

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CIVIL APPEAL NO. ABU 0032 OF 2022**  
**[Suva Civil Action No: HBC 231 of 2020]**

**BETWEEN** : **R B PATEL GROUP LIMITED**

*Appellant*

**AND** : 1. **CENTRAL BOARD OF HEALTH**  
2. **SUVA CITY COUNCIL**  
3. **LAUTOKA CITY COUNCIL**  
4. **LAMI TOWN COUNCIL**  
5. **NASINU TOWN COUNCIL**  
6. **NAUSORI TOWN COUNCIL**  
7. **SIGATOKA TOWN COUNCIL**  
8. **NADI TOWN COUNCIL**  
9. **LABASA TOWN COUNCIL**

*Respondents*

**Coram** : Jitoko, P  
Qetaki, JA  
Morgan, JA

**Counsel** : Ms. L Prasad for the Appellant  
Ms. G. Naigulevu for the 1<sup>st</sup> Respondent  
Mr. N. R. Nand for the 2<sup>nd</sup> and 4<sup>th</sup> Respondents  
No appearance for the 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents  
Mr. A Prakash for the 9<sup>th</sup> Respondent

**Date of Hearing** : 2 November, 2023

**Date of Judgment** : 30 November, 2023

## **JUDGMENT**

### **Jitoko, P**

1. The Appellant is a public listed limited liability company that carries on the business of operating a chain of supermarkets throughout Fiji, with the majority, located within the city and town boundaries of the 2<sup>nd</sup> to 9<sup>th</sup> Respondents. By its very nature, the supermarket is an entity that is a “food establishment” as defined by section 2 of the Food Safety Act 2003 (FSA).
2. The 1<sup>st</sup> Respondent is a statutory body constituted under section 3 of the Public Health Act (Cap 111), which under the FSA, is appointed as the supervisory as well as the regulating body of health licences for the provision and sale of food in the Appellant’s respective supermarkets.
3. The 2<sup>nd</sup> to 9<sup>th</sup> Respondents are constituted under section 8 of the Local Government Act 1972 and are local food authorities for the purposes of the FSA and its Regulations.
4. Since 2014, according to the Appellant, it had been contesting the licencing system of methods used by the 1<sup>st</sup> Respondent, and 2<sup>nd</sup> to 9<sup>th</sup> Respondents as its agents, in imposing on the Appellant, multiple health licence types including health licence types that are by their nature exclusive health licences under the 26<sup>th</sup> Schedule of the Regulations.
5. The Respondents contend that so long as multiple food operations are carried on in the supermarket premises of the Appellant, multiple health licences will apply and be imposed.
6. The Appellant argued that given the nature of the business, that is, that of a supermarket, it ought to be given only one (1) health licence.

## High Court Civil Action No. HBC 23 of 2020

7. This originating Summons proceedings filed by the Appellant on 6 August, 2020 challenged the interpretation by the Respondents of the provisions of the FSA and its Regulations in the licensing system of methods adopted.
8. The Originating Summons was supported by an affidavit (the Affidavit) deposed by the Appellant's Chief Operating Officer Mr Deepak Kumar Rathod (Rathod) on 4<sup>th</sup> August, 2020. Paragraph 1 of the Rathod affidavit stated:

*“1. I am the Chief Operating Officer of the Plaintiff and I am duly authorized by the Plaintiff to depose of matters herein on the basis of my knowledge and on information available to me from the Plaintiff's records and files unless I state that I am advised and/or informed believing the same to be true.”*
9. The Summons and the supporting affidavit were served on the Respondents.
10. At the hearing on 1 April, 2022, Counsel for the 9<sup>th</sup> Respondent, raised the preliminary issue that the Appellant's affidavit in support was defective as the deponent did not have the written authority of the Appellant to swear the affidavit. Submissions from the Counsel having being directed and made, the Court on 3 May, 2022, found in favour of the preliminary objection that Mr Rathod's affidavit in support, was defective and ordered that the Appellant's substantive action be struck out, awarding costs of \$500.00 against the Appellant to each of the Respondents.

## Grounds of Appeal

11. The Appellant sets out seven (7) grounds for appeal. Some grounds overlap and/or are repetitious. The Court is of the view that there is only a single substantive issue, that lies at the heart of this appeal which may be addressed under the following heading.

Whether the learned Judge had erred in law and in fact when he held the Affidavit in Support of Mr Rathod was defective as there was absence of any written authority from the Appellant to swear it.

The other grounds that relate to the exercise of discretionary powers, procedure, and costs, I will revert to later.

### **The Case for the Appellant**

12. The Appellant submitted that the authority for, and the contents of, an affidavit to be filed into Court, are governed exclusively by Order 41 of the High Court Rules. Counsel argued that nowhere under Order 41 is there an express or implied requirement that an authority must be attached or annexed to a deponent's affidavit. All that is required is that "*the deponent has personal knowledge for the facts to which he or she is deposing as contained at Order 41 Rule 5.*" Mr. Deepak Rathod, the Chief Operating Officer of the Appellant Company, was it's the most senior executive and had personal knowledge as to the facts of the company as he particularized in his affidavit.
13. In addition, the Appellant argued that, the Respondents had, as set out under Ground 2 of the appeal, fully acknowledgment in their exchange of correspondence, over a long period of time, the capacity and as well as the authority of Mr. Rathod, on behalf of the company, including his command of the legal issues pertinent to the proceedings, the subject of the substantive action.
14. The Respondent's reliance on the guideline on swearing of affidavit's in **Paul v Director of Lands** [2020] FJSC 3 is, the Appellant contended, distinguished on the ground that it only applies to third parties, who are not parties to the proceedings. In this instance, the deponent is an intimate functionary of the Company and ostensibly acts with the authority of the company, and is duly accepted by the Respondents as such, in the course of years of exchange of correspondence between the parties, on the matter.

15. All in all, the Appellant submitted, that the Court had erred in emphasizing, and solely relying, on the provisions of the Companies Act as to the requirements in the execution of documents by the Company, without considering the requirements of court affidavits under Order 41 Rule 5.

### **The Respondents Arguments**

16. In support of the High Court's finding and conclusion, the Respondent emphasized the essence of an affidavit as a document executed under the Companies Act as set out in **Denarau Corporation Ltd** (supra) to wit:

- (i) that the Company is an artificial person
- (ii) that it therefore is required to act through an agent
- (iii) that such an agent must have proper authority to depose an affidavit on its behalf,

and in the absence of these, the court is open to conclude that the deponent lacks authority to swear the affidavit. The danger of insufficient or absence of authority, the First Respondent Counsel pointed out, was illustrated in **Wadigi Investment Ltd v Laqan** [2016] FJHC 821; HBC 211.2015 (16 September 2016), where the deponent claimed he was a Director of the Company, but upon the search of the Companies Register, his name was not entered as a Director. The Court consequently, rejected the affidavit.

17. Counsel for the 1<sup>st</sup> Respondent also argued that Mr. Rathod, while deposing of evidence in his capacity as the Chief Operation Officer of the Company, the affidavit lacked the details and specific information as to the facts that he is deposing was acquired by him *"in the course of his duties as a Chief Operating Officer,"*; facts which are material to the issues before the Court.
18. Counsel usefully referred to the old section 40 of the now repealed Companies Act Cap.247, which was relied upon by the Court in the **Denarau** Case (supra), which states:

*“40. A document or proceedings requiring authentication by a company, may be signed by a director secretary or other authorised officer of the Company, and need not be under its common seal.”*

19. The new Companies Act 2015, it is noted, no longer has an equivalent provision, but Counsel submitted that the ratio of the **Denarau** Case requiring written authority, is still valid and applicable to this case.

## **Consideration**

### **The Prevailing Law on the Affidavits in Support on Behalf of a Company**

20. In deciding whether it was sufficient for the proponent of an affidavit in support, on behalf of a company, just to say that he has the authority or, should he file the affidavit with a written authority from the company, the High Court in this case, confined itself exclusively with the execution of documents under the Companies Act 2015. It is accepted that the affidavit in question was deposed by the Chief Operating Officer of the Company on its behalf.
21. The Court first referred to section 53 of the Act which provides as follows:

*“Execution of documents (including deeds) by the Company itself –*

*53. (1) A Company may execute a document if the document is signed by –*

*(a) 2 directors of the company;*

*(b) a director and a secretary of the company; or*

*(c) for a private company that has a sole director who is also the sole secretary of the Company, the director.*

*(2) A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this section.*

*(3) This section does not limit the ways in which a company may execute a document, including a deed.”*

22. The Court then referred to four (4) High Court cases: **Denarau Corporation Limited v Deo** [2015] FJHC112; HBC 32.2013 [24 February 2015]; **Sun Insurance Co. Ltd v Sorojini** [2019] FJHC 139; HBC 218.2012 (28 February 2019); **Thomas Johansen Consultants Pte Ltd v Ah Sam** [2021] FJHC 300; HBC 276.2016 (28 September 2021) and **Carpenters (Fiji) Pte Limited v Pleass Global Limited** [2021] FJHC 300; HBE 19.2020 (9 November 2021) all supporting the position that every affidavit in support, filed on behalf of a Company, must be accompanied by a written authority of the company, authorizing such a person deposing, to swear the affidavit on its behalf. The court's rationale seem to be, as stated in **Denarau Corporation Ltd** (supra) that:

*“.....a company being an artificial person cannot act by itself. It should act through agent. The agent must have proper authority to act on behalf of the company. Merely stating that the deponent is Chief Executive Officer of the plaintiff company is not sufficient. He must state the person who gave that authority whether it is a director or secretary or other authorized officer of the company. In absence of this, the deponent will lack authority to swear affidavit on behalf of the Company.....”*

23. The High Court then turned to section 54 (1) of the Companies Act, as if it was the only ground relied on by the Appellant, notwithstanding its Counsel's submissions that were premised on Order 41 Rule 5 of the High Court Rules.

24. Section 54 (1) of the Act, provides:

*“Entitlement to make assumptions*

*54. (1) A person is entitled to make the following assumptions in relation to dealings with the Company –*

*(a) a person may assume that the Company's articles of association and in provisions of this Act that apply to the Company, have been complied with;*

*(b) a person may assume that any person who appears, from information provided by the Company that is available to the public from the Registrar, to be a director or a company secretary of the Company -*

*(i) has been duly appointed; and*

- (ii) *has authority to exercise the powers and perform the duties customarily exercised and performed by a director or company secretary of a similar company;*
- (c) *a person may assume that any person who is held out by the company to be an officer or agent of the company -*
  - (i) *has been duly appointed; and*
  - (ii) *has authority to exercise the powers and perform the duties customarily exercised or performed by the kind of officer or agent of a similar company;*
- (d) *a person may assume that officers and agents of the company properly perform their duties to the Company;*
- (e) *a person may assume that a document has been duly executed by the Company if the document has been signed in accordance with Section 53;*
- (f) *for the purpose of making the assumption, a person may assume that any person who states next to their signature that they are the sole director and sole company secretary of the company occupies both offices; and*
- (g) *a person may assume that an officer or agent of the Company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.... ”*

25. In the High Court’s view therefore, the assumption of entitlement including the authority to act on behalf of the Company under section 54 of the Act is dependent on whether the approval has been granted in section 53 as specified under section 54 (1) (e).

### **Order 41 Rule 5 High Court Rules Application**

26. Order 41 rule 5 deals with the contents of affidavits that are filed into court. It specifically states as follows:

*“5 – (1) Subject to Order 14 rules 2 (2) and 4 (2) to Order 86 rule 2 (1), to paragraph (2) of this rule and to any order made under Order 38 rule 3, an affidavit may contain only such facts as the Respondent is able of his own knowledge to prove.*



*(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.”*

27. O.41 r.5 is all encompassing as to the legal requirements of the contents of affidavits that are filed into Court.
28. The interpretation and effect of the Rule was carefully analysed by Master U.L.Mohamed Azhar in **Sundresan Pillai v Barton Limited** CA No. HBC 63 of 2014. He had earlier, in **Sharma v Prasad** [2018] FJHC 250; HBC 239.2015, made a comparative analysis of the contents required of the affidavits under O.41 r.5 of the Supreme Court Practice (White Book) 1999 and its predecessor, O.38 r.3, and Fiji’s High Court Rules O.41 r.5 and specifically, on whether there is a requirement for written authorization from the parties to the proceedings.
29. The conclusion of the court in **Pillai v Barton** (supra) is that, under O.41 r.5 except in exceptions identified, a deponent of an affidavit in support, including where it is sworn on behalf of a company, does not need any written authority from the company to swear an affidavit on behalf of the company.
30. The only exceptions are as stated under the Rule namely:
  1. Affidavits under O.14, rr.2 (2) and 4 (2) either by the plaintiff or by the defendant on an application or opposition to, or summary judgment;
  2. Affidavits made pursuant to O.38, r.3 (2) (a), where evidence of any particular fact, on the order of the court, may be given by a statement on oath of information or belief;
  3. Affidavits under O.86 r.2 (1), on summary judgment application and summons contending the deponents belief there is no defence to the action.

31. So unless the affidavit falls into any of the exceptions which would need additional authority, all that is required, is for deponent to swear to such facts as he/she able of his knowledge to prove.
32. To contextualize the requirements as to contents of the affidavit is to understand its purpose. As stated by Scott J in **Peter Stinson v Miles Johnson** [1996] HBC 326, the purpose of affidavits is to provide evidence, deposing only as to facts, “*not vehicles for opinions submissions or statements of the law.*” Or to state it in another way, affidavits are akin to oral evidence which a witness, privy to the information surrounding the incident or event, is allowed to state before the court. The High Court in **Vodafone Fiji Ltd v Pacific Connex Investment Ltd** [2010] FJHC 419; HBE097.2008 (30 August 2010) expressed it this way:
- “Affidavits are a source of providing evidence and anyone privy to knowledge and information has a right to depose to an affidavit.”*
33. After all, by its very nature, information deposed in the affidavit as believed by the deponent, from his or her own knowledge, is subject to cross-examination of the deponent at the hearing.
34. It is well to bear in mind that **Denarau Corporation Ltd** (supra) which the High Court and the Respondents relied upon, was decided on the now repealed section 40 of the Companies Act Cap.247 that required authentication if the document or proceedings is not signed by a director or secretary. Master Azhar’s Ruling in **Pillai v Barton** (supra) correctly, in my view, puts the affidavit document under the Companies Act, into proper perspective. Section 40 comes under the sub-heading “*Division 10 – Contracts, etc*” and that the authentication of a company document or proceeding, can only be with reference to contracts on behalf of a company. I agree with the court’s view, that there must always be “*contextual interpretation*” to assist in the interpretation of a legislative provision.
35. I do not necessarily share the conclusion of the Court in **Vodafone Fiji Ltd** (supra) that affidavits are not “*documents*” that need to be authenticated under section 40. They are

properly company documents that belong to and would come under the sanction imposed under the old section 40.

36. The successor provisions to the old section 40 are now under sections 53 and 54 of the new Companies Act 2015. Section 53 (1) as cited at paragraph 21 above, sets out who may sign a company document. While it limits the “*officers*” of the Company, designated thereunder, it does nevertheless provide under section 53 (3) that:

*“(3) This section does not limit the ways in which a company may execute a document, including a deed.”*

37. In my view, sections 53 and 54 of the Act must be read together, dealing as they do with the execution of company documents. Section 54 sets out the assumptions in law in a person’s dealings with a company. Of particular relevance to this case is the assumption of authority on behalf of the company by persons under section 54 (1) (c) and (d) which state that:

*“54. –(1) A person is entitled to made the following assumptions in relations to dealing with a Company –*

*(a) ...*

*(c) A person may assume that any person who is held out by the company to be an Officer or agent of the Company –*

*(i) has been duly appointed and*

*(ii) has authority to exercise the powers and perform the duties customarily exercised or performed by the kind of officer or agent of a similar company;*

*(d) a person may assume that the officers and agents of the company properly perform their duties to the company; ...”*

38. These provisions are relevant and applicable to the assumption by a person dealing with a company that the deponent of an affidavit on behalf of the company, has ostensible authority to depose the affidavit on any material evidence that is known and comes within the ambit of his or her position in the Company.

39. The provision of section 54 (1) (e) to wit:

*“(e) a person may assume that a document has been executed by the Company if the document has been signed in accordance with section 53.”* simply recognizes the process of execution of company documents under it with the proviso at section 53 (3) that complements the assumptions.

40. So it seems that even in the case of an affidavit that is filed under the Companies Act 2015 and specifically come under the purview of section 53, the combined effect of sub-sections (3) and the entitlement to make assumptions provisions under section 54, suggests that such a document, need not be authenticated.

41. If therefore the requirement for authentication of affidavits filed on behalf of companies under the old section 40 of the Companies Act, has been nullified by the operations of the sections 53 and 54 of the new Act, then the argument that any affidavits filed into court under Order 41 (5) of the High Court Rules does not require written authority, becomes even more persuasive.

42. Even in the plain reading of Order 41 rule 1 (4) as to the form of affidavit, does not suggest a secondary meaning or interpretation than to what it states, describing that:

*“(4) Every affidavit must be expressed in the first person and, unless the court otherwise directs, must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by a party to the cause or matter in which the affidavit is sworn, the affidavit must state the fact.*

In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponents place of residence, state the address at which he works, the position he holds and the name of his firm or employer, if any”. [Emphasis is mine]

43. As the Appellant argued in its reading of Order 41 r 5 (2), there is no expressed or implied requirement be it in the content, or in the form, under O,41 r.1(4), that there be authority annexed to the affidavit filed by a deponent in his “*professional business or other occupational capacity.*”
44. The High Court in **Denarau Corporation Ltd** (supra) while confirming its interpretation of section 40 of the Companies Act Cap 247 of the need for authentication of affidavits deposed by persons other than a director or secretary for reasons stated therein, did concede that there were some merit in the submission that the provisions of the High Court Rules (O.41 r.5) do not require any authority to be annexed by the deponent swearing an affidavit in a professional, business or occupational capacity, by concluding as follows:

*‘For my part, I would say it is preferable to show authority when a deponent swear an affidavit on behalf of a company because the deponent is giving evidence by affidavit.’*

#### **Other Grounds of Appeal**

45. Grounds 2, 3, 5 of appeal, this Court is of the view, are already subsumed in its expansive consideration of Ground 1.

I will briefly consider Grounds 4, 6 and 7 of the appeal.

#### **Ground 4**

46. This ground is premised on the fact that the High Court had allowed the Counsel for the 9<sup>th</sup> Respondent oral preliminary objection from the bar table on the issue of lack of written authority by the Company/Appellant. This, the Appellant argued, was an error in law and in fact, given the following:

*“a) there were many mentions before the date of the substantive hearing and none of the Respondents had raised an objection to Mr Rathod’s Affidavit or his authority to depose the Affidavit on behalf of the Appellant;*

- b) *The 9<sup>th</sup> Respondent had notified a formal application to set aside for irregularity within a reasonable time as required under Order 2 Rule 2 of the High Court Rules 1988;*
- c) *The 9<sup>th</sup> Respondent had not filed an Acknowledgment of Service of the Appellant's Originating Summons dated 6<sup>th</sup> August, 2020."*

- 47. This essentially is a procedural issue. The High Court Rules regulate the process from Order 5 onwards, on the mode of beginning of civil proceedings whether it be by writ, originating summons, originating motion or petition.
- 48. This is an originating summons under Order 5 Rule 4 (2) and as far as this court can discern, all the requirements of the relevant provisions of Order 5, Order 7 and Order 10, have been fully complied with.
- 49. It is also evident from the records, that the 9<sup>th</sup> Respondent had not complied with the requirements of Order 12 on time limited on Acknowledgment of Service as per Rule 4, and also there being no ostensible leave granted by the Court under Rule 5 for late acknowledgment of service.
- 50. It is important in my view for the orderly and procedurally correct conduct and management of civil court proceedings, that the court should be vigilant in enforcing the rules of procedures of the court as governed by the High Court Rules.
- 51. In this instance, the 9<sup>th</sup> Respondent had not complied with Order 12. Rule 1, and neither had it cured its non-compliance under Order 2 by making the necessary application to the Court.
- 52. In the end I am nevertheless satisfied that the Court is presumed, in allowing the 9<sup>th</sup> Respondent to make oral preliminary objection without first filing its acknowledgement of service, that it had exercised its discretionary powers to waive these requirements and allowed the Counsel for the 9<sup>th</sup> Respondent audience, and no substantive injustice ensued as a consequence.

## Ground 6

53. The Appellant submitted that the trial court had erred in law and in fact by holding that Mr Rathod's Affidavit in Support was defective and as a consequence, it struck out the Appellant's Originating Summons "*on mere technicality*" when:

*"(a) Order 2 Rule 1 of the High Court Rules 1988 provided the learned Judge with the discretion to treat the lack of written authority (if required) by the Appellant as an irregularity which was curable; and*

*(b) Order 41 Rule 4 of the High Court Rules provided the Learned Judge with the discretion to allow for defective affidavits to be used in evidence notwithstanding any irregularity."*

54. The Counsel for the Appellant argued that even if the affidavit by Mr Rathod was defective because it was not accompanied by the company's written authority, the Court should have exercised its powers to treat the failure as an irregularity under Order 2 Rule 1 and to allow such amendments as are necessary to rectify the non-compliance, without nullifying the proceedings, including the setting aside the whole proceedings under Order 2 Rule 2. To strike out the whole action, the originating summons, on account of a defective affidavit in support, which amounts to an irregularity, curable under Order 2, in the Appellant's view, is an error in law.

55. In the circumstances of this case, this court agrees with the Appellants contention that the High Court, should not have struck out the originating summons, but instead order that the anomaly of the so-called defective affidavit should be rectified, whilst the originating summons remains. Whilst this court recognizes that in the end, it was an exercise of discretionary powers of the court, it was in my view, in this instance, wrong and was an error to strike out the whole proceedings.

## Ground 7

56. This ground deals with the awarding of Costs in which the Appellant was ordered to pay \$500.00 costs to each of the nine (9) Respondents, even though, only the 1<sup>st</sup> to 3<sup>rd</sup>

Respondents had appeared and filed their Acknowledgment of Service, and that the 9<sup>th</sup> Respondent had only appeared on two occasions and had not filed its Acknowledgment of Service.

57. There is merit in the Appellant's submission and this ground succeeds.

### **Conclusion**

58. The correct position of the law, as regards the filing of affidavits into court is that espoused by **Pillai v Barton** (supra) and approved in **Smak Works Pte Ltd v Total (Fiji) Pte Ltd** [2020] FJHC 781, per Stuart J.

59. All affidavits filed into Court, need only to comply with Order 41 and under it, there is no requirement for any affidavits, excluding those exceptions under Order 4 Rule 5 (1), to be authenticated or deposed with a written authority in case of a company annexed to it.

60. In this instance, the affidavit of Mr. Deepak Rathod, the Chief Operating Officer of the Appellant, deposing as he did in his affidavit, of matters acquired on the basis of this knowledge and information available to him, does not need further authentication from the Appellant.

### **Qetaki, JA**

61. I have considered the judgment of Jitoko, P in draft and I agree with it, the reasoning and the proposed orders.

### **Morgan, JA**

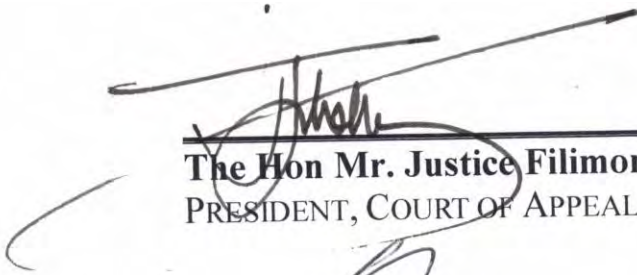
62. I concur with the judgment of Jitoko, P.

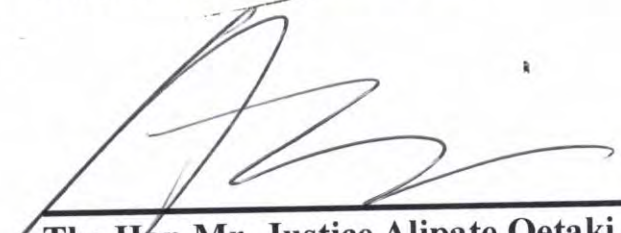


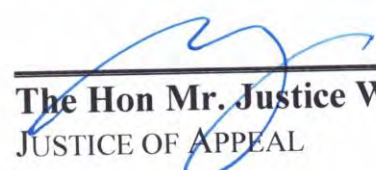
63. **Orders**

1. *Appeal is allowed.*
2. *Originating Summons and its Affidavit in Support deposed by Deepak Kumar Rathod, filed on 6 August, 2020, are hereby re-instated.*
3. *Matter is referred back to the Suva High Court Registry for a hearing dated to be fixed.*
4. *Costs awarded in the court below are set aside in respect of the 4<sup>th</sup> to 8<sup>th</sup> Respondents*
5. *Costs to the Appellant of \$1500.00 in the proceedings in this Court, is made against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 9<sup>th</sup> Respondents to be apportioned equally.*



  
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**The Hon Mr. Justice Filimone Jitoko**  
PRESIDENT, COURT OF APPEAL

  
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**The Hon Mr. Justice Alipate Qetaki**  
JUSTICE OF APPEAL

  
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**The Hon Mr. Justice Walton Morgan**  
JUSTICE OF APPEAL

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