

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

CIVIL APPEAL NO. ABU 106 of 2018
[High Court Civil Action No.01 of 2013]

BETWEEN : **GENERAL MACHINERY AND HIRE LIMITED**

Appellant

AND : **THE CHIEF EXECUTIVE OFFICER -**
FIJI REVENUE & CUSTOMS AUTHORITY

Respondent

Coram : Basnayake, JA
Lecamwasam, JA
Guneratne, JA

Counsel : Mr. C. B. Young for the Appellant
Ms. R. Malani for the Respondent

Date of Hearing: 04 May 2022

Date of Judgment: 27 May 2022

JUDGMENT

Basnayake, JA

[1] I agree with the reasons and conclusions arrived at by Lecamwasam, JA.

Lecamwasam, JA

[2] Being aggrieved by the Ruling of the Learned High Court Judge dated 13th September 2013, the appellant has preferred this appeal on the following grounds of appeal:-

Grounds of Appeal

1. *The learned Judge erred in law in holding that the Appellant was bound by the grounds of objection filed with the Chief Executive Officer of the Respondent pursuant to Section 21(2) of the Tax Administration Act when the Appellant had not filed a review before the Tax Tribunal but had invoked the jurisdiction of Section 91(1) (b) of the Tax Administration Act.*
2. *The learned Judge erred in law when he applied the maxim of public policy, generalia specialibus non derogant when it was not applied in the interpretation of the Appellant's rights to file an action directly with the Tax High Court pursuant to Section 91(1)(b) of the Tax Administration Act.*
3. *The learned Judge erred in law and was in breach of the duty of fairness when he applied the maxim of public policy, generalia specialibus non derogant but did not give an opportunity to the Appellant to respond to or make any submissions on the maxim.*
4. *The learned Judge erred in law in following the decision of the South African case of **HR Computek (Pty) Ltd and the Commissioner for the south African Revenue Services** : Case No. 830/2011 delivered on 29 November 2012 when the legislation in the South African case differed in substance to that of the relevant provisions of the Tax Administration Act.*

5. *The Judge erred in law in not considering the Appellant's written Submissions including those set out in paragraphs 2.6 to 2.10.*

6. *The Judge erred in law in not considering the case in Fiji for the amendment of the Statement of Claim pursuant to High Court Rules Order 20 Rule 5.*

[3] The background to the appeal is as follows: The Appellant filed proceedings in the Tax Court of the High Court at Suva against the Respondent on the basis that the tax assessment made by the Respondent was incorrect. The Appellant alleges that the manner in which it was carried out by the Respondent by issuing various garnishee orders and the conduct of the Respondent thereon amounted to an abuse of process and bad faith.

[4] When the matter was taken up for trial (as per page 268 of the High Court Record), Mr. Young, counsel for the Appellant answered court "All discovered", in response to which Mr. Haniff stated "all documents are agreed". Yet, (as per page 270 of the High Court Record), Mr. Haniff has objected to EXP 56, EXP 57 on the basis that wages and salaries, and development costs deductions which are being claimed by the Plaintiff in his evidence have not been pleaded.

[5] On this objection, Mr. Young, the counsel for the Plaintiff/Appellant moved to amend the statement of claim, which he was permitted to do on payment of costs. The Defendant/Respondent now objects to the amended statement of claim on various grounds.

[6] Relying on the strength of Section 21(2) of the Tax Administration Act 2009, in their submissions, the Respondent stated that the Appellant was bound by the grounds of objection filed with the CEO. It further states that the Appellant should have filed the review before the Tax Tribunal, as the main class of a reviewable decision is an objection decision and the main role of the Tribunal is to review objection decisions made by the CEO.

[7] The respondent further avers that the person objecting is limited to the grounds stated in the objection to which the objection decision relates unless the Tribunal/Court granted the person leave to add new grounds. He further states that the appellant never raised any objection in its objection letter relating to:-

- (i) proceeds relating to the sale of land to a third party; and
- (ii) deductions of the Director's salary.

Therefore, the respondent claims that the Appellant cannot take up any position that was not taken up at the stage of objection.

[8] However, it is important to note that the objections had been filed on 21st January 2013 and the amended assessment issued on 24th September 2014, after a considerable lapse of time from the date on which objections were filed. Therefore, the appellant was prevented from incorporating any new grounds into the objections that did not exist at the time of filing. The Appellant should not be deprived of taking up the objection in respect of the assessment by way of an amended statement of claim, as the assessment is material to the objection decision but came into existence at a later date to the objections. Therefore, any objections to the amended statement on the above ground cannot be allowed.

[9] The other important issue raised by the Respondent is that of the wrong forum. He avers that the appellant should have appealed to the Tax Tribunal if he was dissatisfied by the decision of the CEO FRCA, instead of going to the High Court. However, Section 81(2) of the Tax Administration Act stipulates that the tribunal has no jurisdiction to review the matter if the dispute exceeded \$50,000 unless both parties consent to the Tribunal's jurisdiction. The dispute between the parties in the instant case exceeded \$50,000 and the parties did not agree by consent to the Tribunal's jurisdiction. Therefore, the Appellant was within his rights to have gone before the High Court, that being the only available option.

[10] At the same time, the present application is only in relation to the claim regarding jurisdiction contained in the amended statement of claim. As we cannot be oblivious to the fact that no legitimate reason exists not to allow an application if an amendment does not change the scope of the matter, I am inclined to allow the amendment to remain intact. Such application for an amended statement of claim will enable the parties to resolve all the disputes between them thereby negating the possibility of duplicating matters between parties by filing different cases.

[11] Now I advert my attention to the issue relating to the application of the maxim of public policy *generalia specialibus non derogant* which the Learned High Court Judge in his Ruling dated 13th September 2018 referred to. The issue of application had arisen in relation to the correct forum before which the dispute required to be litigated. However, the value of the dispute coupled with the lack of consent between the parties led to the application of Section 91(1)(b) of the Tax Administration Act, as the Tax tribunal does not have jurisdiction to rule on the matter. Hence, the above maxim has no direct application to the instant situation as the statutory provisions envisage a forum in the event the amount in dispute exceeds \$50,000 where both parties do not consent to the Tribunal's jurisdiction, thus precluding the jurisdiction of the Tribunal.

[12] In light of the above reasoning, I hold that the Learned High Court Judge has erred by not allowing the amended statement of claim which prevented the parties in identifying the specific issues between them. I do not see any prejudice caused to the Respondent in allowing such amended claim. Therefore, I set aside the ruling of the learned High Court Judge dated 13th September 2018 and remit the case record back to the High Court for further steps.

[13] I answer the cumulative grounds of appeal in favour of the appellant.

[14] The Appellant is entitled to cost of \$5,000.00 which must be paid within 28 days from the date of this Judgment.

Guneratne, JA

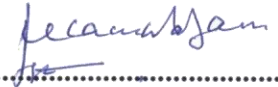
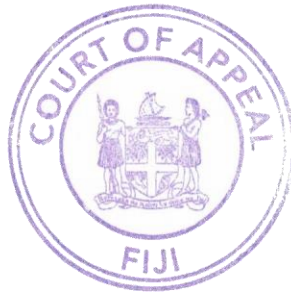
[15] I agree with the judgment of Lecamwasam, JA and the reasons and proposed orders contained therein.

The Orders of the Court:

1. *Appeal allowed.*
2. *Ruling of the Learned High Court Judge dated 13th September 2018 is set aside.*
3. *Respondent to pay \$5000.00 to the Appellant within 28 days from the date of this judgment.*
4. *Case to be remitted to the High Court for further steps.*



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Hon. Justice E. Basnayake
Justice of Appeal



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Hon. Justice S. Lecamwasam
Justice of Appeal



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Hon. Justice A. Guneratne
Justice of Appeal