Republic³. Compliance with the Act, the Rules and Practice Directions is not optional. The Act, Rules and Directions are especially important given that they are essential tools which Courts employ to maintain procedural fairness in trials.

- [8] For these reasons when the registry, counsel or unrepresented parties fail in their duty to properly prepare the ‘record’ for the case on appeal, that we rely on, they must be sternly reminded to do better. Furthermore, when a legal representative’s performance in this regard falls a long way short of compliance with the Act, Rules, and Directions then consideration of costs may be appropriate⁴.

¹ *KU (A Child) v Liverpool City Council* [2005] EWCA Civ 475, [2005] 1 WLR 2657 at [48].

² *Schmidt v BNZ Ltd* [1991] 2 NZLR 60 (HC) at 63.

³ Constitution of the Republic of Fiji, Chapter 2, see Article 15.

⁴ *In re Nasrullah Mursalin* [2019] EWCA Civ 1559 at [2].

- [9] The ‘*record*’ we received was imperfect. Some but not all the witness statements provided to the Tribunal for its original hearing were missing. No transcript of the Tribunal hearing was available, although we surmise the missing statements and transcript may have been provided to the Employment Relations Court. These documents, both the appellant and unrepresented respondent told us, were crucial to their competing submissions about Mr Navara’s work relationship with Clabbs.
- [10] Finding this imperfect record and the glaringly obvious importance of the missing material, the court was left in an irretrievable situation where we could not consider whether the judgment under appeal correctly applied the law.
- [11] This explains our reasons for adjourning the appeal and reserving court costs against the appellant ‘Labour Officer,’ and not Mr Navara personally, as the appellant was responsible under the Act, Rules, and Directions to file a complete, accurate and organised ‘record’ for our consideration.
- [12] Clabbs took no steps and filed no documents before the Appeal was called. By email, received the day before the appeal hearing, counsel advised the registry they had ceased to represent Clabbs. Following late personal service Clabbs only just made an appearance after the scheduled call time for the hearing. In the interests of justice, we granted leave for Clabbs to then file late submissions in reply to the appellants case and adjourned the hearing to later in the session. In those circumstance no interparty costs, in addition to court costs, are warranted.
- [13] During the adjourned period we urge both parties towards a common-sense and practical settlement of Mr Navara’s worker’s compensation claim.

ORDERS:

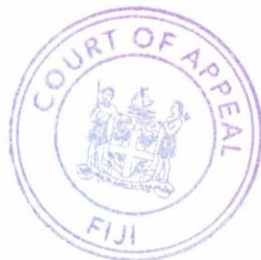
- (1) The Appeal is adjourned to be recommenced afresh in the next available session.

- (2) Leave granted to the Appellant to prepare an amended complete and well organised case record in consultation with the respondent and file that document for certification no later than the 31 January 2025.
- (3) Court Costs against the Labour Office are reserved and will be set by the court following the appeal hearing.



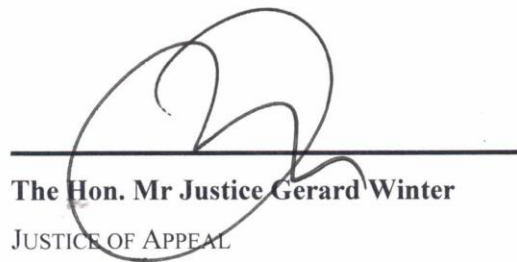
The Hon. Mr Justice Alipate Qetaki

JUSTICE OF APPEAL



The Hon. Madam Justice Pamela Andrews

JUSTICE OF APPEAL



The Hon. Mr Justice Gerard Winter

JUSTICE OF APPEAL