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IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0002 OF 1992S

BETWEEN:

ANURADHA CHARAN

Appellant/Applicant

AND:

THE PUBLIC SERVICE COMMISSION
RAMEND PRASAD
TOKASA BUINIMASI

Respondents

In Chamber: The Hon. Mr. Justice Ian R. Thompson, Justice of Appeal

Hearing: Monday, 16 November 1998, Suva

Counsel: Mr. M. Raza for the Appellant
Mr. D. Singh for the Respondent

Date of Decision: Thursday, 19 November 1998

DECISION IN CHAMBERS

On 21 July 1992 the applicant paid into court \$250 as security for costs in her appeal. The payment was made in compliance with an order under rule 17(1)(c) of the Court of Appeal Rules. On 19 November 1993 her appeal was dismissed and the applicant was ordered to pay the respondents' costs. The Court did not fix the amount of the costs. The respondents have not applied to have them taxed. The \$250 is still in court. The applicant now applies for it to be paid out to her. The respondents object, saying that they are entitled to receive it.

Rule 17(1)(c) provides that an appellant must apply to the registrar "to fix the amount and nature of the security to be given by him for the prosecution of the appeal, and for payment of all such costs *as may be ordered to be paid by him*" (emphasis added).

Section 13 of the Court of Appeal Act (Cap.12) gives the Court of Appeal *inter alia* the same powers as the High Court to order the payment of costs, which in turn, by virtue of section 18 of the High Court Act (Cap.13), are those of the High Court of Justice in England. Rule 6 of the Court of Appeal Rules applies the Rules of the High Court to proceedings of the Court of Appeal, subject to the Court of Appeal Rules. Rule 32(1) of the Court of Appeal Rules provides that costs allowed by the court are to be taxable according to the High Court scales. 0.62 r.20 of the High Court Rules requires proceedings for taxation of costs to be commenced within three months after the judgment, order or direction that they be paid was made or given.

The applicant says that, as the respondents have still not applied for taxation of their costs nearly five years after the judgment ordering their payment, she is entitled to have the money she deposited returned to her. Mr Singh says that 0.62 r.20 is not applicable because rule 17(1)(c) alone governs the matter. He says that money deposited as security for costs pursuant an order of the Registrar made under that rule is automatically payable to the respondent in the appeal if the court orders that the appellant is to pay his costs.

A similar issue was addressed by Ward J.A. in respect of money paid into court as security for costs in an appeal to the Supreme Court. (Suresh Charan and Another v. Suva City Council, Civil Appeal No. CBV0006 of 1994). Although not couched in precisely the same terms as rule 7(1)(c) of the Court of Appeal Rules, rule 8 of the Supreme Court Rules provides for the Registrar to order the giving of security for *inter alia* the payment of any costs that may become payable to the respondent. Section 14 of the Supreme Court Decree provided that, if the amount of costs was not fixed by the Court, they were to be taxed in accordance with

the rules for the time being regulating the taxation of costs in the Court of Appeal. So the issue addressed by Ward J.A. was essentially the same as that which I have to address in respect of the present application.

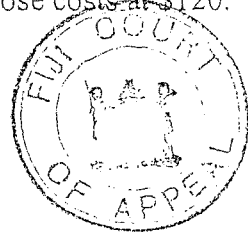
In that instance the money deposited had been paid out to the respondent; it was stated that it was the practice of the court registry, where the Court had ordered the payment of costs by an appellant, to pay automatically to the respondent the amount deposited as security by the appellant, without any taxation of the costs having occurred or the amount of the costs being fixed by the Court. Ward J.A. held that that was not authorised by the Decree or the Rules and was improper. He ordered the respondent in that appeal to pay to the appellants the amount of the money paid out to it, plus interest for the time it had improperly had use of the money.

In my view Mr Singh's proposition that, where in respect any appeal the Court has ordered an appellant to pay the respondent his costs of the appeal, the effect of rule 17(1)(c) of the Court of Appeal Rules requires the automatic payment out of money deposited as security for those costs is fundamentally unsound. It ignores the part of the rule set out above in italics. That clearly gives the money deposited the character of security for the prosecution of the appeal (irrelevant for present purposes) and for the payment of costs ordered to be paid. Unless the Court has fixed the amount of those costs; it is unknown until the costs have been taxed or agreed. Mr Singh said that in the present instance the amount of respondents' costs was about \$2,000 and that, as the amount deposited was only \$250, taxation was unnecessary. However, until costs are taxed, it is impossible to say what amount is actually payable. In some instances it may be more than the amount deposited as security and in others less than that amount. Where

it is less than that amount, clearly it would be quite wrong for that amount to be automatically paid out. That is why the proposition that the money is to be paid out automatically is fundamentally unsound.

In the matter with which Ward J.A. dealt, the respondent sought leave to apply for taxation of its costs; Ward J.A. rejected that application because of the delay. In the present case Mr Singh did not suggest that the respondents had any desire to have their costs taxed and made no application an extension of time for them to apply for taxation. I have to say that, even if he had done so, it is most unlikely that after such a long delay I should have granted his application.

In those circumstances, as the costs have not been taxed and five years have now elapsed, the security is no longer required and the applicant is clearly entitled to have the \$250 which she paid into court as security paid out to her. Interest is not payable, as the money has remained in court since it was deposited and was not authorised to be, nor was it, invested so as to earn income. I order the payment out of the \$250 to the applicant forthwith. I order also that the respondents are to pay the appellant her costs of this application as Mr Raza appeared for the hearing of the application, I fix the amount of those costs at \$120.



I. R. Thompson
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Mr Justice I. R. Thompson
Justice of Appeal

Solicitors:

Messrs. M. Raza and Associates, Suva for the Appellant
Office of the Solicitor-General, Suva for the Respondent