IN THE SUPREME COURT OF FIJI

[CIVIL APPELLATE JURISDICTION]

Civil Petition No. CBV 0003 of 2019

[Civil Appeal No. ABU 0063 of 2017]

BETWEEN : **SURESH KANT**

Petitioner

AND : **1. THE PROCEEDINGS COMISSION ON BEHALF OF USENIA MANAKIWAI**

2. THE PROCEEDINGS COMMISSION ON BEHALF OF THE HUMAN RIGHT & ANTI DISCRIMINATION COMISSION

Respondents

Coram : **Hon. Mr. Justice Anthony Gates, Judge of the Supreme Court**

Hon. Madam Justice Chandra Ekanayake, Judge of the Supreme Court

Hon. Mr. Justice Madan B. Lokur, Judge of the Supreme Court

Counsel : **Mr. S. Singh for the Petitioner**

: **Mr. R. Vananalagi for the Respondent**

Civil Petition No. CBV 0011 of 2019

[Civil Appeal No. ABU0063 of 2017]

BETWEEN : **1. THE PROCEEDINGS COMISSION ON BEHALF OF USENIA MANAKIWAI**

2. THE PROCEEDINGS COMMISSION ON BEHALF OF THE HUMAN RIGHT & ANTI DISCRIMINATION COMISSION

Petitioners

AND : **SURESH KANT**

Respondent

Counsel : **Mr. R. Vananalagi for the Petitioners**

: **Mr. S. Singh for the Respondent**

Date of Hearing : **10 August 2022**

Date of Judgment : **26 August 2022**

JUDGMENT

Gates, J

1. I have read in draft the judgment of Ekanayake J. Respectfully I agree with it and with its Orders.

Ekanayake, J

Introduction

2. The petitioner in CBV 0003/19 (Suresh Kant) by his petition for special leave to appeal to this court dated 10/1/2019 (filed with an affidavit of the same date from his lawyer) has assailed the majority judgment (of Hon. Lecamwasam JA and Hon. Guneratne JA) of the Court of Appeal (COA) dated 30/11/2018. By the above judgment appeal was dismissed. Further, it was ordered compensation payable by the appellant to the 1st respondent was reduced to $7,500 and appellant to pay $2,500 as costs to the 1st respondent. However, in paragraph 2 of the above judgment Hon. Basnayake JA has concluded as follows:-

"[2] I have had the benefit of reading in draft the judgments of Lecamwasam JA and Guneratne JA. I agree with their conclusion that this appeal should be dismissed. However Lecamwasam JA with Guneratne JA concurring have reduced the amount of compensation to $7500.00 in their judgments. With utmost respect to my two noble brothers, I disagree. In my judgment the appeal is dismissed with costs in a sum of $5000.00 (FJD) payable to the 1st respondent (1st applicant) by the appellant within 28 days."

The principal grounds on which the petition was based were embodied in para – 3 of the petition.

3. The petitioners in CBV No. 0011/2019 – Civil Appeal No. ABU 0063/2017, by their petition to this court dated 5/7/2019 had moved for special leave from the Learned High Court Judgment's of 30/11/2018 and to set aside the same.

4. Of consent both appeals were taken up for hearing together before this court.

5. In para 9 of the impugned judgment of the COA the Learned Justices had been of the view that background facts pertaining to all these matters were correctly stated in the Learned HCJ's judgment. I too agree with that position and said para 9 of the judgment dated 2/6/2017 under 'INTRODUCTION' is reproduced below:

"[9] As the material facts of this case are cogently stated by the learned High Court Judge in paragraphs 1 – 5 of the judgment of the High Court, I can do no better than repeat those in verbatim below:-

'INTRODUCTION'

1. *This proceeding is instituted by Human Rights and Anti-Discrimination Commission (2nd Applicant), on behalf of the 1st Applicant, who was a tenant under a purported agreement of tenancy with the Respondent-landlord. Admittedly there were arrears of rent to the value of $2,200. The tenancy had commenced in May, 2015, according to the purported 'Memorandum of Agreement to Lease'. 1st Applicant, her husband, their 5 children and her elderly parents totaling 9 persons lived in the said premises, since May, 2015. Though the period stated in the said memorandum, was for one year the tenancy continued after that period and the Respondent had accepted $500 as rental, even as late as 20th April, 2017. (See annexed WT1 to affidavit in response)*

2. *On 7th of April, 2017 between 5-6 pm, while only one child was in the premises the Respondent through an agent had locked the house, and the child was left alone outside the house at dusk without any form of supervision, completely disregarding the safety of the child. The Respondent in the affidavit in opposition stated that premises subject to purported tenancy agreement was a Crown Lease No 1859 and no consent was obtained from the Director of Lands, but in the letter written to the 2nd Applicant, on 21st April, 2017 he had admitted that the 1st Applicant was a tenant in Wainibuku Flats in Nakasi.*

3. *The issue of the validity of the 'Memorandum of Agreement to Lease' will be irrelevant as it had lapsed more than a year ago and Respondent had accepted rental payments after expiration of said period, and had also expressly admitted tenancy of the 2nd Applicant. According to his own statement of accounts provided to the 1st Applicant, by the Respondent had provided details of payments as well as the arrears this statement was annexed to the affidavit in support as UMM2. 1st Applicant had complained to 2nd Applicant about the eviction of her family of 9 including 5 children and two elderly parents. The 2nd Applicant had informed the Respondent that he had breached Section 39 (1) and 39(2) of the Constitution of Republic of Fiji (the constitution) through an arbitrary eviction and had also breached Section 41 of the Constitution as children's rights are also infringed by the actions of the Respondent. He had replied to the said letter and stated that he had lawfully exercised distress of rent and 'Under Distress of Rent their caretaker' had closed the flat in issue and had stated that the landlord has nothing to do 'to tenant's family being deprived of food, clothes and shelter', due to the said action. So, in other words the Respondent is admitting that he had exercised distress of rent through the caretaker. It is not clear whether the caretaker was a bailiff appointed generally or specifically under the law. No evidence of such appointment was attached to the affidavit in opposition.*

4. *When this matter came up before on the first day on 5th May, 2017 more than a month had lapsed from the eviction of the 1st Applicant. So considering the urgency of the interim orders sought, an oral hearing was conducted though there was no affidavit in opposition filed at that time. Interim orders were granted and the 1st Applicant was restored to the possession and a stay was ordered regarding the execution of purported distress by the agents of the Respondent.*

5. *At the hearing it was revealed that 1st Applicant's all the household items were removed before she was given possession, and this was done after interim order for possession was granted. Despite the order for stay of process of distress and not to change the status quo till the conclusion of this matter, it was revealed and the goods were removed to unknown location and even a list of items under distress was not given . When this was inquired, counsel for the Respondent said there was no intention to violate the orders of the court and assured return of all the items forthwith. Since the 1st Applicant was given*

possession of the premises without her household items, it cannot be considered as restoring possession specially considering that she was a person who could not afford to pay rent and would not be in a position to purchase new household items. So even at the time of the hearing 1st Applicant was denied 'actual' possession of her household items for more than 50 days, despite interim order stalling all the proceedings of distress."

6. Against that background, the learned High Court Judge had arrived upon the finding that there was an unlawful eviction carried out by the petitioner. In addition, the learned High Court Judge had found, *inter alia,* that the petitioner violated the constitutional rights of the 01st respondent through the act of locking up the house and leaving the 13 year old son outside which prevented him from entering the house after dusk thereby endangering the safety of the child – see para 10 of the COA judgment.

7. The grounds of appeal submitted to COA as appearing in para – 8 of the said judgment are produced below:-

"[8] Being aggrieved by the above orders, the appellant filed this appeal on the following grounds of appeal:-

1. *The learned Judge erred in law in finding that the respondents (original applicants) were not precluded from seeking constitutional redress by way of originating summons when Rule 3 (1) of the High Court (Constitutional Redress) Rules 2015 requires than an application for Constitutional Redress be made by way of motion.*

2. *The learned Judge erred in law when he accepted that the respondents (original applicants) could have included the concise nature of their claim in terms of Rule 4(3) (a) of the High Court c (Constitutional Redress) Rule 2015 in the originating summons but instead that it was acceptable that they had detailed the description of the claim in their Affidavit in support.*

3. *The learned Judge erred in law when he accepted that the respondents (original applicants) had correctly stated all their reliefs in the originating summons which included damages although such relief cannot be assessed and awarded by way of affidavit evidence.*

4. *The learned Judge erred in law and in fact in finding that the Appellant (original respondents) had breached Section 39(1) & (2) of the Constitution.*

5. *The learned Judge erred in law in finding that it was irrelevant that the 'Memorandum of Agreement to Lease' between the parties did not have the consent of the Director of Lands.*

6. *The learned Judge erred in law in finding that re-entry could not be enforced although the learned Judge accepted that monthly rentals were payable and accepted between the parties.*

7. *The learned Judge erred in law and in fact that there was no basis for re-entry and distress wholly failed to consider that the first respondent (original first applicant) was residing at the Appellant's with rental arrears of $2,200.00.*

8. *The learned Judge erred in law and in fact in contextually interpreting Section 7(1) –(5) of the Constitution in favour of the first respondent (original first applicant) when it failed to take into consideration the impact of the area of the first respondent (original first applicant) in the sum of $2,200.00 on the respondent. The learned Judge failed to consider the distress of the Respondent, a private property owner who was being of the usage of his property by the first respondent (original first applicant) who had the choice of finding all the native residents at the property where she could have afforded to pay rent.*

9. *The learned Judge erred in law and in fact in finding that the respondent had violated Section 41(1) (d) and (2) of the Constitution when it was the first respondent (original first applicant) and the rest of her family who were negligent in leaving their own child home alone and unsupervised and the child was not the party to the action.*

10. *The learned Judge erred in law and in fact in finding that the appellant (original respondent) had violated section 41(1) (d) and (2) of the Constitution when no such declaration or relief was sought by the Respondents (original applicants) in their originating summons.*

11. *The learned Judge erred in law and in fact in finding that the property of the appellant (original respondent) constituted a 'home for the first respondent (original first applicant) when it failed to consider that the first respondent (original first applicant) had not paid her rent for the property and was in arrears in the sum of $2,200.00. The first respondent (original first applicant) had no legal right to reside at the property.*

12. *The amount of damages awarded being $25,000.00 is manifestly harsh, excessive and un-assessed.*

13. *The learned Judge erred in awarding damages without referring to any case authorities to justify the award.*

14. *The learned Judge erred in awarding damages without there being any application for assessment of damages."*

Background

8. At this juncture I wish to reproduce the reliefs granted by the Learned HCJ appearing at page – 22 of the High Court Record under 'Final Orders':-

"a. The 1st applicant is granted possession of premises at Lot 22, Flat 4, Kings Road, Nakasi until she and her family is evicted by an order of court.
b. The respondent is prevented from interfering, preventing in any way hindering the safe enjoyment of the said premises in pursuant to above order.
c. The said orders are granted without prejudice to the respondent's right to institute an action for eviction.
d. The purported Distress for Rent is stayed permanently.
e. Respondent to pay a compensation of $25,000 to the 1st applicant within 28 days.
f. No order as to costs."

In the Court of Appeal

9. The petitioner had appealed to the Court of Appeal to set aside the judgment of the High Court dated 2/6/2017. By this judgment *inter alia* the 01st respondent was restored to possession of lot 22, Flat 4 until she and her family would be evicted by an order of court. She was also awarded $25,000 as compensation.

10. The Court of Appeal in the impugned judgment dated 30/11/2018 concluded *inter alia* that:-

"(i) The 'Memorandum of Agreement to Lease' was no longer enforceable as it was meant only for a period of one year from 8 May 2015. Therefore, the learned High Court judge's conclusion that it was irrelevant to consider the clauses of

the said memorandum after the validity period had elapsed was held to be justified.

(ii) The provisions of section 91(b) & (c) of the Property Law Act (Cap 131) apply to the instant case, despite there being no written agreement in force. The petitioner is not debarred from resorting to section 91(b) & (c) to protect his rights of ownership as it is not disputed that the 01st respondent was in arrears of rent for a period exceeding one month. Hence, the conduct of the petitioner in exercising his right of distress through a Bailiff cannot be faulted although the manner of execution was incorrect.

(iii) The steps taken by the petitioner up to the time of affixing the notice of distress was correct. However, the re-entry and the locking of the house from outside were illegal and could not be allowed to stand. Instead, the petitioner could have had recourse to the procedure laid out in Section 105 of the Property Law Act."

11. By majority judgment of the COA dated 30/11/2018 following orders were made:-

> *"(1) Appeal dismissed.*
> *(2) Amount of compensation payable by the Appellant to the 1st Respondent is reduced to $7,500.00.*
> *(3) Appellant to pay $2,500.00 as costs to the 1st Respondent."*

12. The petitioner challenges the judgment of the Court of Appeal on the following grounds in that the Court of Appeal had erred in fact and law in holding that:-

(i) The re-entry to the premises by the petitioner was unlawful.

(ii) The petitioner's distress for rent was unlawful.

(iii) The lease agreement was not in force or enforceable after one year from 8 May 2015.

(iv) The 01st respondent was entitled to compensation in a sum of $7,500 and not holding that the 01st respondent was not entitled to any compensation.

(v) The 01st respondent was entitled to cost of $2,500.

13. Against that background, the learned High Court Judge had made the finding that there was an unlawful eviction by the Appellant (hereafter referred to as the Appellant) and

therefore had ordered restoration of possession to the first applicant (hereinafter referred to as the first respondent). In addition to that, the learned High Court Judge found, inter alia, that the Appellant had violated the constitutional rights of the 1st Respondent through the act of locking up the house, leaving the 13 year old son outside which prevented him from entering the house after dusk thereby endangering the safety of the child. In this regard para 12 of the COA judgment is reproduced below:-

> *"[12] I now advert my attention in the same manner, to the conclusion of the learned High Court Judge regarding the application of section 91(b) & (c) of the Property Law Act. The learned Judge held that since no valid agreement for lease existed between the landlord and tenant, the respondent cannot resort to the above section. I quote the above provisions of the Property Law Act below, as the content therein is relevant for the present analysis."*

14. **Section 91(b) and (c) of the Property Law Act (Cap 131):-**

Powers in lessor

> *"91. In every lease of land there shall be implied the following powers in the lessor, his personal representatives and transferees:*
>
> > *(b) that whenever the rent reserved is in arrear he or they may levy the same by distress:*
> > *(c) that whenever the rent or any part thereof, whether legally demanded or not, is in arrear for the space of one month, or whenever the lessee has failed to perform or observe any of the covenants, conditions or stipulation contained or implied in the lease, and on the part of the lessee to be performed or observed, he or they may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determined the estate of the lessee, his personal representatives, transferees or assigns, therein but without releasing him or them from liability in respect of the breach or non-observance of any such covenant, condition or stipulation".*
>
> *[13] The applicability of the above provision extends to every lease of land whether there is a formal agreement of lease or otherwise. It does not exclude leases with no written agreements. To presume otherwise is an aberration which is contrary to natural rights of ownership. In the instant case initially there had been a valid written agreement under which the first respondent had entered the premises. Later it had lapsed due to non-renewal of the agreement. As such, the character in which the respondent entered the premises was that of a tenant. A person who enters in one character is presumed to continue to hold on the same*

footing unless there is strong evidence to the contrary, which is absent in the present case. However, this presumption is not an endorsement to the continued applicability of the written agreement, which correctly lapsed due to non-renewal, but merely an acknowledgement of the fact that the respondent had not changed the character of tenancy."

15. Further, applicability of provisions in Section 91(b) and (c) of the Property Law Act is crucial to the issue at hand. The justices of COA (in majority decision) has dealt with it in this manner. In this regard I opt to reproduce paras 13 and 14 of the COA Judgment:-

> *"[13] The applicability of the above provision extends to every lease of land whether there is a formal agreement of lease or otherwise. It does not exclude leases with no written agreements. To presume otherwise is an aberration which is contrary to natural rights of ownership. In the instant case initially there had been a valid written agreement under which the first respondent had entered the premises. Later it had lapsed due to non-renewal of the agreement. As such, the character in which the respondent entered the premises was that of a tenant. A person who enters in one character is presumed to continue to hold on the same footing unless there is strong evidence to the contrary, which is absent in the present case. However, this presumption is not an endorsement to the continued applicability of the written agreement, which correctly lapsed due to non-renewal, but merely an acknowledgement of the fact that the respondent had not changed the character of tenancy.*
>
> *[14] Therefore, I hold that the provisions of Section 91(b) & (c) of the Property Law Act (Cap 131) do apply to the instant case, despite there being no written agreement in force. The Appellant is not debarred from resorting to Section 91(b) & (c) to protect his rights of ownership as it is not disputed that the first respondent was in arrears of rent for a period exceeding one month. Hence, I do not fault the conduct of the Appellant in exercising his right of distress through a Bailiff."*

I find no error in the above conclusions.

16. It is noteworthy to mention that although the application made by Petitioner in this case to convert this action into a writ action, the learned HCJ had made no order on that. If allowed, the resulting position, that this court would have been in a more privileged position to ascertain whether Anil Chandra was in fact a Bailiff or not. As the court had been silent over that application, it prevented the parties from examining Anil Chandra to ascertain the truth.

17. Actual entry into the premises may have been arbitrary as observed by the Learned HCJ, the house was locked up in an unreasonable manner preventing the 13 year old child from entering the house. At the time this locking up took place the said child had been out of home. Rulings by the Learned High Court Judge had to be made only on respondent's evidence without affording an opportunity for the present petitioner to file an affidavit in opposition. On the material available before the Learned HCJ, locking up of the house was concluded as illegal. As per para 20 of the COA judgment, conclusion with regard to the above matter is that the date of locking up of the house does not make any difference because it appears that no notice to quit had been issued by the Appellant (present petitioner).

18. What has to be considered now is the claim of the 1st respondent (on behalf of Usenia) that is the 13 year old child's safety was imperiled in the result the child had not been able to enter premises. It appears that other members of the house had left the child alone in the premises having gone to attend a funeral and for employment. However, without cross-examination court was not in a position to ascertain whether the safety of the child was in fact endangered and if so to what extent.

19. The Learned HCJ had further observed the failure on the part of the appellant to follow the correct procedure especially in terms of section 89(1) of the Property Law Act by issuing notice. At this stage as per reasons given in paras 27-28 of the COA judgment their view had been although the lessor had the right to issue a notice of distress he had no right to enter the house or to lock the house from outside without an order of court. In view of the above, his conduct therefore amounts to an arbitrary act which cannot be allowed despite his grievance that he was unable to recover the rent for a long period of time. I find the Learned Justices of COA has committed no error in arriving at that conclusion.

20. For the reasons enumerated by the COA in the majority judgment following orders were made:-

"1. Appeal dismissed.
2. Amount of compensation payable by the appellant to the 1st Respondent is reduced to $7,500.00
3. Appellant to pay $2,500.00 as cost to the 1st Respondent."

Special Leave to Appeal

21. Section 7 of the Supreme Court Act No. 14 of 1998 deals with special leave to appeal to the Supreme Court. Section 7 thus reads as follows:-

Section 7(1):-

(a)……
(b)……
(c)……

Section 7(2):-

(a)…….
(b) …….
(c) …….

Section 7(3) In relation to a civil matter (including a matter involving a constitutional question), the Supreme Court must not grant special leave to appeal unless the case raises-

(a) a far-reaching question of law;
(b) a matter of great general or public importance;
(c) a matter that is otherwise of substantial general interest to the administration of civil justice."

In this jurisdiction it is well settled that the criteria set out in Section 7(2) of the Supreme Court Act are extremely stringent and special leave to appeal is not granted as a matter of course. In **Dip Chand v State**; CAV 004.2010(9/5/12) had clearly held as follows:-

"....Given that the criteria is set out in Section 7 (2) of the Supreme Court Act *No. 14 of 1998 are extremely stringent, and special leave to appeal is not granted as a matter of course the fact that the majority of the grounds relied upon by the Petitioner for special leave to appeal have not been raised in the Court of Appeal makes the task of the Petitioner of crossing satisfying (sic) the threshold requirements for special leave even more difficult."*

22. On a plain reading of section 7 (3) of the Supreme Court Act quoted above Supreme Court can grant leave only if the threshold criteria spelt out in the above subsection has been satisfied. The criteria laid down as above is stringent an appellant moving for special leave to appeal in relation to a civil matter, should satisfy above criteria.

23. This criteria had been carefully examined by the Supreme Court of Fiji in **Bulu v Housing Authority** [2005] FJSC 1 CBV0011.2004S (8 April 2005) and **Dr. Ganesh Chand v Fiji Times Ltd.**, (31st March 2011). It is amply clear from the above decisions that special leave to appeal is not granted unless the case raises a far reaching question of law, is one of gravity involving a matter of great general or public importance, or otherwise of some substantial general interest to the administration of civil justice.

24. Having considered the facts and circumstances of this case I am of the view that this is a matter which involves a great general or public importance. Leave is therefore granted.

25. For the reasons given in the preceding paragraphs I am convinced that the Learned COA Judges had committed no error in dismissing the appeal in Civil Appeal ABU 0063 of 2017. However, the order regarding payment of costs to the 1st respondent needs consideration. By the same judgment the amount of compensation payable by the appellant to the 1st respondent has been already reduced from $25,000 to $7,500. Because of the circumstances of the case, I am of the view that it is justifiable.

26. I find that the appellant is ordered to pay $2,500 as costs to the 1st respondent. It is noted that appellant was already ordered to pay the 1st respondent compensation also. As such I affirm the COA judgment subject to the variation that *"No order is made with regard to costs"*.

Civil Petition No. CBV0011/2019

27. I shall now turn to the leave application made to this court in the case bearing No: CBV 0011/2019 by the petitioners namely; The Proceedings Commissioner on behalf of Usenia Mataiwaca Manakiwai and The Proceedings Commissioner on behalf of the Human Rights and Anti Discrimination Commission (who were the respondents named in the previous appeal No. CBV 0003/19). As per the petition moving for leave filed in this case the sole ground on which leave is sought is reproduced below:-

> *"(a) The Justices of Appeal Lecamwasam and Guneratne erred in law and in fact in reducing the compensation from $25,000 to $7,500."*

28. Although no enlargement of time was sought by the petitioners here, to avoid any probable prejudice that would be caused to them. I will proceed to consider enlargement of time.

29. By the above leave application what has been challenged is the same judgment of the COA dated 30/11/2018.

30. It is noted that the leave application in CBV 0011/2019 was made to this court on 5/7/2019. Under section 5 (a) of the Supreme Court Rules a petition and affidavit in support must be lodged at the court registry within 42 days of the decision from which leave to appeal is sought. In the case at hand (CBV0011/2019) petition for leave to appeal had been filed on 5/7/2019 moving for special leave against the judgment of the COA dated 30/11/2018. It is amply clear that this application had been filed by the petitioners in this case after the time frame of 42 days stipulated in the aforesaid Rule 5. Petitioners have failed to show the delay in filing this application. Delay had been even more than 7 months from the date of the impugned judgment. It appears to be a considerable delay.

31. Petitioners have failed to submit any reasons with regard to such a long delay. No application for enlargement of time also sought by the petition. Appellate Courts

examine five factors by way of principled approach to such applications: **Kumar v. The State; Sinu v. The State** CAV0001/09, CAV0001/10 21st August 2012. Those factors are:-

> *"(i) The reason for the failure to file within time.*
> *(ii) The length of the delay.*
> *(iii) Whether there is a ground of merit justifying the appellate court's consideration.*
> *(iv) Where there has been substantial delay, nonetheless is there ground of appeal that will probably succeed?*
> *(v) If time is enlarged, will the Respondent be unfairly prejudiced?"*

32. The petitioner's in CBV 0011/2019 have failed to give any reasons as to the considerable delay of more than 7 months. Even at the hearing no reasons were submitted for consideration of this court. Further, the petitioners have failed to satisfy this court with sufficient material even when there is a substantial delay nonetheless are there any grounds here to succeed in the appeal. In view of the above analysis enlargement of time cannot be granted. The sole ground of appeal submitted in CBV0011/2019 (reducing compensation from $25,000 to $7,500), was also dealt with in the case of CBV003/2019.

33. From the material available I am unable to conclude that petitioners here have fulfilled the threshold criteria stipulated in section 7 (3) of the Supreme Court Act for granting leave. Leave is therefore refused. Further, there is no merit in the above ground of appeal submitted in case No. CBV0011/2019, and it should fail.

Lokur, J

34. I respectfully agree.

ORDERS PROPOSED BY COURT:

CBV No. 0003/2019

1. Special leave to appeal is allowed.
2. Appeal is dismissed.
3. The COA judgment dated 30/11/2018 is affirmed subject to the variation that – *'No order is made with regard to costs'*.

CBV No. 0011/2019

4. Special leave to appeal is refused. Appeal is dismissed.
5. Judgment of the COA dated 30/11/2018 is affirmed subject to the variation that – *'No order is made with regard to costs'*.

.....
Hon. Mr. Justice Anthony Gates
Judge of the Supreme Court

SUPREME COURT FIJI

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Hon. Madam Justice Chandra Ekanayake
Judge of the Supreme Court

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Hon. Mr. Justice Madan B. Lokur
Judge of the Supreme Court