

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 130 of 2016

BETWEEN : **RANGILA DEVI** of Uciwai, Nadi, Domestic duties as the Administratrix in the **ESTATE OF AVINESH GOUNDER** late of Uciwai, Nadi, Fiji, Mechanic, Deceased, Intestate.
PLAINTIFF

A N D : **PACIFIC TRANSPORT LIMITED** a limited liability company having its registered office at 169 Forster Road, Walu Bay, Suva.
FIRST DEFENDANT

A N D : **ROHIT HARI KISSUN** of Sukanaivalu Road, Lautoka, Bus Driver.
SECOND DEFENDANT

A N D : **LAND TRANSPORT AUTHORITY** a body corporate established under the Land Transport Act.
THIRD DEFENDANT

Appearances: Mr Roopesh Singh for Plaintiffs
Mr Wasu Pillay for 1st and 2nd Defendants
Mr Gabriel Stephens for 3rd Defendant

Date of Hearing: 7 July 2017

Date of Order: 7 July 2017

ORDER

[01] This is an application for leave to appeal.

[02] The third Defendants, Land Transport Authority seek leave to appeal the Master's decision delivered on 17 February 2017 dismissing the third Defendant's application to set aside the default judgment entered against them in default of pleading. The learned Master dismissed the setting aside application on a technical ground that the person sworn the affidavit did not file his authority to swear an affidavit on behalf of the

third Defendant. In his ruling the learned Master states at para (9) and (12):

“(9) The Third Defendant is a statutory authority established under the Land Transport Act. The deponent ‘Mereseini Siliva’ is employed by the Third Defendant as its ‘Litigation Officer’. She says that she was duly authorised by the Third Defendant to depose the contents. There is no ‘Ostensible Authority’ annexed to the Affidavit. Accordingly, I do not place any value on this Affidavit...

(12) ...This may leave the court with no option but to dismiss the third Defendant’s Summons since there is no evidence on which the court can exercise its discretion under Order 19, rule 9 of the High Court Rules, 1988.”

[03] The application is made pursuant to Order 59 Rule 8 (2) and 11 of the High Court Rules 1988, as amended (“HCR”) and the inherent jurisdiction of the Court. Rule 8-(2) provides:

*“No appeal shall lie from an interlocutory order or judgment of the Master to a single judge of the High Court without **leave** of a single judge of the High Court which **may be granted or refused upon the papers filed.**” (Emphasis provided).*

[04] When the matter was taken up for hearing, Mr Singh suggested that since their application for setting aside the default judgment was dismissed on technical reason, they can still file a fresh application before the Master. He also undertakes that he can hold back the application for assessment of damages (currently pending before the Master) until such time they file their fresh application to set aside.

[05] Mr Stephens, Counsel appearing for third Defendant accepts the suggestion and agrees to file a fresh application before the Master in 21 days from today (7 July 2017).

[06] I would, therefore, make orders by consent as follows:

1. The Applicant/Defendant will file a fresh application to set aside the default judgment before the Master in 21 days from today (7 July 2017).
2. The Respondent/Plaintiff will withhold the application for assessment of damages, which is now pending before the Master, until such time the Applicant files a fresh application for setting aside the default judgment.
3. The matter is adjourned before the Master for mention only at 8.30am on 4 August 2017.
4. No order as to costs.

M. H. Mohamed Ajmeer 7/7/17

M. H. Mohamed Ajmeer

JUDGE

At Lautoka

7 July 2017

