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1. SHARON ALI
2. LAUTOKA CITY COUNCIL

v.

THE TRUSTEES OF LAUTOKA GOLF CLUB

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[COURT OF APPEAL—Tuivaga, P., Kermode, J.A., Tikaram, J.A.]

Civil Jurisdiction

Hearing: 15 September, 1988
C Judgment: 11 November, 1988

(Local Government—Rating appeal—onus on he who seeks to assert valuation incorrect—party on whom onus lies must open the case—valuer if required to provide basis of the valuation.)

D *J. G. Singh* for the Appellants
B. K. Bali for the Respondent

Appeal by Sharon Ali and Lautoka City Council against a decision of the Supreme Court (Dyke, J.) which set aside the decision of the Magistrate's Court in Lautoka Rating Appeal No. 2 of 1983 and ordered the rating appeal be reheard. The valuer had carried out the valuation of the land occupied by the Lautoka Golf Club,
E of which the trustees are the respondents.

The Trustees pursuant to s. 70 of the Local Government Act (Cap. 125) brought an appeal against the valuation in the Magistrate's Court. The Magistrate made a preliminary ruling viz that the valuer should open proceedings, contra, as he said to the ordinary procedure in a civil suit: but confirming that the onus of proof lay on the one who challenged the valuation. Thereupon the Council indicated it would
F not call evidence. The Counsel for the Trustees then stated he would not call evidence, asked that the appeal be allowed and the old valuation should stand.

The Magistrate dismissed the appeal. The Trustees appealed to the Supreme Court (Dyke, J.) which sent the matter back to be heard by another Magistrate.

G Counsel agreed that since the rating appeal has been decided on merits, the matter should be remitted to the Magistrate's Court for hearing de novo and that all costs orders be set aside and costs would be costs in the course.

The Court then, at the request of the parties expressed its views on the onus of proof in Rating appeals and who should open proceedings.

H *Held:* The onus in Rating Appeals is on the person who seeks to contend that the valuation is incorrect.

It followed that the objector should open the case.

There are no circumstances why as in some New South Wales cases the onus of proof will change.

The valuer should provide to the Trustees the particulars relating to the basis of his valuation should a request therefor be made in writing.

Judgment in the Court below affirmed.

Appeal dismissed.

All orders as to costs awarded set aside.

Future costs including the costs of the appeal to be costs in the cause.

Case referred to:

Tilghman v. Valuer-General (1966) 12 L.G.R.A. 380.

Judgment of the Court

This is an appeal against the judgment of the Supreme Court (per Dyke, J.) whereby in the exercise of its appellate jurisdiction it set aside the decision of the Magistrate's Court in Lautoka Rating Appeal No. 2 of 1983 and ordered that the appeal be heard de novo by another magistrate.

The appellants before us are Mr Sharon Ali (the official valuer) and the Lautoka City Council on whose behalf he carried out the valuation. They were the respondents in the Magistrate's Court as well as in the Supreme Court. The respondents before us are the Trustees of the Lautoka Golf Club the lessees of the land valued by Mr Ali. The Trustees were the appellants in the Magistrate's Court as well as in the Supreme Court. Therefore in order to avoid confusion and for the sake of brevity we shall wherever necessary refer to Mr Sharon Ali as "the Valuer", the Lautoka City Council as the "the Council", and the Trustees of the Lautoka Golf Club as "the Trustees".

The brief facts and circumstances leading up to the present appeal are as follows:

At the hearing of the rating appeal brought under the provisions of Section 70 of the Local Government Act Cap. 125, the Magistrate ruled on a preliminary submission and directed that the Valuer should open proceedings. He did this "contrary to normal manner of a civil trial" (to use his own words) whilst holding that the onus of proof lay on one who challenges the valuation. He took this course notwithstanding objections from the original appellants should be aware of the basis of valuation. Thereupon the Counsel for the Valuer and the Counsel for the Council advised the Court that they did not intend to call any evidence. Counsel for the Trustees then declared his intention of not calling any evidence either and asked that the appeal be allowed and the old valuation should stand.

The Magistrate commenced his decision by stating:

"This has been a rating appeal which has taken a bizarre course."

A After expressing his views about the need for placing agreed facts before the court and the desirability of exchanging valuation opinions he concluded by saying:

> "Nothing has been proved. The appeal must and is now dismissed. Cost to respondents to be taxed if not otherwise agreed. . . "

B The Trustees then appealed to the Supreme Court where Dyke J. after reviewing what had transpired in the Court below and after expressing certain views, ordered as follows:—

> "What happened in the Magistrate's Court was a travesty and cannot be allowed to stand. The only sensible course is to set it aside and send it back for hearing before another magistrate, who, I trust, will be put in a position to consider the issue on its merits. The appellant will have the costs of this appeal to be taxed if not agreed."

C Counsel for the appellants as well as counsel for the respondent in this court agreed after initial arguments that since the rating appeal had not been decided on merits the matter should be remitted to the Magistrate's Court for hearing de novo and that all orders as to costs be set aside and in lieu thereof a general order of costs in the cause be made. We therefore do not find it necessary to deal with the various legal issues raised in the grounds of appeal filed both in the Supreme Court (as it was D then known) and in this Court.

Counsel for appellants before us however requested this Court to express its views on the onus of proof in rating appeals and also as to who should open proceedings. He made this request so that conflicting decisions given in the past on the issue by some magistrates, may be resolved. There is no doubt in our minds that the onus of proof in rating appeals in Fiji lies on the party who seeks to assert that the E valuation is incorrect. Under Section 66 of the Local Government Act all valuations are required to be entered in a rate book and rates are assessed on such valuations but sub-section 5 of section 70 of the Local Government Act gives the Magistrate's Court power on an appeal to vary the valuation entered in the rate book. However in determining an appeal a magistrate has only two options open to him—either to confirm the valuation or to "direct that the rate book be altered to give effect to the F contention of the appellant as far as that contention appears to the court to be well founded".

It is clear from these provisions that the legislature must have intended to place on the appellant the burden of satisfying the court that his contention is correct. We therefore accept as correct and applicable to Fiji also the following statement of law made by the Land and Valuation Court of New South Wales in *Tilgham v. Valuer-General* (1966) 12 L.G.R.A. 380:—

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> "The principle is well established in this Court that an objector or appellant bears the onus of proof in any challenge to the values assigned to the land by the Valuer-General. . . and this entails an objector or the appellant proving both that the valuation challenged is erroneous and what value should be substituted for an erroneous valuation. . . "

H It therefore follows that the onus of opening proceedings also lies on the objector or the appellant.

We are aware that in certain Australian cases it was held that the onus in valuation appeals may shift in certain circumstances but these cases turned essentially on the interpretation of the relevant statutory provisions under which the appeals were lodged. In any case we see no circumstances surrounding the instant rating appeal why the onus should shift or why the appellants should not begin. A

However we share the concern expressed by the Magistrate as well as by the Supreme Court that the appellant in rating appeals should not be expected to mount an appeal *in vacuo* so to speak by being completely in the dark as to the basis of valuation. We therefore trust that the Valuer will have no hesitation in providing to the Trustees of their counsel particulars relating to the basis of his valuation should a request be made in writing to this effect. Alternatively the trustees could resort to the provisions of the Magistrate's Court Act and the rules made thereunder to seek the necessary particulars. Section 70(6) of the Local Government Act provides as follows: B C

> 'The provisions of the law relating to the trial of a civil action in a Magistrate's Court shall apply insofar as they may be applicable to the hearing of an appeal under the provisions of this section and the magistrate shall have and may exercise all the jurisdiction and powers conferred upon him by such law."

In our view a rating appeal should not be treated as an area for hide and seek nor an occasion for scoring points. The appeal procedure provides a mechanism to correct any erroneous valuation and this avenue to seek redress is open to the Local Government as well as the ratepayer for whose welfare the local governments exist. D

The judgment of Dyke J. that the Magistrate's Court proceedings be set aside and that the rating appeal be remitted back for hearing before another magistrate is affirmed and to that extent this appeal must be deemed to have been dismissed. However all costs awarded to date are also set aside. All future costs to be cost in the cause including the costs in this appeal. E

Appeal dismissed.