

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

Civil Appeal No. ABU 35/06
(High Court Civil Action No: HBC 68/01L)

BETWEEN:

MADHWAN KESHWAN

Appellant

AND

KESHNI DEVI

First Respondent

AND

SHAIEND RAM KRISHNA

Second Respondent

AND

THE REGISTRAR OF TITLES

Third Respondent

Dr. M.S. Sahu Khan for the Appellant

Ms. T. Draunidalo for the First Respondent

S.K. Ram for the Second Respondent

No appearance by the Third Respondent

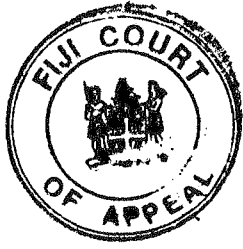
DECISION

[1] This is an application by the second Respondent for an order striking out the appeal which has been filed against him.

- [2] It is not necessary to set out in any detail the nature of the proceedings which have led to this appeal. It is sufficient to note that the Appellant claims to have an interest in certain property namely Crown Lease 227143 of which the second Respondent has been described by the High Court as a purchaser for value without notice who would appear to be entitled to have the property registered in his name. Owing, however, to the pending appeal (which primarily involves issues between the Appellant and the First Respondent) the Registrar of Titles has declined to register the transfer; this has led to difficulty and inconvenience.
- [3] In support of the second Respondent's application Mr. Ram referred to Sections 12 (2) (f), 13, 16, 17 and 20 (1) (k) of the Court of Appeal Act. He also referred to Rule 22 of the Court of Appeal Rules and the Court's inherent jurisdiction. Ms. Draunidalo supported Mr. Ram's submission however Dr. Sahu Khan suggested that a single justice of appeal has no jurisdiction to strike out an appeal upon the motion of a respondent.
- [4] While emphasizing the merits of the application Mr. Ram also argued that the High Court decision in respect of which the appeal had been lodged was clearly interlocutory but despite this fact no leave had been obtained to file the appeal as was required by Section 12 (2) (f) of the Act. Therefore, Mr. Ram suggested, there had been a failure to comply with the requirements of the Act and accordingly both Sections 20 (i) (g) and 20 (i) (k) gave a single justice jurisdiction summarily to dismiss the appeal.

- [5] With respect, I do not agree. As I see it, the only power to dismiss an appeal at the instance of a party which is given to a single justice is the power to dismiss "on the application of the appellant" (Section 20 (1) (h)). The power to dismiss "for other causes specified in the rules" (Section 20 (1) (g)) cannot in my view be extended to include a power to dismiss on the application of a party since that power is specifically dealt with under Section 20 (1) (h). Ms. Draunidalo suggested that Section 20 (1) (k) was a "catch all" case management provision which was additional to and not confined by the limitation included in Section 20 (1) (h). In my view, were that the case then none of the Sections 20 (1) (a) to (j) would be necessary at all: Section 20 (1) (k) alone would be sufficient.
- [6] Under the provisions of Section 6 of the Act and Rule 13A of the Rules, the power to dispose of an appeal is only exercisable either by three or two justices. The opposed dismissal of an appeal on the motion of a respondent is not, in my view an order or direction "that is incidental to an appeal" (as was the case in Bob Hoytte v. Sajen Prasad (ABU 44/95) referred to me by Mr. Ram and see Section 20 (1) (k)) rather it is dispositive of the appeal.
- [7] In my opinion Section 20 (1) of the Court of Appeal Act does not give to a single justice or appeal the jurisdiction summarily to dismiss an appeal on the motion of a respondent on the ground that the leave to appeal required by Section 12 (2) (f) and Rules 26 (2) and (3) has not been obtained. The time to raise the failure to obtain leave is as a preliminary point on the hearing of the appeal itself.

[8] The application is dismissed. The Appellant's costs are summarily assessed at \$200.



A handwritten signature in black ink, appearing to read "M.D. Scott", is written above the printed name.

M.D. Scott
Resident Justice of Appeal

16 October 2006