

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

Civil Appeal No. ABU 12 of 2006
(High Court Civil Action No. HBC 500/05S)

BETWEEN:

REGISTRAR OF TITLES

Appellant

AND

KIRAN LATA (f/n Bhikham)

(as administratrix of the estate of Arvind Kumar
(f/n Ram Jatan) deceased)

Respondent

Coram: **Barker, JA**
 Ellis, JA
 Scott, JA

Hearing: **6 March 2007**

Counsel: **Ms. M. Rakuita for the Appellant**
 M. Arjun for the Respondent

Judgment: **9 March 2007**

JUDGMENT OF THE COURT

[1] On 28 May 1996 Ravindra Pratap Singh and Paras Ram, the executors and trustees of the estate of Ram Jattan entered into a deed of family arrangement with the beneficiaries. Pursuant to this arrangement certain real estate was to be transferred to the

beneficiaries, three children of the deceased, one of whom was Arvind Kumar.

- [2] On the same day that the deed was entered into the executors and trustees also executed a transfer of the properties to the three beneficiaries.
- [3] Unfortunately, owing to the loss of one of the certificates of title, the transfer could not be lodged for registration until April 2005. In the nine years since its execution, the Respondent's solicitors had lost touch with Ravindra Pratap Singh and with Paras Ram and they could not be traced. Furthermore, the Land Transfer Regulations (the Regulations) had been amended by the Land Transfer (Amendment) Regulations 1999 (LN 119/99).
- [4] The transfer executed in May 1996 had been prepared, as was then required by the Regulations, on A3 paper. The amended Regulations however required all instruments lodged for registration to be engrossed on A4 paper (Regulation 2). Since Ravindra Pratap Singh and Paras Ram could not be located, a fresh instrument of transfer could not be executed. When Arvind Kumar's widow (the Respondent) attempted to lodge the 1996 transfer, her application was refused. The Registrar of Titles, relying on Section 35(1) of the Land Transfer Act (Cap. 131 – the Act) refused to accept the document on the ground that it was the wrong size, and therefore failed to comply with the Regulations as amended.
- [5] The Respondent appealed to the High Court under the provisions of Section 164 of the Act. Section 164 is as follows:

"Appeal to court from order of Registrar

164.-(1) If, upon the application of any person interested to have any instrument registered, or to have any instrument, instrument of title, foreclosure order, vesting order or other document issued under the provisions of this Act, or to dispense with the production of any instrument of title, or to have any act or thing done or performed by the Registrar, which the Registrar refuses so to do, such person interested may require the Registrar to state in writing the grounds of his refusal and such person may, if he thinks fit, at his own cost, summon the Registrar, to appear before the court to substantiate and uphold the grounds of his refusal, such summons to be issued out of the court and to be served upon the Registrar six clear days at least before the day appointed for hearing the complaint of such person.

(2) Upon the hearing of any complaint under the provisions of this section, the Registrar shall have the right of reply and the court may, if any question of fact is involved, direct an issue to be tried to decide such fact, and *thereafter the court shall make such order in the premises as the circumstances of the case require* and the Registrar shall obey such order, and all expenses attendant upon any such proceedings shall be borne and paid by the person preferring such complaint unless the court orders the same to be paid out of the Consolidated Fund".

(emphasis added)

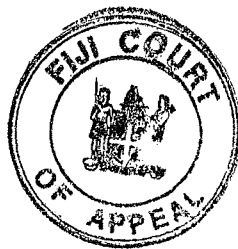
- [6] The High Court allowed the Respondent's appeal. As is clear from the judgment dated 16 November 2005 the Judge accepted that the Registrar had acted perfectly properly and in conformity with the amended Regulations in rejecting the A3 document. The Judge, however, took the view that Section 164 gave the High Court power to overrule the Registrar's decision where there were "adequate and justified" grounds for so doing.
- [7] The Office of the Solicitor General, representing the Registrar, now appeals against the High Court's decision. The crux of Ms. Rakuita's argument was that the High Court exceeded its powers by overruling the Registrar who was bound, by regulation, to act in the way he had done. If the High Court's decision were allowed to stand then, it was submitted, the necessary controls over the registration of documents would be swept away and the Registrar would be forced to accept whatever document was presented to him for registration, whether or not the document complied with the requirements of the Regulations.
- [8] With respect, we disagree. The issue raised by this appeal is not whether the Registrar was wrong to refuse the document but whether the High Court was right to allow the document to be registered even though it did not comply with the requirements of the amended Regulations.
- [9] The decision reached by the High Court resulted from the special circumstances of the case. These included the fact that there was no fault on the part of the Respondent, that the technical shortcomings in the document (merely its size) could not, in view of the non availability of Ravindra Pratap Singh and Paras Ram, at all easily or economically be remedied and that the

document was not be objected to on the grounds of want of clarity or legibility.

[10] Ms. Rakuita's submission appeared to be based at least in part on the assumption that the High Court's decision to direct the Registrar to accept the document would amount to some kind of precedent which would undermine the amended Regulations themselves. As will be seen, however, from Section 164 of the Act, the High Court is specifically empowered to "make such order in the premises as the circumstances of the case require". The High Court's decision in this case and in these particular circumstances was in our view clearly correct and in no way brings into question the Registrar's general duty under Section 35 (1) to accept only such documents as conform with the requirements of the amended Regulations.

RESULT

1. Appeal dismissed.
2. Appellant to pay the Respondent's costs which are assessed \$1,500.



A handwritten signature in cursive script, appearing to read "R. J. Barker".

Barker J.A.

A handwritten signature in cursive script, appearing to read "A. J. Ellis".

Ellis J.A.

A handwritten signature in cursive script, appearing to read "W. Scott".

Scott J.A.

Solicitors:

Office of the Solicitor General, for the Appellant
William Scott Graeme & Co, Solicitors for the Respondents