

**BETWEEN: SHANTILAL BROTHERS (FIJI)
LIMITED**

Plaintiff

AND: THE ATTORNEY GENERAL

Defendant

JUDGMENT ON COSTS

After listening to both counsels as to costs of this appeal this is what I have to say:

Generally, the Court has a discretionary power to award cost to a successful party. In this case, this was an appeal from the Magistrate's Court decision and thereby cost follow the event. This means, at the end of the appeal and after the decision is made, a successful party is entitled to his/her cost but if not then it must be for a good cause as to why cost should not be awarded. Otherwise, a successful party in the appeal is normally granted cost of the appeal. However, a successful party can be deprived of the right to cost if that successful party has not advanced argument before the Court below for consideration by that Court, but took it to advance argument in the appeal Court, then he must be deprived as to cost. As in this case the Appellant did advance argument in the court below for consideration by the said court. The reason is simple, if the opportunity was not given to the Court below the party cannot gain by way of cost in the appeal Court.

In this case the Appellant was the Plaintiff and issued out a Writ of Summons for the Respondent to appear in Court below for the Court to decide the substantive matter in the Writ of Summons. Prior to proceeding to hear the substantive matter the Court heard submission from the Respondent's Counsel for the matter to be dismissed and also heard the

Appellant's Counsel. What I gathered from the Court below as to decision, that the Summons was dismissed without hearing the substantive matter.

The Appellant in this matter maintained all along that he has not put his case before the Court, and the Court dismissed the case without giving him the right to be heard. This Court allowed the appeal on the same ground. So what the Appellant has exercised here is for the Court to give him that right to be heard and this was a constitutional requirement.

The next question I asked myself, is that, are there any good cause or reason for me not to allow cost in this appeal?

I find that there is nothing that was justified before me to exercise that discretionary power in not awarding cost in this matter. And therefore, the Court treated the cost in this matter as cost followed the event and the Appellant is entitled to his cost of this appeal to be agreed or taxed.

DATED AT PORT-VILA, this 25th DAY of JUNE 1999

BY THE COURT


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MARUM REGGETT MBE
Judge

