

THE COURT OF APPEAL, FIJI  
[ON APPEAL FROM THE HIGH COURT]

Civil Appeal No. ABU 034 of 2020  
(HBC 115 of 2012)

BETWEEN : MOHAMMED HAKIM

*Appellant*

AND : ABDUL LATIF

*Respondent*

Coram : Almeida Guneratne, JA

Counsel : Mr. W. Rosa for the Appellant  
: Mr. K. Chang for the Respondent

Dates of Mention : 5<sup>th</sup> February, 2021

Date of Ruling : 12<sup>th</sup> February, 2021

**RULING**

[1] When this matter, (being a matter for enlargement of time to appeal the judgment of the High Court), was taken before me on 5<sup>th</sup> February, 2021 Counsel for Appellant tendered in open Court “a Notice of Discontinuance” of the whole action dated 29<sup>th</sup> January, 2021 and is now filed of Record where I have given a marking as ‘X’.

[2] However, learned Counsel for the Respondent moved for an Order for costs.

[3] Mr. Rosa for the Appellant took exception to any order for costs being made in consequence of which I reserved order on making a Ruling.

### **Determination**

[4] In the result, there remained two issues for me to make a determination on viz:

- (a) The Application of the Appellant to have the action (Appeal) discontinued.
- (b) The Respondent's application for costs.

### **The Application of the Appellant to have the action discontinued**

[5] In that regard, I saw no impediment in allowing that application (in effect) being an application to have the Appeal withdrawn and/or dismissed.

[6] Accordingly, I proceed to determine that the Appellant's said application as aforesaid to stand dismissed in terms of Section 20 (1) (h) of the Court of Appeal Act (Cap 12).

### **The Matter for Costs urged on behalf of the Respondent**

[7] Learned Counsel for the Appellant urged that, he was opposed to any order for costs being made in the facts and circumstances of the case.

### **The Law and /or Legal Principles in that Regard**

[8] It is trite law that, an order for costs, as the Rule lies in the area of the exercise of judicial discretion.

[9] No doubt, any exercise of discretion (even judicial discretion) must be based on some acceptable objective and rational grounds in the facts and the circumstances of a particular case.

### **Application of the said principles**

[10] From June, 2020, this matter has been on the Record.

[11] There have been 11 mention dates, of course, mainly for various steps. On three of those dates Appellant had been absent and unrepresented, the Respondent on two dates.

[12] It is on the 18<sup>th</sup> of January, being a Mention date that the Appellant had moved to file a Notice of discontinuance of the Appeal.

[13] In the meantime, an affidavit in opposition to the Appellant's application for enlargement of time to appeal had been filed and the Appellant had even filed an affidavit in Reply until he decided to "throw in the towel."

### **The Resulting Position**

[14] The Notice of Discontinuance by the Appellant was filed on the 29<sup>th</sup> January, 2021 and there was no procrastination on the Appellant's part in that regard.

[15] Apart from that fact as the proceedings on record revealed, timelines had not been given for the filing of written submissions and indeed the matter had not been set for arguments.

### **Determination**

[16] Thus, taking the aforesaid facts into consideration, I was inclined in the overall and on a balance that some nominal costs ought to be ordered in the exercise of my discretion under and in terms of Section 20 (1) (J) of the Court of Appeal Act.

[17] Accordingly I proceed to make orders as follows:

**Orders of Court**

1. The Application of the Applicant (Appellant) to discontinue the proceedings of this matter (in effect being an application to withdraw the appeal on record) is allowed.
2. Consequently, I make order in terms of Section 20 (1) (h) of the Court of Appeal Act (Cap. 12) in dismissing this Appeal.
3. In so far as the Respondent's Counsel's submission in moving for costs, I order a sum of \$500/= as nominal costs to be paid by the Appellant to the Respondent within 30 days of notice of this Ruling under Section 20 (1) (j) of the Act.



*Almeida Guneratne*

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**Almeida Guneratne**  
**JUSTICE OF APPEAL**