IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. 429 of 2004

BETWEEN

MARIKA TUKANA of Vugalei Settlement, Lami.

PLAINTIFF

A N D

PORTS TERMINAL LIMITED of P.O. Box 519,

Administration Building, Suva.

DEFENDANT

Counsel	:	Mr. S.Raikanikoda for the plaintiff.
		Mr. R. Prakash for the Defendant.
Date of Hearing	:	11th November, 2016
Date of Order	:	30th January, 2017

ORDER

[1] The plaintiff in this case is bedridden. A motion was filed for an order to conduct the hearing of this matter at the residence of the plaintiff which was objected to by the defendant.

[2] The trial of this matter was concluded before Judge Filimoni Jitoko (as he then was) who left the judiciary without writing the judgment. When the mater came up before me I found that Judge Jitoko had not kept notes of the proceedings had before him. He had only made notes of the evidence in chief of the plaintiff. During that period the court did not have the audio recording facility. Therefore, the court was not in a position to deliver the judgment on the evidence adduced before Mr. Jitoko.

[3] An application was made by the solicitors of the plaintiff to have the Mr. Jithiko appointed and the court by its order dated 06th August, 2015 refused the said application.

[4] The solicitors of the plaintiff then made the present application to conduct the proceedings at the residence of the plaintiff since the plaintiff is bedridden.

[5] The learned counsel for the defendant objected to the application on three grounds. Firstly, the plaintiff is not in a position to give evidence due to his ill-health. If the court decides to conduct the hearing that is to record the evidence of the plaintiff at his residence the court will require the solicitors of the plaintiff to provide a medical report indicating whether the plaintiff is in a proper health condition to testify before the court. Therefore, this is not a ground that could be considered in deciding whether the application should be allowed or not.

[6] Secondly, there is no provision in law to facilitate such a practice. In this regard I would like to quote the Latin maxim "***actus curiae neminem grava bit***", which means an act of the Court shall prejudice no one'.

[7] The question then arises whether the court would administer justice fairly and squarely by both parties if it refuses this application of the plaintiff. This case would have been over about twelve years before the judge who heard the case was careful enough to keep his notes properly. The plaintiff was compelled to make this application not because of his own fault, but because of the fault of the court.

[8] The learned counsel is correct in submitting that there is no express provision of law to adopt such a practice. If the court does not exercise its inherent power in a situation like this there will not be a more appropriate situation for any court to exercise its inherent power. Inherent power is conferred upon the courts of justice to exercise such power in the interest of justice when specific provisions are not provided for by law.

[9] Thirdly, there will not be transparency in the proceedings it the evidence is recorded at the residence of the plaintiff. Wherever the court sits, it becomes a public place. Therefore, the question of transparency does not arise for consideration.

[10] For the reasons aforementioned I make the following orders:

1. The court orders that the evidence of the plaintiff be recorded at the residence of the plaintiff after being satisfied that he is in a proper health condition to testify.
2. The defendant shall pay the plaintiff $1000.00 as costs of this application within fourteen (14) days from today.

Lyone Seneviratne,

JUDGE

30th January, 2017.