IN THE HIGH COURT OF APPEAL OF FIJI
AT SUVA
CIVIL JURISDICTION

Action No.: HBC 159 of 2013

BETWEEN : **SEVANAIA VEILAVE** of Lot 17, Makosoi Estate, Pacific Harbour, Driver, as the father, the intended Administrator and next friend of his late daughter namely **ADI KELERA MARAMA** infant, deceased, intestate.

APPLICANT/PLAINTIFF

AND : **SALVEEN SACHIN NAICKER** of Nawaka, Nadi, Driver.

1ST RESPONDENT/1ST DEFENDANT

AND : **NAIM ENGINEERING CENDERA CONSTRUC**

TION LIMITED whose registered office is at Level 2, Jet Point, Supa Centre, Martintar, Nadi.

2ND RESPONDENT/2ND DEFENDANT

Counsel : **Mr. M. A. Khan for the Applicant/Plaintiff**
Mr. A. K. Narayan for the 1st and 2nd Respondent/1st Defendant

Catch Words: *Amendment- grant of letters of administration after institution of action- amendment of the writ and statement of claim to allow the change in capacity -striking out – power to order amendments in lieu of striking out- Sections 3,4,5, 9 and 10 of Compensation to Relatives Act 1920- Ord.18 r.18 of HCR.*

Cases Referred in the Respondent's submission in Opposition to Notice of Appeal

Ingall v Moran 1944 1 KB 160

Tanuku v AG (unreported) decided on 26th January, 2000 Fiji High Court (Suva) case No HBC 134 of 1995.

JosaiaNainoka v BA, Tavua Drainage Board (unreported) Fiji Supreme Court (Western Division) at Lautoka Action No 237 of 1978(decided on 28th November, 1985)

Balakaba v Jagdish [2013] FJHC 547(decided on 16th August 2013)(unreported)

Douglas Stuart Jamieson V Dominion Insurance Limited (2012) 1 FLR 10

Railala v Yuen Yin Hum (unreported) (decided on 13th July, 2001) Fiji High Court Case No. HBC 528 D. 1992s.

Cases Referred in the Judgment

McPherson v McPherson **1936 AC 177**

Ingall v Moran1944 1 KB 160

Tanuku v AG (unreported) decided on 26th January, 2000 Fiji High Court (Suva) case No HBC 134 of 1995.

JosaiaNainoka v BA, Tavua Drainage Board (unreported) Fiji Supreme Court (Western Division) at Lautoka Action No 237 of 1978(decided on 28th November, 1985)

Wakaya Vs Chambers et al (unreported) (decided on 10th November, 2011)

Austin v Hart [1983] 2 All E.R. 341

McPherson v McPherson 1936 AC 177

Marsh v Marsh [1945] AC 271, PC. (at p276)

Emanuel v Australian Securites Commission 144 ALR 359

Roberts v Gill & Co and Others [2010] 4 All ER 367

Date of Hearing	**:**	**29th March, 2017**
Date of Judgment	**:**	**21th April, 2017**

JUDGMENT

INTRODUCTION

1. This is an Appeal against the Master's decision. The Master had struck off the Plaintiff-Appellant's action (the Plaintiff) in terms of Order 18 rule 18 of the High Court Rules of 1988. The Plaintiff is the father of the deceased child and in this action he is seeking compensation for special damages for medical expenses, damages for pain and suffering, damages under Compensation to Relatives Act 1920 and also under Law Reform (Miscellaneous Provisions)(Death and Interest) Act 1935 for loss of prospective

earnings. The action was filed on **31st May, 2013.** According to the Statement of Claim the death was due to the motor accident happened on **30th May, 2010**. The Plaintiff had not obtained Letters of Administration at that time of the institution of the action and subsequently it was obtained. The Plaintiff had filed this action as '***intended*** *Administrator* ***and Next Friend***' of the deceased. Orders were granted in terms of summons for directions, by consent of the parties. The Plaintiff filed and served his Affidavit verifying list of Documents. Then, the Defendants sought to amend the statement of defence by summons filed on 4thApril, 2014. After several adjournments the hearing of the said summons seeking amendment to the defense, was fixed on **12th November, 2014, but it was stayed on that day,** as the Defendant had, subsequently filed summons seeking strike out of the action and also seeking stay of their earlier summons for amendment. While directions were being made regarding the second summons filed by the Defendant seeking strike out, another **summons was filed by the Plaintiff** seeking to amend the writ of summons and stamen of claim on 25th November, 2014. The Summons filed by the Defendant seeking strike out was heard on 16th March, 2014 and by Ruling delivered, on11thNovember, 2016 and action was struck off.

2. The Ruling delivered, on 11thNovember, 2016, at paragraph 2 stated that the court had stayed the Defendant's summons to amend its defence until the determination of the summons to strike out.

3. The Plaintiff made a failed attempt to file an Appeal and for that Notice and Grounds of Appeal, against the said Ruling was filed on 24th November, 2016. This was presumably abandoned, sometime after 24th November, 2016 before 2nd December,2016,as the Ruling delivered by the Master could not be classified as a 'final order' in line with the decision of Fiji Court of Appeal in ***Goundar v Minister for Health*** *[2008] FJCA 40; ABU0075.2006S (9 July 2008)* .

4. The summons seeking leave to appeal out of time, against the said interlocutory order, was filed on 2nd December, 2016and the hearing was that application was conducted on

8th February, 2017.Decision granting, Leave to Appeal was delivered on 17th February, 2017

5. The Notice and Grounds of Appeal was filed on 21st February, 2017. The hearing of the Appeal against the interlocutory ruling of the master was on 29th March, 2017.

6. According to the Notice and Grounds of Appeal filed on 21st February, 2017 the grounds are

   i. The Acting Master of the High Court erred in law and fact by nullifying the Writ of Summons filed on 31st May 2013 under the Order 18 Rule 18 application filed by the Defendants.

   ii. That the Acting Master of the High Court erred in law and in fact by failing to consider that the Plaintiff is the biological father of the deceased and by virtue of being the biological father the Plaintiff has standing /locus standii to institute proceedings.

   iii. That the Acting Master of the High Court erred in law and in fact by failing to consider that the Plaintiff has a reasonable cause of action by virtue of being the biological father of the deceased and the sole beneficiary in the deceased's estate. In the judgment, it stipulated that "***In any event, I consider that neither section 5 nor 10 of the Compensation to Relatives Act can assist the Plaintiff.*** .... Though the Plaintiff could not have commenced the action as an administrator under section 6(1)(e) of the Succession, Probate and Administration Act(Cap 60), and section 4 of the Compensation to Relatives Act 29, he is entitled to bring action under section 10 of the Compensation to Relatives Act"

   Further it stated that "there is in this case nothing before me to say either that the Plaintiff is the sole beneficiary, or that he is bringing the action on behalf of any other beneficiary..."

iv. The Acting Master of High Court erred in law and in fact in failing to consider that the terms "father", "intended administrator" and also "next friend" were used in the intituling enabling him entitlement as Plaintiff to institute this action pending grant of Letters of Administration.

v. That Acting Master of the High Court failed to consider the pending application field by the Plaintiff on 25th November, 2014 for leave to amend Writ of Summons filed on 31st May, 2013, after the grant of Letters of Administration was obtained by the Plaintiff. The Acting Master in para 58-59 states that "…the proposed amendment does not in any way cure the irregularity from the beginning … in the circumstances, I find that the writ in this action is invalid and struck out accordingly."

7. When considering the grounds of appeal I do not wish to consider them in the above order. There are two main issues that can be deducible from the said grounds and they are

i. Can the proposed amendment of the Plaintiff seeking deletion of word 'intended' from writ of summons and statement of claim be allowed in terms of the local decisions that had followed ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160, but at the same time did not consider Order 20 rule 5(4) of the High Court Rules of 1988. If so can the action be reinstated?

ii. The reliance of Compensation to Relatives Act 1920 , in the statement of claim should, in any event prevent the action of the Plaintiff being struck out (in terms of ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160). Was there a fatal irregularity under Section 9 of the Compensation to Relatives Act 1920 for nullifying or invalidate the whole proceedings.

The Summons filed by the Plaintiff seeking Amendment (for change of capacity)

8. The Plaintiff had filed summons seeking an amendment to the caption of the writ as well as to the statement of claim. The proposed amendment was sought in terms of Order 20 rule 5 of the High Court Rules of 1988. The proposed amendment sought to amend the description of the Plaintiff from '*the intended Administrator*' to '*Administrator*' by deleting the word '*intended*' from the writ as well as from the statement of claim.

9. At the time of the institution of the action the Plaintiff was yet to obtain the letters of administration which he obtained subsequently. The action was filed due to eminent expiration of time period for action under Limitation Act 1971.

10. The Ruling of the Master, held that amendment for change of capacity cannot be granted by the court. The counsel for the Respondent, relied on ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160. This Ruling of the Master, also relied on Fiji High Court cases, ***Josaia Nainoka v Ba, Tavua Drainage Board*** (unreported) Fiji Supreme Court (Western Division) at Lautoka Action No 237 of 1978(decided on 28th November, 1985) and ***Tanuku v AG*** (unreported) decided on 26thJanuary,2000 Fiji High Court (Suva) case No HBC 134 of 1995. The counsel for the Respondent relied heavily on this judgment.

11. Both these decisions in Fiji, relied principally on ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160 a UK decision. After this decision the Order 20 of UK Rules of Supreme Court was amended in 1981, and this amendment was to remedy the injustice to a person like the Plaintiff. I will discuss more on that later, in this judgment.

12. Apart from these Fiji High Court decisions, ***Douglas Stuart Jamieson V Dominion Insurance Limited*** (2012) 1 FLR 10 Master's decision and ***Railala v Yuen Yin Hum*** (unreported) (decided on 13th July, 2001) Fiji High Court Case No.0528D of 1992s also relied on abovementioned UK (Court of Appeal) decision, which held that a person should first obtain Letters of Administration before institution of action in the representative manner.

13. ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB160, was delivered on 10th December, 1943, and that decision had considered the UK law, that prevailed at that time.

13. In UK, Supreme Court Rules were amended after this judgment, in 1981 on recommendation of Law Reform Committee of UK on their Final Report, as regard to injustice that would cause to an Administrator as opposed to Executor from decision of. ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160 .

14. Supreme Court Practice (UK) (1988) (White Book) at p 352-3 it states,

> *'So far as additional capacities in which a party may sue are concerned,* ***the former r.5(4)*** *was found by the Law Reform Committee in the Final Report to be too restrictive, because it allows a plaintiff to add a claim on behalf of the estate if probate is subsequently granted to him as executors since his title would relate back to the death, but is does not cover the comparable situation where the plaintiff is subsequently granted letters of administration because the title in his case related back to the date of the grant which would normally have been after the issue of the writ. They recommend the change in the law and the rules, and this has been done by s.35(3) and substituted r.5(4),* ***which has the effect of negative Ingall v Moran****[1944] 1 All ER 97, [1944] KB 160.....'*

15. Order 20 rule 5 (2) and Order 20 rule 5(4) of High Court Rules of 1988, deals with situation similar to the Plaintiff in this case and they are as follow;

> *'5(2) where an application to the Court for leave to make the amendment mentioned in paragraph (3),(4), or (5)* ***is made after any relevant period*** *of* ***limitation current at the date of issue of the writ has expired****, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.*
>
> ....
>
> 5(4) ***An amendment to alter the capacity*** *in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or* ***has since acquired.'*** (emphasis added)

16. The abovementioned provisions are analogous to the UK Rules of Supreme Court that prevailed in 1988(See p 348 The Supreme Court Practice, Vol 1 (White Book) (1988).

17. Fiji's High Court Rules of 1988 is analogous to the UK Supreme Court Rules in 1988, hence High Court Order 20 rule 5(4) had remedied injustice to an Administrator in line with the decision of ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160.

18. Order 20 rule 5(2) of High Court Rules of 1988, states that in spite of expiration of limitation period subsequently (i.e at the time of the amendment), the capacity of a person maybe amended. This is an exception to the normal rule and this type of amendment is granted, only for specific instances stated in Order 20 rule 5(3),(4) and (5). The requirement is that, the limitation period should not have expired when the action was filed, initially.

19. When the action was filed it was done within the 3 year, time period as the 'intended' administrator. The alteration of 'capacity' is the change of Plaintiff's status since acquisition of status of Administrator. He was no longer an intended administrator, after obtaining Letters of Administration.

20. Order 20 rule 5(2) and 5(4) grants the court discretion to allow change of status or capacity of a party in an action. Considering the circumstances of the case the discretion of the court should be exercised in favour of the Plaintiff allowing the change of status.

21. It should also be noted that Plaintiff was suing this action as the father of the deceased under Section 10 of the Compensation to Relatives Act 1920, for which no letters of administration is needed. So, the Plaintiff's status as administrator is not determinant of his right to this action. So, it is wrong to nullify entire proceeding, as the Plaintiff had dual capacity as a relative of the deceased. This will be discussed in detail later.

22. Application of ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160, which was the law applicable in UK in 1933 prior to the introduction of amendments to UK Supreme Court Rules in 1981 , is not compatible with the High Court Rules of 1988. The application said law to Order 20 rule 5(4) of the High Court Rules of 1988, is like turning back the clock.

23. Order 20 rule 5(2) and 5(4) of High Court Rules of 1988, allows an amendment due to change of capacity of the Plaintiff, after institution of action. This was not considered in the Master's decision.

24. High Court Order 20 rule 5(4) allows amendments to alter the capacity of the Plaintiff since there is undisputed evidence that the Plaintiff had since institution of the action acquired the capacity as Administrator of his deceased child. If not, an injustice would cause to the Plaintiff and in my judgment those provisions allows the court to exercise its discretion in favour of the Plaintiff's amendment to delete the word 'intended' from the writ of summons and also from the statement of claim .

25. Fiji High court decisions that were referred in the written submission of the Respondent had not considered the effect of Order 20 rule 5(2) and 5(4) of High Court Rules of 1988 and the fact that UK Rules of Supreme Court (RSC) to Ord.20 r 5(4) was amended, since the pronouncement of ***Ingall v Moran*** [1944] 1 All ER 97, [1944] KB 160 in 1943.

26. I am more fortified in this regard by a recent UK decision of ***Roberts v Gill & Co and Others*** - [2010] 4 All ER 367 at 378 Lord Collings SCJ held,

> *'RSC Ord 20, r 5 was also amended in 1981, but the only relevant change was to permit amendment to a party's capacity not only to a capacity which the party had at the date of the commencement of the proceedings, but also to a change to a capacity which the party had since acquired. This gave effect to a recommendation of the Law Reform Committee, enacted as s 35(7), to deal with the anomaly that, where probate was granted to a person as executor, leave to amend to make a claim on behalf of the estate could be given because the title related back to the death, but where the plaintiff was subsequently granted letters of administration in such cases, the title related back to the date of the grant, which would have been after the issue of the writ. This had the effect of removing the grave injustice caused by such decisions as* ***Ingall v Moran****[1944] 1 All ER 97, [1944] KB 160,* ***Hilton v Sutton Steam Laundry*** *(a firm) [1945] 2 All ER 425, [1946] KB 65,* ***Burns v Campbell****[1951] 2 All ER 965, [1952] 1 KB 15,* ***Finnegan v Cementation Co Ltd****[1953] 1 All ER 1130, [1953] 1 QB 688'.*

27. So the conclusion of the Master regarding the proposed amendment of the Plaintiff's capacity is from 'intended administrator' to the 'Administrator' is erroneous in terms of the Order 20 rule 5(2) and 5(4) of the High Court Rules of 1988, and it should be allowed.

28. On the said ground alone the decision to strike out the action should be quashed, and the action should be reinstated and the appeal should be allowed.

29. Without prejudice to what was stated above, the Plaintiff's inherent right to action under Compensation to Relatives Act 1920 is considered.

Compensation to Relatives Act 1920

30. The learned counsel for the Defendants- Respondents (Defendants) at the hearing said the non-compliance of the Section 9 of Compensation to Relatives Act 1920, requirement could be cured by an amendment to the statement of claim. He argued, that no such amendment was sought by the Plaintiff in their summons for amendment which was pending before the court when the summons for striking out was heard. The counsel for the Defendants stated that the Master had considered the material filed by the Plaintiff seeking amendment in the Ruling delivered on 11.11.2016, while striking out. According to the Defendants, since there was no amendment seeking rectification of deficiency of the requirement for Section 9 of Compensation to Relatives Act (Cap29), the striking out was the only option available. I humbly do not agree with that submission.

31. The Order 18 rule 18 of the High Court Rules of 1988 states as follows;

> '*18(1) The Court may at any stage of the proceedings order to be* ***struck out or amend any pleading*** *or the endorsement of any writ in the action, or* ***anything in any pleading*** *or in the endorsement, on the ground that-* *………………"* (emphasis added)

32. So, there is ample provision contained in Order 18 rule 18 of the High Court Rules of 1988, for the court to order for **amendment** of *'any pleading'* or ***anything in any pleading***, *ex meromotu* for a curable defect, if striking out can be saved from such an endeavor and to

prevent injustice to the litigant. If court think, that an amendment to pleading can prevent strike out it, may give necessary directions in lieu of striking out.

33. So, there was ample power vested with the Master to order an amendment if that could save the matter being struck out.

34. If an amendment could cure the deficiency of the requirements contained in Section 9 of the Compensation to Relatives Act 1920, why that opportunity was not given to the Plaintiff was not explained in the, otherwise well-reasoned determination of the Master delivered on 11.11.2016. The power of the court to order amendment under Order 18 rule 18 of High Court Rules of 1988 is wide enough, and may be exercised with unless an order or any appropriate order in the exercise of its discretion.

35. The Section 5 of Compensation to Relatives Act 1920 states as follows;

> *'5. Every such action shall be brought by and in the name of the executor or administrator of the deceased person, and the court may give to the parties respectively for whom and for whose benefit the action was brought such damages as are considered proportioned to the injury resulting from the death.*

36. The Section 9 of Compensation to Relatives Act 1920 states as follows;

> *'In every such action the plaintiff on the record shall be required to deliver to the defendant or his barrister and solicitor, together with the statement of claim, full particulars of the person or persons for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered'.*

37. Section 10 of Compensation to Relatives Act1920 states as follows

> ***10**.-(1) Where in any of the cases provided for by this Act it happens that there is no executor or administrator of the deceased person, or that there being such executor or administrator no action as hereinbefore mentioned is within six months after the death of the deceased person as herein mentioned brought by and in the name of his executor or administrator, then such action may be brought by and in the name or names of all or of any of the persons, if more than one, for whose benefit such action would have*

been if it had been brought by and in the name of the executor or administrator.

(2) Every action so brought shall be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be as if it were brought by and in the name of the executor or administrator.

38. The Plaintiff had brought the action as '*next of kin*' of the deceased and this is stated in the writ of summons. The Writ of Summons also stated that he was suing as the father, of the deceased child. So what else was needed under the said provision is not clear, and the alleged irregularity was non delivery of the particulars in terms of Section 9 of Compensation to Relatives Act 1920. In ***Railala v Yuen Yin Hum*** (unreported) (decided on 13th July, 2001) Fiji High Court Case No. HBC 528 D. 1992s the non-compliance of Section 9 of Compensation to Relatives Act 1920, was not held as curable irregularity. So, it was not a fatal irregularity.

39. In ***Railala*** (supra) applied Privy Council decision ***Austin v Hart*** [1983] 2 All E.R. 341 where it held that, if irregularity '*causes no prejudice to the defendant, there is no reason for the Court to insist that the irregularity nullifies and invalidate the whole proceedings....*'. This was regarding non-compliance of requirement under Section 10 of the Compensation to Relatives Act 1921. This was held to be the modern approach and Justice Fatiaki (as his lordship then was) in ***Railala*** (supra) applied the said modern approach to non-compliance of Section 9 of the Compensation to Relatives Act 1920.

40. This modern approach is further fortified by Gates CJ in more recent Fiji Supreme Court case ***Wakaya Vs Chambers et al*** (unreported) (decided on 10th November, 2011), regarding a different provision of law.

41. In ***McPherson v McPherson*** **1936 AC 177** it was held that if the irregularity had denied a party the rules of natural justice, it can be considered as void.(see ***Marsh v Marsh*** [1945] AC 271, PC. (at p276) where it was held that irregularity that had not denied rules of natural justice , may be considered voidable if such an application is made promptly. If such an

application seeking nullification is made late the court may exercise its discretion not to nullify the proceedings. This may be so when there is an obvious injustice by doing so. The alleged non-compliance of requirement under Section 9 of Compensation to Relatives Act 1920, by the Plaintiff, cannot lead to strike out of the action. Such an approach will create injustice, and would be deviating from the purpose and over reliance on the technicalities.

42. In ***Wakaya Vs Chambers et al*** (unreported) (decided on 10th November, 2011) Fiji Supreme Court (Gates CJ) quoted the following passage from ***Emanuel v Australian Securites Commission*** 144 ALR 359, Kirby J held,

> *'There is a reason for the tendency in the series of cases cited by McHugh JA in Woods v Bate... and in other cases to like effect, for the reluctance of courts in recent times to invalidate acts done pursuant to a statutory condition. Courts today are less patient with merit less technicalities.* ***They recognize the inconvenience that can attent an overly strict requirement for conformity to procedural preconditions. In the morass of modern legislation, it is easy enough, even for skilled and diligent legal practitioners*** *(still more lay persons who must conform to the Law)* ***to slip in complying with statutory requirements*** *.....* ***An undue rigidity in insisting upon strict compliance with all of the procedural requirements of the law could become a mask for injustice and a shield for wrong-doing."*** *(emphasis is mine)*

43. In the ***Wakaya Vs Chambers et al*** (unreported) (decided on 10th November, 2011) Fiji Supreme Court (Per Gates CJ) held in favour of the applicant, of the leave of the Supreme Court. In that case though one party was not served at all and the other party was served one day late in terms of Supreme Court Rules, the leave was granted and irregularity was not held as fatal. The ratio of the said Fiji Supreme Court decision can be applied to this appeal.

44. The principle *nunc pro tunc* is applied in certain circumstances for non-performance of procedural requirements when there is no injustice. In some cases even an Appeal is treated

as leave to appeal, when there is merits in an Appeal. (See **_Emanuel v Australian Securites Commission_** 144 ALR 359).

45. The ratio of decision of Gates CJ in **_Wakaya Vs Chambers et al_** (unreported) (decided on 10thNovember, 2011) Fiji Supreme Court also supports, *'nunc pro tunc'*. So, a non-performance of procedural requirement, under certain circumstances, can be fulfilled even later. This depend on the circumstances and the effect of the non-compliance or irregularity and its effect to the other party as well as purpose of such compliance. The cumulative effect of such factors can result in court's finding that irregularity as not mandatory.

46. I can't see any reason why the whole proceeding should be nullified on two grounds. First the counsel for the Respondent admitted that requirements under Section 9 Compensation to Relatives Act 1920, could be cured by an amendment. If so there is sufficient power for the court under Order 18 rule 18 of the High Court Rules of 1988, to direct the Plaintiff such an amendment, rather than striking out the entire action.

47. Admittedly it could be cured by an appropriate amendment to the statement of claim in terms of Section 9 of the Compensation to Relatives Act 1920.

48. Secondly, Sections 3 and 4 of the Compensation to Relatives Act 1920 allows an action for wrongful death of a child by a parent. There is no injustice to the Defendant as the Statement of Claim clearly specified the Plaintiff as the father of the deceased child apart from being the intended administrator at the time of the institution of the action. Section 10 of Compensation to Relatives Act 1920, allows a parent to institute action under said Act even without a Letter of Administration.

49. So, there is no need to change the capacity of the Plaintiff to claim damages under said provision. The right of action as parent under, Compensation to Relatives Act 1920 is not

dependent on being an Administrator. The striking out of the action on that ground is erroneous.

50. The Appeal is allowed. The Ruling of the Master, delivered on 11.11.2016 is quashed. The action is reinstated and the matter is to be listed before the Master for suitable directions. The cost of this action is summarily assessed at $1,000.

FINAL ORDERS

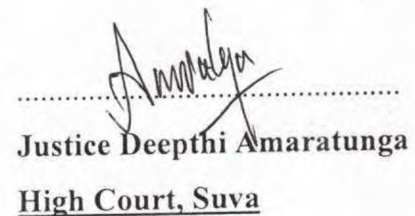
a. The appeal is allowed.

b. The ruling delivered by the Master on 11.11.2016 is quashed.

c. The action is reinstated and the matter is to be listed before the Master forthwith for directions.

d. Costs of this appeal is summarily assessed at $1,000.

Dated at Suva this 21st day of April, 2017



Justice Deepthi Amaratunga
High Court, Suva