

**HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION No. 368 OF 2020

BETWEEN : **AUTOWORLD TRADING (FIJI) LIMITED** a Limited liability company having its registered office at Suva, Fiji.

APPELLANT
(Original Plaintiff)

AND : **FIJIAN COMPETITION AND CONSUMER COMMISSION**
An Institution duly established under the Fijian Competition and Consumer Commission Act 2010.

FIRST RESPONDENT
(Original 1st Defendant)

AND : **JOEL ABRAHAM, IRFAN HUSSAIN, SHIGUFAH SHAINAAZ, and DARLIEN CHANDRA** all of Fijian Competition and Consumer Commission.

SECOND RESPONDENTS
(Original 2nd Defendant)

Representation : **Ms. Saumaki** (Shelvin Singh Lawyers) for the Appellant.
Ms. Choo (R Patel Lawyers) for the Respondents.

Date of Hearing : 10th November 2023.

Ruling – Preliminary Issue

Introduction

- [1] The Appellants have filed 2 Summons. Both were filed on the same day. One is for the stay of execution of the Orders of the Acting Master of 16th August 2023 until the hearing and determination of the appeal. The other is for the hearing of the appeal.

- [2] On 9th October 2023 when the matter was called Mr Walli for the Respondent's sought 21 days to file an affidavit in response. I allowed the Respondent 21 days to file an affidavit and sought that the parties file written submissions after the 21 day period. The matter was set for hearing. On the hearing date Ms Choo raised a preliminary issue that the Appellant needed leave of the Court as the order of the Acting Master was interlocutory and not a final order. I briefly heard the lawyers and gave both sides 21 days to file written submissions simultaneously. The Respondents submission was filed on 23rd November 2023. The Appellant (Original Plaintiff) filed their submission on 1st December 2023.

Brief History of the Matter

- [3] The Appellant (Plaintiff) had filed a writ of summons on 3rd December 2020 with the Respondents as Defendants in the matter. On 3rd October 2022 the Defendants filed a summons to strike out seeking that the Plaintiff's claim be struck out on grounds that the Plaintiff did not disclose reasonable cause of action against the Defendants. A Ruling was delivered by the Acting Master on 16th August 2023 and he struck out the Plaintiff's statement of claim and writ of summons and dismissed it pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988.

Analysis

- [4] The position of the Respondents (Original Defendants) is that the Appellant (Original Plaintiff) required leave of this court (Order 59 Rule 8 (2) High Court Rules) as the order of the Acting Master was an interlocutory order (Application Approach). The position of the Appellant (Original Plaintiff) is that the Order of the Acting Master was a final order therefore no leave was required. They relied on the Fiji Court of Appeal decision of Justice Guneratne (**Single Judge**) in **Cakaunitavuki v. Colonial Fiji Life Ltd [2021] FJCA 21; ABU012.2020 (7th January 2021)** – (Order Approach),
- [5] The Appellant/ Original Plaintiff's lawyers in their written submission have referred to the Supreme Court case **Jivaratnam and Singh v. Prasad [2023] FJSC 11; CBV 0005 of 2020** which decided as follows “[41] *In the absence of any statutory assistance to aid the courts in Fiji, this Court is of the view that the “application approach” should be adopted unless there are strong reasons in any particular case for not doing so. As a general guide and rule of thumb, when and where there is doubt if the Order is final or interlocutory, leave should be sought.*” In favoring the “application approach” the Supreme Court preferred **Goundar v. Minister for Health [2008] FJCA 40; ABU0075.2006S (9th July 2008) (Three Judges)** – (Application approach).
- [6] In **Goundar v. Minister for Health [2008] FJCA 40; ABU0075.2006S (9th July 2008) (Three Judges)**, the Fiji Court of Appeal in paragraph 38 gave examples of interlocutory applications, it included an application to strike out a pleading. The Respondent's (Original Defendant's) application before the Acting Master to strike out the writ of summons was an application to strike out a pleading. I am therefore satisfied that the Acting Master's Ruling of 16th August 2023 was an interlocutory ruling and leave under

Order 59 Rule 8 (2) of the High Court Rules was required by the Appellant (Original Plaintiff). Order 59 Rule 11 of the High Court Rules requires that “*any application for leave to appeal an interlocutory order or judgment shall be made by summons with a supporting affidavit, filed and served within 14 days of the delivery of the order or judgment.*” The timeline for the Appellant (Original Plaintiff) was 30th August 2023. The Appellant filed notice and grounds of appeal on 23rd August 2023. The Appellant has not obtained leave to appeal the interlocutory order of the Acting Master which is a requirement under the High Court Rules.

Conclusion

- [7] I uphold the preliminary issue raised by Ms Choo and strike out the notice and grounds of appeal as incompetent for want of leave to appeal.

Court Orders:

- (a) The notice of appeal filed on 23rd August 2023 is incompetent for want of leave to appeal and is struck out.
- (b) Costs of this action is summarily assessed in favour of the Respondents (Original Defendants) at \$800.00 and is to be paid by the Appellant (Original Plaintiff) within 30 days.

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Chaitanya Lakshman
Acting Puisne Judge

16th January 2024

