

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

**CIVIL APPEAL NO. ABU 0031 OF 2018**  
**[High Court Civil Action No. HBC 106 of 2016]**

**BETWEEN** : **IFTIKAR IQBAL AHMED KHAN** *1<sup>st</sup> Appellant*

**MUSTAFFA NEWAZ KHAN** *2<sup>nd</sup> Appellant*

**AND** : **SHAVEENA KUMARI** *Respondent*

**Coram** : **Basnayake, JA**  
**Lecamwasam, JA**  
**Dayaratne, JA**

**Counsel** : **Mr. G. O’Driscoll for the Appellants**  
**Ms. F. Shah and Mr. S. Nand for the Respondent**

**Date of Hearing:** **15 November, 2019**

**Date of Judgment:** **29 November, 2019**

**JUDGMENT**

**Basnayake, JA**

[1] I agree with the reasons and conclusions of Lecamwasam JA.

## **Lecamwasam, JA**

[2] This is an appeal filed by the Appellants (1<sup>st</sup> and 2<sup>nd</sup> defendants) against the Judgment of the High Court Judge at Lautoka dated 3<sup>rd</sup> April, 2018. The facts in brief are:

The original Plaintiff (Respondent) while searching for a suitable property for purchase came across the property of Prema Wati Nath, who lives in Canada. Having traced a grandson of Prema Wati Nath, namely J. Singh, the said plaintiff paid a visit to the 1<sup>st</sup> Defendant/Appellant's solicitor's office on the recommendation of J. Singh, to retain his services for the purchase of the property. The 2<sup>nd</sup> Defendant/Appellant was employed under the 1<sup>st</sup> Defendant. According to the Plaintiff, the 2<sup>nd</sup> Defendant undertook to prepare the relevant documents for the purchase of the property.

[3] J. Singh, the supposed agent of Prema Wati Nath also happens to be her grandson. As per the evidence, the amount agreed upon for the sale and purchase transaction was \$12,000. However, subsequently, the original Plaintiff (hereinafter to be referred as Shaveena Kumari) states that the 2<sup>nd</sup> Defendant, being the Clerk of the 1<sup>st</sup> Defendant, had asked for \$37,000 as the transaction price. Shaveena Kumari further states that the 2<sup>nd</sup> Defendant Appellant had justified the increased purchase price on the basis of an increase in the market value of the property.

[4] On perusal of the record I find that the 2<sup>nd</sup> Defendant/Appellant has made attempts to evade liability by transferring liability to J. Singh. J. Singh had not, at any stage of the proceedings, acknowledged the fact that he had accepted any money as the sale price in order to transfer it to his grandmother, who lives in Canada.

[5] Finally the learned High Court Judge, having been satisfied that the Plaintiff had proved her case sufficiently, concluded that the defendants had committed professional misconduct. Therefore, he held in favour of the plaintiff and ordered the defendants to refund the sum of \$37,000 to the Plaintiff the money which the 2<sup>nd</sup> defendant had deceptively obtained from the Plaintiff. He further ordered the defendants to pay jointly

and severally general damages in the sum of \$20,000 and punitive damages in the sum of \$30,000 totaling to \$50,000 to the plaintiff.

[6] Aggrieved by the above orders, the defendant/appellants filed the instant appeal on 27 grounds of appeal. I will, as far as possible, deal with the said grounds *in seriatim*.

Ground 1

“1. ***THAT*** the Trial Judge Ajmeer J’s conduct during the trial was positively and actively obstructing the 1<sup>st</sup> Defendant in doing his work as a Counsel and further Ajmeer J’s. Conduct was abrupt, tensed, rude, arrogant, discourteous, belittling and bullying the Defendants and as such his conduct lead to an unfair trial and as such there was a substantial miscarriage of justice.

Despite the allegation of unfair conduct on the part of the learned High Court Judge, the appellants had failed to make reference to specific instances of unfair conduct which justifies the allegation. However, in their reply to the submissions of the respondent, the appellants have drawn the attention of court to pages 482 and 697 of volume 2 in the High Court Record in support of the first ground of appeal.

[7] Having thoroughly perused the above, I find no evidence of the defendants having objected to leading evidence of the plaintiff or any other serious objection throughout the proceedings except trivial objections one can expect in any ordinary case. Further, although the appellants refer to 30 instances in which the trial Judge interfered or cross-examined witnesses while the first appellant was still conducting his cross-examination, they have failed to pin point such instances specifically.

[8] Considering the overall situation, I find that the flow of evidence had been smooth with only a few objections. These objections mainly pertained to the legality and propriety of the first defendant/appellant appearing as the counsel for the 2<sup>nd</sup> defendant/appellant. Even in such instances, I did not detect any serious incident which would have justified an allegation of unfairness on the part of the learned High Court Judge, other than the exchange of a few words. It was naturally up to the

learned Judge to make appropriate orders in the circumstances. In these circumstances, ground 1 must fail.

[9] Ground 2

***THAT** the Trial Judge Ajmeer J. erred in law and in fact in not allowing the 1<sup>st</sup> Defendant to defend the 2<sup>nd</sup> Defendant contrary to rule of natural justice and Constitutional Rights to Counsel.*

I cannot but concur with the decision of the learned judge to not allow the 1<sup>st</sup> defendant to defend the 2<sup>nd</sup> defendant. The appellants have not substantiated their claim by establishing the manner in which the decision of the learned High Court Judge was contrary to natural justice or to the constitutional right to counsel. Article 14(2)(d) of the Constitution of the Republic of Fiji unequivocally provides for the right of every person charged with an offence to be represented by a counsel. It further allows the accused the freedom of choosing his/her own legal representation. The said Article reads as follows:

*“to defend himself or herself in person or to be represented at his or her own expense by a legal practitioner of his or her own choice, and to be informed promptly of this right or, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission, and to be informed promptly of this right;”*

[10] However, the circumstances of the matter at hand is such that, an automatic application of the Constitutional provision without qualification may in reality result in justice being denied. While the 2<sup>nd</sup> defendant has every right to choose his own legal representation, permitting him to retain the services of a legal practitioner who himself is a co-defendant could have led to a potential conflict of interest. In order to ensure due process of law it is imperative that the legal practitioner does not receive instructions from the client which may be in conflict with his own interests. Such conflicts of interest could lead to the failure to exercise due diligence, competence, and care in representing the client. In the matter at hand, while the cause of action was the same for both defendants, the potential existed for the 1<sup>st</sup> defendant to divest

himself of liability by pinning it on the 2<sup>nd</sup> defendant. In the interests of justice it was incumbent upon the learned High Court Judge to disallow the request of the 2<sup>nd</sup> defendant to be represented by the 1<sup>st</sup> defendant. I do not hesitate to conclude that the learned High Court Judge acted in the best interests of the 2<sup>nd</sup> defendant in not permitting the appearance of the 1<sup>st</sup> defendant for the 2<sup>nd</sup> defendant. Further, this court has not been persuaded adequately as to the manner in which the learned High Court Judge has acted contrary to the rules of natural justice. Therefore the 2<sup>nd</sup> ground of appeal fails.

[11] Ground 3

***THAT** the Trial Judge Ajmeer J. erred in law and in fact in not giving or refusing the 1<sup>st</sup> Defendant to defend the 2<sup>nd</sup> Defendant as he was required by law that reasons must be given for rulings for the information of all the parties concerned and as such there was a substantial miscarriage of justice.*

In view of the reasoning provided in disallowing the 2<sup>nd</sup> ground of appeal, this ground too fails.

[12] Ground 4

4. ***THAT** the Trial Judge Ajmeer J. erred in law and in fact by not allowing the 2<sup>nd</sup> Defendant to be defended by the 1<sup>st</sup> Defendant was denied a fair trial and as such there was a substantial miscarriage of justice.*

Similar to my findings in the two preceding grounds of appeal, the appellants have failed to demonstrate the manner in which the learned High Court Judge's decision to disallow the 1<sup>st</sup> Defendant to represent the 2<sup>nd</sup> defendant hampered a fair trial for the defendants. On a careful perusal of the High Court Record, I find that the 2<sup>nd</sup> defendant has not been deterred from cross-examining certain witnesses at length, refuting the argument of the denial of a fair trial. Pages 554-561 of the Record contain the 1<sup>st</sup> defendant/appellant's cross-examination of witness No.3 of the Plaintiff while pages 561-568 contain the 2<sup>nd</sup> defendant/appellant's cross-examination of the same witness. Likewise, Pages 575-577 and pages 587-593 of the Record contain the cross-examination of witnesses No.4 and 5 of the plaintiff respectively by

the 1<sup>st</sup> defendant/appellant. At the same time, pages 577-578 and 590-600 of the record contain the cross-examination of the said witnesses by the 2<sup>nd</sup> defendant/appellant. There appears to be no difference between the volume and content of the cross-examinations by the two appellants merely because the 1<sup>st</sup> defendant was not allowed to appear on behalf of the 2<sup>nd</sup> defendant.

[13] Ground 5

5. ***THAT** the Trial Judge Ajmeer J. erred in law and in fact in not granting the 2<sup>nd</sup> Defendant couple of hours to arrange for another counsel after he was denied representation by the 1<sup>st</sup> Defendant and such refusal caused an unfair trial and a substantial miscarriage of justice.*

The appellants have not made it clear neither does the High Court Record contain information as to the point at which an application was made to arrange for another counsel or the time at which an application for recess was made in order to enable them to retain another counsel. However, as pointed out earlier, despite the lack of legal representation after the 1<sup>st</sup> defendant was disallowed from appearing for the 2<sup>nd</sup> defendant, the 2<sup>nd</sup> defendant has appeared to fare well at the trial. The 2<sup>nd</sup> defendant had not been refused any fair trial rights which would have justified a plea of a miscarriage of justice. Therefore the 5<sup>th</sup> ground of appeal also fails.

[14] Ground 6

6. ***THAT** the Trial Judge Ajmeer J. erred in law and in fact in not allowing the 1<sup>st</sup> Defendant to cross-examine the plaintiff and her witness, matters which involved the 2<sup>nd</sup> defendant and impacted the 1<sup>st</sup> Defendant the refusal to do so denied the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant a fair trial.*

As I have already observed, the failure of the 1<sup>st</sup> defendant to appear for the 2<sup>nd</sup> defendant has not caused any demonstrable injustice or negative impact to the 2<sup>nd</sup> defendant. Therefore, there is no evidence of the denial of a fair trial. The 6<sup>th</sup> Ground of appeal too thus fails.

[15] Ground 7

7. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact in not taking into consideration the plaintiff's statement of claim and the evidence that was adduced by the plaintiff were contrary to the plaintiff's statement of claim and/or was never pleaded in Plaintiff's Statement of Claim.

As correctly observed by the learned High Court Judge, not all matters related to a case on a factual basis can be incorporated by way of pleadings. Certain matters could be evinced by way of evidence during the trial. Therefore, the argument that the plaintiff led evidence beyond the statement of claim holds no water. As for contrary evidence, in so far as the evidence does not fatally contradict the statement of claim, there is no necessity to consider irrelevant evidence. The 7<sup>th</sup> ground of appeal also fails.

[16] Ground 8

8. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact in finding that the 1<sup>st</sup> Defendant was liable whereas the evidence of the plaintiff was to the effect that she had no dealings with the 1<sup>st</sup> Defendant and as such there was no evidence against the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> appellant is correct in that the plaintiff in her evidence stated that she had no dealings with the 1<sup>st</sup> defendant. As such, there is no evidence against the 1<sup>st</sup> defendant as far as the transaction is concerned. However, his liability arises from a different footing, i.e. through the common law doctrine of vicarious liability. As the employer of the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant is responsible and accountable for all acts of his employee within the scope of employment. Even if the employer is not strictly privy to the act of the employee, the employer is accountable for the conduct of the employee in the course of employment. The conduct which gave rise to the instant action falls neatly within the course of employment of the 2<sup>nd</sup> defendant. In fact, it was in relation to his conduct vis-à-vis a client of his employer. As the employer of the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant is held liable for the conduct of his employee. Therefore, the 8<sup>th</sup> ground of appeal too fails.

[17] Ground 9

9. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact in finding the 1<sup>st</sup> Defendant vicariously liable which was contrary to law based on the evidence before the court.

I do not agree with the contention of the appellants that the learned Judge has erred in finding the 1<sup>st</sup> defendant vicariously liable for the actions of the 2<sup>nd</sup> defendant. For reasons elucidated in the preceding paragraph, I find that though the first defendant had not taken part in the actual act of the transaction, his involvement emanates on the basis of vicarious liability. This ground therefore fails.

[18] Ground 10

10. ***THAT*** the Trial Judge Ajmeer J.'s findings that both the defendants forged the documents in question when there was no evidence of forgery by 1<sup>st</sup> and 2<sup>nd</sup> Defendants. There was no independent evidence of handwriting expert or other evidence pointing towards the defendants and as such there has been a substantial miscarriage of justice.

Pursuant to a thorough scrutiny of the High Court Record, the learned Judge's finding of forgery can safely be presumed to be on the basis of evidence that were laid down before the trial court. The trial judge is better positioned to evaluate the veracity of the evidence placed before court as he has the benefit of observing such evidence first-hand. Calling for independent evidence of a handwriting expert is routine procedure in most matters of forgery, which is second nature to any trial judge. However, if the evidence before court is sufficiently compelling and the trial judge does not require the assistance of specialized knowledge to determine the fact in issue, the trial judge is not bound to call expert evidence. Therefore, even though no expert evidence in relation to handwriting was called for, I am convinced the learned Judge had made his finding that a forgery has taken place in regard to the property of Prema Wati Nath after the careful evaluation of all available evidence before him. However, while the 1<sup>st</sup> defendant is vicariously liable for the conduct of the 2<sup>nd</sup> defendant, there is no direct involvement of the first defendant in so far as the forgery is concerned.



[19] Ground 11

11. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact in not taking into consideration that there were serious conflicts of evidence between the plaintiff and her witness and on balance of probabilities he ought to have found the plaintiff's case not proved against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Having carefully considered the High Court Record, I cannot agree with the above proposition. I do not venture to elaborate on and discuss separately all the evidence that had been led before the High Court. Suffice is to state that the analysis of evidence by the learned High Court Judge is comprehensive enough to make a further analysis redundant. I am amply convinced that the plaintiff has sufficiently satisfied the court of the pecuniary damage caused to her for the High Court to hold on a balance of probabilities, in favour of the plaintiff. Therefore, I hold that the Learned Judge has not erred as pleaded by the appellants.

[20] Ground 12

12. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact not taking into serious consideration the civil claim by the Plaintiff against one J. Singh in a Lautoka Magistrates Court Civil Action No.97 of 2012 whereby J. Singh agreed owing to the Plaintiff the sum of \$38,000.00 the same amount that was claimed by the Plaintiff against the Defendants in this Honourable Court which proved on balance of probabilities that J. Singh owed monies to the Plaintiff and not the Defendants and on this material the plaintiff's action ought to have been dismissed contrary to the laws of estoppel.

J. Singh in his evidence at page 684, referring to the plaintiff states: "she had given some loan to me, it was not given to me my Lord. It was arranged through Mr Shaina Waz Khan". The evidence further reveals that the sum of FJ\$ 38,000, more or less similar to the sum of the loss suffered by the Plaintiff, had been given to J. Singh by the plaintiff through the 2<sup>nd</sup> defendant. The defense did not at any stage lead evidence to refute this claim. Therefore, the balance of probabilities shifts against the defence and is not detrimental to the plaintiff. Accordingly, ground of appeal 12 also fails.

[21] Ground 13

13. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact by excessively interfering with both the Appellant's cross-examination of the Plaintiff and her witnesses which led to the Appellant's/Defendant's not having a fair trial and hence a substantial miscarriage of justice.

The appellant elaborated his position in regard to this ground of appeal in his written submissions by reference to pages 482 to 485 of the Record, which mainly comprises the opening address of the plaintiff. I do not detect any miscarriage of justice as alleged at the time of the opening address. Further I find, at the very end of page 486, that the counsel had accepted the ruling of court with no objection or displeasure expressed. Again, I do not perceive any miscarriage of justice through the unnecessary interference of the learned Judge as alleged by the appellants during the evidence in chief of the original plaintiff at pages 487 to 504 or at pages 505 to 517. Therefore ground of appeal 13 fails for lack of cogent evidence.

[22] Ground 14

14. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact by not allowing the 1<sup>st</sup> Defendant to cross-examine the 2<sup>nd</sup> defendant and his witnesses. That after the 2<sup>nd</sup> Defendant had given evidence in Chief the trial judge directed the Plaintiff's Counsel to cross examine the 2<sup>nd</sup> Defendant was not asking the 1<sup>st</sup> Defendant to cross examine the 2<sup>nd</sup> defendant.

Once again, while the appellants allege the above, they do not attempt to convince Court by highlighting the specific page or pages which would aid their proposition. If the learned High Court Judge directed the counsel for the respondent to cross examine immediately after the evidence of the 2<sup>nd</sup> appellant, it was the duty of the first appellant to make an application to cross examine the 2<sup>nd</sup> defendant. The appellants could have raised the issue if such application was refused by the Court. However, the High Court Record does not reveal a scenario in which the 1<sup>st</sup> defendant had made an application of that nature. Therefore the 14<sup>th</sup> ground of appeal fails.

[23] Ground 15

15. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact when he wrote the judgment in open court whilst the Counsels were waiting for almost 5 minutes on 3<sup>rd</sup> of April 2018 did not without taking into consideration the entire evidence in the trial and as such there was a substantial miscarriage of justice.

**PARTICULARS**

- i) after hearing the Plaintiff's and Defendant's case adjourned the matter to 15<sup>th</sup> of November 2017 for judgment when the 2<sup>nd</sup> Defendant passed away and the matter was further adjourned to February 2018 and on this date the judgment was not ready and further adjourned to 3<sup>rd</sup> of April 2018. On 3<sup>rd</sup> of April 2018 the trial judge did not have a written judgment but wrote the judgment hurriedly in Court and later read the judgment. The said judgment did not contain what was pronounced in court on 3<sup>rd</sup> of April 2018 but later contained in a written judgment some 3 days later.

It is challenging to fathom events which gave rise to this allegation. However, commonsense dictates that it would not have been possible for the learned Judge to craft a judgment of almost 60 pages in five minutes (pages 22 to 82 of the Record). I reject this ground of appeal in light of the foregoing observation.

[24] Ground 16

16. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact when he heard the evidence of the Plaintiff's and defendant's on the 31<sup>st</sup> day of July 2017 and gave judgment on 3<sup>rd</sup> of April 2018 could not have remembered or recollect the demeanour of all the witnesses after they had given evidence some 9 months ago and hence finding the demeanour of witness as a fact what they had said some 9 months ago caused a substantial miscarriage of justice.

It is implausible to suggest that the mere passage of 8 months between the conclusion of the trial and the delivery of the judgment would give rise to a miscarriage of justice as the Judge may not have remembered or recollected the demeanour of all the witnesses. Judges do not and should not attempt to mentally recollect the demeanor of witnesses at the time of writing the judgments. Bench

notes are an important part of a judge's profession. Trial judges often make notations of impressions and demeanor of witnesses as well as a myriad other notes which later aid in crafting the judgments. In any event, since the matter at hand was a case which involved a practicing lawyer of the same court, it would only be natural for the learned judge to recollect the proceedings in more vivid detail than he would in any other case, even without the aid of his notes. Hence, this ground of appeal too fails.

[25] Ground 17

17. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact when on the 15<sup>th</sup> of November 2017 the 2<sup>nd</sup> Defendant passed away and it was encumbered on the court that the Plaintiff substituted the 2<sup>nd</sup> Defendant after the Probate was granted and pronouncing judgment against the deceased was wrong in law and the judgment should be declared null and void.

I allow this ground of appeal on the basis that it was incumbent on the court to have taken steps for substitution on receipt of notice of the death of the 2<sup>nd</sup> defendant, which it had failed to do. It is recorded that the fact of the 2<sup>nd</sup> defendant's death was known to court when the case was mentioned on 15<sup>th</sup> November 2017, at which point the court should have taken steps for substitution. However, as pointed out by the plaintiff/respondent, Order 15 Rule 7 Sub rule 8 of the High Court Rules 1988 applies in such situations. Therefore, the failure of court will not affect the rights of parties to go against the estate of the deceased.

[26] Ground 18

18. ***THAT*** the Trial Judge Ajmeer J. erred in law in pronouncing judgment which was ambiguous and contrary to Plaintiff's statement of claim and evidence before the Court caused a substantial miscarriage of justice.

I hold that contrary to the above contention, the judgment pronounced by the High Court Judge is devoid of ambiguity and therefore it has not given rise to a miscarriage of justice. As such, this ground of appeal too fails.

[27] Ground 19

19. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact when he concluded in his conclusion that “For the reasons set out above, I having been satisfied that the plaintiff has proved her case sufficiently, conclude that the defendants had acted for both the vendor and purchaser in a conflicting situation and thereby committed a professional misconduct. The defendants had devised a plan to extract monies from the plaintiff on the forged documents, which is another professional misconduct” when there was no evidence of such professional misconduct by either defendants.

I do not see any reason to interfere with the above finding of the learned High Court Judge as it is well founded on facts before the high Court. Therefore, I reject this ground of appeal.

[28] Ground 20

20. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact when he concluded without evidence and without giving an opportunity to the defendants when he stated that “that the defendants had acted for both the vendor and purchaser in a conflicting situation and thereby committed a professional misconduct. The defendants had devised a plan to extract monies from the plaintiff on the forged documents, which is another professional misconduct.”

Indisputably, a reading of the judgment of the learned High Court Judge suggests that the above finding was based on the overall evidence of the case. The contention of the appellant that the said statement is not based on evidence is the result of a narrow reading of the judgment as the learned judge is not required to individually support each of his statements with evidence when the overall evidence supports such finding. As per the evidence, the learned Judge has not erred in law or fact by arriving at the conclusion.

[29] Ground 21

21. ***THAT*** the Trial Judge Ajmeer J. erred in law and in fact when he gave judgment without taking into serious consideration all the evidence before the Court. “The defendants must jointly and severally refund the sum of \$37,000.00 to the plaintiff. Also, the defendants must jointly and severally pay general damages in the sum of \$30,000.00 totaling

*\$50,000.00 when the Plaintiff's evidence before the court was that the 1<sup>st</sup> Defendant played no part in a claim.*

Although the 1<sup>st</sup> defendant played no part in the transaction, his is one of vicarious liability resulting from the master-servant relationship between the defendants. As per evidence, I find that the legal relationship of vicarious liability is the only causal link between the first defendant and the dispute at hand. Evidence revealed that he played no part in the transaction and in fact the plaintiff has not seen him until he came to court. Although, he is legally liable, as his role is not significant, the amount he had been ordered to pay should not be equal to that imposed on the 2<sup>nd</sup> defendant. Therefore, I set aside the order of FJ\$30,000 against the first defendant. However, his failure to have supervised his employees in a better manner led to the unfortunate situation of the Plaintiff. Therefore, I order the first defendant to pay a sum of FJ\$10,000. The order against the 2<sup>nd</sup> defendant remains intact. Therefore, damages of FJ\$30,000 will be imposed on his estate. In light of the foregoing, this ground is partly allowed.

[30] Ground 22

22. ***THAT*** *the Trial Judge Ajmeer J. erred in law and in fact in awarding punitive damages in the sum of \$30,000.00 contrary to the laws regarding awarding of punitive damages.*

In view of the reasons stated in the previous ground of appeal, I reduce the amount of damages imposed on the 1st defendant from FJ\$30,000 to \$10,000. The order for damages in the sum of FJ\$30,000 against the 2<sup>nd</sup> defendant remains intact.

[31] Ground 23

23. ***THAT*** *the trial Judge Ajmeer J. erred in law and in fact in awarding general damages in the sum of \$20,000.00 contrary to the laws regarding awarding of general damages.*

For the reasons stated above, I overturn the order for general damages in respect of the 1<sup>st</sup> defendant. However, the amount of FJ\$20,000 imposed on the 2<sup>nd</sup> defendant shall remain.

[32] Ground 24

24. ***THAT*** the Trial Judge Ajmeer J's drawing of conclusion that both the defendants were liable was irrational and not soundly based on legal principles and as such there was a substantial miscarriage of justice.

As I have previously stated, both defendants were held liable due to the master and servant relationship. Such a conclusion was not based on a finding of wrongdoing of the 1<sup>st</sup> defendant. Therefore, I find this ground of appeal to be redundant.

[33] Ground 25

25. ***THAT*** the Trial Judge Ajmeer J's findings against the defendants were contrary to documentary evidence tendered in court and in the circumstances his findings were a travesty of justice.

This ground of appeal cannot succeed for lack of explicit evidence in support of the contention.

[34] Ground 26

26. ***THAT*** the Learned Trial Judges findings against the Appellants/Original Defendants were contrary to the evidence and not taking into account serious consideration the evidence of the 2<sup>nd</sup> Defendant and his witnesses.

The appellants have failed to elaborate and point out the precise instances in which the findings of the learned Judge were contradictory to the evidence led before court. Therefore, this ground fails.

[35] Ground 27

27. ***THAT*** the Appellant reserves right to add further grounds of appeal upon receipt of Court Record.”

In view of the above reasons, the appeal is dismissed subject to the variations that have been stated.

**Dayaratne, JA**

[36] I have read in draft judgment of Lecamwasam JA and I agree with the reasons and conclusions.

**Orders of the Court:**

1. *Appeal is partly allowed.*
2. *Defendants to jointly and severally refund the sum of \$37,000.00 to the plaintiff/respondent.*
3. *First defendant to pay FJ\$10,000 as general damages to the plaintiff.*
4. *2<sup>nd</sup> defendant to pay general damages in the sum of \$20,000.00 and punitive damages in the sum of \$30,000.00 i.e. a total of \$50,000.00 to the Plaintiff.*
5. *The defendants to jointly and severally pay costs of this court in a sum of \$5,000.00 and of the High Court.*



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



**Hon. Mr. Justice S Lecamwasam**  
**JUSTICE OF APPEAL**



**Hon. Mr. Justice V Dayaratne**  
**JUSTICE OF APPEAL**