

**IN THE COURT OF APPEAL, FIJI**  
**[Civil Appellate Jurisdiction]**

**Civil Appeal No: ABU 0041 of 2014**  
**(High Court Civil No. HBC 055.2009)**

**BETWEEN** : 1. **TRUSTEES OF THE REPUBLIC OF FIJI OF THE**  
**METHODIST CHURCH IN FIJI**

2. **REV. SIMIONE KOROI**

**Appellants**

**AND** : 1. **RAVUAMA VONU**

2. **AKARIVA VURA**

**Respondents**

**Coram** : Basnayake, JA  
Almeida Guneratne, JA  
Kumar, JA

**Counsel** : Mr. S. Valenitabua for the Appellants  
Mr. N. Tuifagalele for the Respondents

**Date of Hearing** : 01 February 2017

**Date of Judgment** : 23 February 2017

**JUDGMENT**

**Basnayake, JA**

[1] I agree with the reasoning and conclusion of Almeida Guneratne JA.

**Almeida Guneratne, JA**

- [2] This was a case where upon an allegation and/or complaint made by members of a village community that the plaintiffs were indulging in acts of witchcraft, the plaintiffs (respondents to this appeal) instituted the present action by writ of summons against the 2<sup>nd</sup> appellant (a Minister of the Methodist Church hereinafter referred to as the Church) and the 2<sup>nd</sup> defendant in the original action (a steward or ‘Vakatawa’ of the Church) in question on the basis that, they had committed various acts causing damage to the Respondents’ property.
- [3] The church had been made the third defendant on the premise that it was vicariously liable for the wrongful acts of the said 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- [4] The 1<sup>st</sup> defendant (2<sup>nd</sup> Appellant in this Appeal), the 2<sup>nd</sup> defendant and the 3<sup>rd</sup> defendant filed a joint statement of Defence (vide: pages 37-42 of the RHC). The statement of claim is at pages 21-35 of the RHC and the reply thereto of the Respondents is at pages 43-46 of the RHC.
- [5] There were three others who were named as defendants as would appear from the caption in the High Court who were discharged from the proceedings at an initial stage with the consent of the Respondents.
- [6] Consequently, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants who remained as the surviving defendants in the action did not participate at the trial. Nor were they represented by Counsel.
- [7] After hearing the evidence led on behalf of the Respondents, the learned High Court Judge reserved judgment which he delivered on 26<sup>th</sup> May, 2014 holding as His Honour did that the plaintiffs’ case was established. (The said judgment is at pages 8 to 19 of the RHC)
- [8] The 2<sup>nd</sup> Appellant (1<sup>st</sup> defendant in the High Court) and the 1<sup>st</sup> Appellant (the Trustees of the Church in question, who were not a party in the High Court) have preferred a joint

appeal against the said judgment urging several grounds of appeal. (Vide: Notice and Grounds of Appeal at pages 4 to 5 of the RHC).

**Threshold Issue to be determined before a consideration of the Grounds of Appeal**

- [9] However, for this Court to assume jurisdiction over the matters raised in the said Notice and Grounds of Appeal, the Appellants would have to overcome a threshold issue in the context of relevant and/or applicable legal provisions which I propose to raise and deal with as follows.

**Can the 2<sup>nd</sup> Appellant maintain this Appeal?**

- [10] The 2<sup>nd</sup> appellant was the 1<sup>st</sup> defendant before the High Court. The case was heard against him *in absentia* in terms of Order 35 Rule 1(2) of the High Court Rules.

“**Order 35 Rule 1(2):** If when, the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counter-claim, in the absence of that party.”

- [11] Thereafter Judgment was given and the course of action available to him was to make an application to Court to have the said Judgment set aside in terms of Order 35 Rule 2(1) and (2) of the High Court Rules.

“**Order 35 (2)** - (1) Any Judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party on such terms as it thinks just.”

(2) An application under this rule must be made within 7 days after the trial.”

- [12] In the result, in so far as the 2<sup>nd</sup> Appellant is concerned, without availed himself of the provisions of the said Order 35(2) (1) and (2) he could not have preferred an appeal to this Court against the judgment of the High Court in question. For the same reason he could not have preferred even a leave to appeal application against the said High Court



judgment which renders an inquiry as to whether the impugned Judgment of the High Court was interlocutory or final irrelevant.

- [13] If it is to be regarded as interlocutory, (as the learned High Court Judge labeled it), then clearly by reason of the provisions of Section 12(2)(f) of the Court of Appeal Act (Cap.12) the 2<sup>nd</sup> Appellant could not have preferred the present (direct) appeal to this Court.
- [14] If it is to be regarded as final, then, by reason of Order 35(2) (1) and (2) the 2<sup>nd</sup> Appellant could not have invoked the jurisdiction of this Court by way of a direct appeal.

#### **Can the 1<sup>st</sup> Appellant maintain this Appeal?**

- [15] If the 2<sup>nd</sup> Appellant, who was a party to the action in the High Court is precluded from maintaining this appeal for the aforesaid reasons *a fortiori* the 1<sup>st</sup> Appellant who was not even a party to the said action but who has joined with the 2<sup>nd</sup> Appellant in preferring the present appeal cannot, by reference to any legal principle or logic, be regarded as possessing *locus standi* to maintain the present appeal. There is certainly no statutory provision in the Laws of Fiji conferring such a right on such a party.

#### **Some Socio-Religious Reflections in the Fijian context**

- [16] Before parting with this Judgment, I feel obliged to reflect and comment on the following submissions made on behalf of the 1<sup>st</sup> Appellant.

#### **Re: The Wrong Description of the Methodist Church**

- [17] Counsel submitted that, there is no entity in existence called the “Methodist Church of Fiji” but that it is “the Methodist Church of the Republic of Fiji”.
- [18] In that regard I need to say no more than to say that an incorrect description of a party could not have defeated an action but responding to Counsel’s lament, I would welcome

that, in future actions the said Church is described and cited properly. I also took note of the fact that, Counsel was heard to concede that he was appearing for 'the church' which he complained had been wrongly described. It was so conceded by Counsel in response to a question raised by my brother Justice Kamal Kumar.

**Re: The failure on the part of the Plaintiffs to name the Trustees of the Church as the Party to be Sued**

- [19] This point had reference to Section 2 of the Registration of Religious Bodies Act (Cap.68).
- [20] Counsel's complaint was that, as decreed in several statutes in Fiji, where "the Trustees" of religious bodies are the party who are required to be sued to any suit, a practice appears to have been adapted in relation to the Methodist Church to the contrary as is revealed in the instant case.
- [21] I see merit in the said points raised by Counsel and I say that in future litigation the proper procedure ought to be followed.

**Exercise in a Socio-Religious context Vs. failure to follow Procedure as decreed by Law**

- [22] While Counsel's efforts are to be appreciated, the aforesaid points ought to have been taken at the trial before the High Court paying due regard to the provisions relating to joinder of parties (Order 15 Rule 4 of the High Court Acts and Rules) and Order 15 Rule 6 relating to joinder and non-joinder of parties.
- [23] The Trustees (the 1<sup>st</sup> Appellant) or the 2<sup>nd</sup> Appellant not having taken any initiative to take action in terms of the said statutory provisions cannot now urge them in this Court to have the judgment of the High Court set aside. In the result, the exercise on the part of the 1<sup>st</sup> Appellant (who was not even a party to the proceedings in the High Court) boils down to a mere attempt to ventilate socio-religious sentiments.

### **One Final Procedural point as regards the continuance of the Appeal**

- [24] This arises from the fact that Learned Counsel for the 1<sup>st</sup> Appellant at the outset of the hearing brought to the notice of Court that, the 2<sup>nd</sup> Appellant had become deceased and therefore he was only appearing for the 1<sup>st</sup> Appellant. (Although the present appeal is a joint 1<sup>st</sup> and 2<sup>nd</sup> Appellants Appeal).

### **The Rule requiring Substitution for Litigation to Continue**

- [25] Ordinarily, if a party to litigation is said to be deceased, substitution of some party in the room of the said party would be required for the matter to proceed for otherwise the record in the case would be rendered defective.

### **Exception to that Rule**

- [26] However, the exception to that Rule would be where a procedural irregularity in the proceedings could be overcome where parties agree to nevertheless proceed with, which was the case in this appeal in as much as Counsel for the Respondents did not object to the appeal being proceeded with.

### **Does this Court need to go into Alice in Wonderland (per Lord Tennyson) or even looking through the glass window of Alice?**

- [27] I do not think so, for both the substantive as well as the procedural issues remain clear cut in my view as articulated and reasoned above.

### **Conclusion**

- [28] For that aforesaid reasons, I am of the view that, this appeal is misconceived for which reason I have no hesitation in dismissing the same.



**Kumar, JA**

[29] I agree with the reasons and conclusion of Almeida Guneratne JA.

**The Orders of the Court are:**

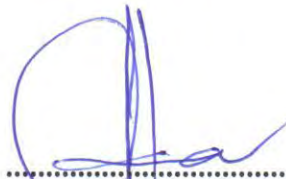
1. *The appeal is dismissed and the Judgment dated 26<sup>th</sup> May 2014 of the High Court is affirmed.*
2. *The 1<sup>st</sup> Appellant is ordered to pay as costs of this Appeal a sum of \$2,500.00 to the Respondents within 21 days of this Judgment.*



.....  
**Hon. Justice E. Basnayake**  
**JUSTICE OF APPEAL**



.....  
**Hon. Justice Almeida Guneratne**  
**JUSTICE OF APPEAL**



.....  
**Hon. Justice K. Kumar**  
**JUSTICE OF APPEAL**