

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

CIVIL APPEAL NO. ABU0026 OF 2002
(High Court Action No.HBJ0021 of 1997)

BETWEEN:

RATU NAPOLIONI RAGIGIA DAWAI

Appellant

AND:

RATU ISIRELI ROKOMATU NAMULO

Respondent

Coram: Eichelbaum, JA
Tompkins, JA
Penlington, JA

Hearing: Wednesday, 20th August 2003, Suva

Counsel: Mr. A.K. Singh for the Appellant
Mr. I. Fa for the Respondent

Date of Judgment: Tuesday, 26th August 2003

JUDGMENT OF THE COURT

This is an application under section 122(2)(a) of the Constitution for leave to appeal to the Supreme Court.

The proceedings concern the headship position of Tui Nadi. On the death the then Tui Nadi, Ratu Josua Navaqei Dawai, in 1993 there was a dispute as to his

successor. A Native Lands Commission then held an inquiry under Section 17 of the Native Land Trust Act Cap.133. At the end of that inquiry, the Commission on 4 October 1977 made a determination appointing the appellant to the post. The respondent was dissatisfied with the process of the inquiry. He therefore applied to the High Court for judicial review. That application came on for hearing before Townsley J. in the High Court at Lautoka. In a reserved judgment delivered on 16 March 2000 the Judge found that the decision of the Commission was unlawful and quashed it.

This judgment, of course, was adverse to the appellant and yet it was over 24 months after its delivery before he took any further step. The appellant then filed in this Court an application seeking leave for an extension of time to file an appeal. That application came for hearing on 8 May 2003. In a reserved judgment delivered on 16 May 2003 the appellant's application was dismissed.

The appellant now applies under section 122(2)(a) of the Constitution for leave to appeal to the Supreme Court. That subsection provides:

"122. – (2) An appeal may not be brought from a final judgment of the Court of Appeal unless:

(a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance."

For the appellant to succeed on this application he must satisfy this Court that the decision appealed from is a final decision of this Court and that the proposed appeal raises a question of significant public importance.

It was common ground that the decision of this Court on the application to extend time was a final decision.

We therefore turn to the second requirement, namely, that the proposed appeal raises a question of significant public importance.

Before this Court can grant leave it must certify a question of significant public importance. Mr. Singh for the appellant accepted, and we think rightly so, that the question must relate to the decision of this Court on the application for leave to extend the filing of an appeal. Mr. Singh recognised that the proposed question in the summons was a most convoluted one. It contained matters which were extraneous to the decision of the Court on the application to extend time.

Mr. Singh submitted that in the Supreme Court, if leave was granted, he would wish to argue that this Court wrongly exercised its discretion. Counsel therefore reformulated the question to read:

Did the Court of Appeal in refusing to extend the time for the filing of an appeal exercise its discretion properly?

Once the question for certification was reformulated in this way the outcome of the appellant's present application became inevitable. This Court exercised a judicial discretion in accordance with well established principles. Its decision was not a matter of significant public importance. In turn the question which the appellant submits for certification does not raise a question of significant public importance.

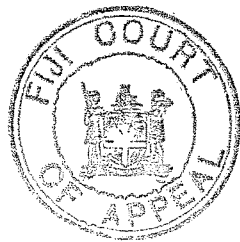
The application to appeal to the Supreme Court must therefore fail.

Result:

The application is dismissed. There will be costs to the respondent which we fix at \$750.00.

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Eichelbaum, JA

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Tompkins, JA



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Penlington, JA

Solicitors:

Messrs G.P. Shankar & Company, Ba for the Appellant
Messrs Fa & Company, Suva for the Respondent