

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

Civil Appeal No. 0066 of 2005
(High Court Civil Action No HBC 220/04S)

BETWEEN:

COLONIAL FIJI LIFE LIMITED

Appellant

AND:

KAMLA WATI
(f/n Ram Samujh)

Respondent

AND:

SURESH SANI

Intervener

Coram:

Scott, JA
Wood, JA
McPherson, JA

Hearing:

21 November 2006

Counsel:

H.K. Nagin for the Appellant
R. Singh for the Respondent
R. Chand for the Intervener

Judgment:

24 November 2006

JUDGMENT OF THE COURT

[1] On 24 March 2004 the High Court convicted the Intervener of the murder of the Respondent's husband, Ashok Kumar.

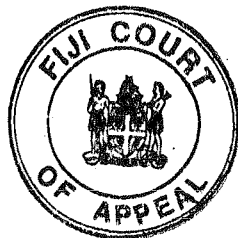
- [2] In March 2005 the Intervener's appeal against conviction was allowed. A new trial was ordered.
- [3] In July 2005 (Civil Action 220/04) the High Court gave judgment in favour of the Respondent who had claimed the moneys due under a life insurance policy taken out by her late husband, the nominated beneficiary of which was the Intervener.
- [4] On 6 January 2006 the Director of Public Prosecutions gave notice of intention not to proceed further against the Intervener by filing a nolle prosequi.
- [5] The Intervener now wishes to initiate his own claim to the moneys due under the life insurance policy.
- [6] The Intervener was given leave to intervene in this appeal on 2 November 2006. He seeks the following orders:
1. that judgment in High Court Civil Action 220/2004 be set aside;
 2. that Civil Action 220/04 be remitted to the High Court for re-hearing.
- [7] Counsel for the Appellant accepted that the judgment of the High Court would have to be set aside since the Respondent's claim under the policy was advanced on the basis that a claim by the Intervener would be debarred on the grounds of public policy. This does not however mean that the issue cannot be determined in civil proceedings to which the insurer and the two competing claimants would need to be joined.

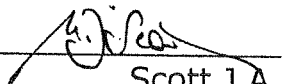
[8] Counsel for the Respondent, on instructions, was not able to agree to the orders sought. He did not, however, advance any argument in opposition.


[9] We are satisfied that in the unusual circumstances of this case the judgment of the High Court must be set aside.


RESULT

1. Leave to the Appellant to discontinue this appeal.
2. Judgment of the High Court in Civil Action No. 220/2004 set aside.
3. The parties to appear before the High Court Master on Wednesday 29 November 2006 at 10.00a.m. for directions to be given for the joinder of parties and filing of fresh pleadings.
4. Costs reserved.




Scott J.A.


Wood J.A.


McPherson J.A.

Solicitors

Messrs. Sherani for the Appellant
Kohli & Singh for the Respondent
Ram Chand & Co. for the Intervener