

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 21 of 2012

BETWEEN: SEGRAN NAIR
APPELLANT

AND: CARPENTERS FIJI LIMITED Trading As CARPENTERS
MOTORS
RESPONDENT

Appearances: Mr. D. Nair and Mr. P. Rae (FBFSEU) for the Appellant.

Mr. S. Sharma for the Respondent.

Date/Place of Judgment: Friday 02 December 2016 at Suva.

Coram: Hon. Madam Justice A. Wati.

A. Catchwords:

Employment Law – Procedure to introduce new grounds of appeal not contained in the notice – party alleging that his or her closing submission not considered by the Court must also show that the decision is otherwise flawed on law and facts causing miscarriage of justice for it to be vitiated by the appellate court.

B. References:

(i) Legislation:

1. *The Employment Relations Promulgation 2007 ("ERP"): ss. 238(2) (b).*
 2. *The High Court Rules 1988 ("HCR"): Order 55 Rule 6.*
-

1. The employee appeals against the decision of the Employment Relations Tribunal ("ERT") of 6 November 2012 wherein it held that the employer's action to dismiss the employee on 6 October 2010 was lawful and fair.
2. The employee's complaint is only in regards the issue that the Legal Tribunal had at various stages in her judgment mentioned that the employee had not filed his closing submissions when it was filed in the ERT Registry on 20 December 2011 and served on the employer.
3. It is therefore alleged that the employee's closing submissions which raised important questions of law and fact were not considered by the ERT thereby depriving the worker natural justice and an unbiased hearing of the grievance.
4. I must highlight that in the grounds of appeal filed and served; the employee did not raise any challenge to the findings of the ERT based on the evidence. However in his written submissions, he raises issues which were not part of the grounds of appeal. This is not permissible unless the employee seeks leave of the Employment Court to argue new grounds.
5. Order **55 Rule 6(3) of the HCR**, which legal provision is applicable to the proceedings in this Court by virtue of s. 238 (2) (b) of the ERP, states:

"Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the grounds of merits on the real question in controversy between the parties".
6. Paragraph (1) referred to in Order 55 Rule 6(3) above is reference to Order 55 Rule 6 (1). The Provision reads that:

"The notice of motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice served not less than 7 days before the day appointed for hearing of the appeal, on each of the persons on whom the notice to be amended was served".

7. The appellant did not file any supplementary grounds of appeal or sought leave of the Court to amend the grounds. The new grounds were quietly sneaked in through the written submissions. This is improper practice of adding new grounds to the submissions without the leave of the Court. Irrespective of the fact that the new grounds were included in the submissions, leave ought to have been sought and in absence of any leave, I refuse to allow any new grounds to be argued and determined.
8. If I were to confine the issue to the grounds of appeal, the only issue before the Court is whether the employee suffered any prejudice as a result of the ERT's stating in its judgment that the employee did not file his closing submissions.
9. Mr. Rae who appeared for the employee only argued that since the closing submissions were not considered, the employee was seriously prejudiced. Mr. Rae failed to convince this Court in which way the employee was prejudiced and whether on the analysis of the evidence the ERT was wrong. The employee has to show that in not considering the submissions, errors of fact and law were made.
10. There are so many instances in which parties do not even make oral closing submissions or file closing submissions but the Court still proceeds to determine the issue based on the evidence itself. This does not mean that the judgment is flawed.
11. Closing submissions normally assists the Court in understanding the issues raised by the parties. In this case, despite the ERT stating that there were no closing submissions, the issues and the evidence was carefully analysed by the ERT.

12. There is no challenge that the evidence of the parties was no considered and that the ERT did not make proper findings of fact and law. In absence of any such grounds of appeal appropriately raised, I find that the appeal has no basis.
13. In the final analysis therefore, I dismiss the appeal and order that each party bears their own cost of the appeal proceedings.



Anjala Wati

Judge

02.12.2016



To:

1. *Fiji Bank & Finance Sector Employees Union (FBFSEU) for the Appellant.*
2. *Patel Sharma Lawyers for the Respondent.*
3. *File: Suva ERCA 21 of 2012.*