

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

**CIVIL APPEAL NO. ABU 038 of 2022**

[Suva HBM 0082 of 2021]

**BETWEEN** : **PRANIL SHARMA**

*Appellant*

**AND** : **1. INOKE TAKIVEIKATA**  
**2. ITAUKEI LAND TRUST BOARD**  
**3. FIJI POLICE FORCE**  
**4. PC 5077 TIMOCI**

*Respondents*

**Coram** : **The Honourable Mr. Justice Filimone Jitoko**  
**President Court of Appeal**

**Counsel** : **In Person for the Appellant**  
: **Ms P. Mataika for the 1<sup>st</sup> Respondent**  
: **Mr J. Cati for the 2<sup>nd</sup> Respondent**  
: **Ms S. Pratap for the 3<sup>rd</sup> and 4<sup>th</sup> Respondent**

**Date of Hearing** : **25 October 2023**

**Date of Ruling** : **30 November 2023**

# RULING

1. On 27 October 2021 the Appellant filed a Notice of Motion and an Affidavit in Support, applying for constitutional redress pursuant to section 44 of the Constitution against the Respondents seeking various reliefs.

2. The Orders sought are incoherent as they are disjointed and confusing, but simply for the records they seek:

*“1. An Order, that this Honourable High Court to issue on the violation of human rights on the land issue which was subject to the 2<sup>nd</sup> Respondent who failed to act on the laws of 2013 Constitution.*

*2. An Order that this Honourable High Court to issue on the emotional torture, mental torture and physical torture from the rental property of the landowner in Fiji on the negligence of Second, Third, Fourth and Fifth Defendants of this court proceedings.*

*3. An Order that this Honourable High Court to issue on the general damage and punitive damage against the Second Defendant of this court proceeding.*

*4. An Order this Honourable High Court to legalised Landlord and Tenant Act 2017.*

*5. An Order that this Honourable High Court to order to traveling of the Applicant of this court proceeding the Ministry of Employment Productivity and Industrial Relations has issued letter to the Applicant for seasonal workers and that the action of both Defendant, Applicant are not due to proceed.”*

3. On 13 December 2021, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed their application to strike out the action, pursuant to Order 18 Rule 18 (1) (a) of the High Court Rules 1988 on the ground that the Appellant’s action disclosed no reasonable cause of action.

4. Similarly, on 14 February 2022, the First Respondent filed his Order 18 Rule 18 (1) (a) summons.

5. The 2<sup>nd</sup> Respondent filed his summons to strike under the same Order 18 Rule 18 (1) (a) soon after.
6. All the applications were heard on 22 April 2022 and on 27 May, the High Court struck out the proceedings and awarded \$500.00 costs to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
7. On 26 September 2022, the Appellant filed an “*Amended*” Notice of Appeal based rather presumptuously that the court’s consent has been given under section 20 (b) and (c) of the Court of Appeal Act.
8. Meanwhile on 3 October, 2022 the Appellant filed his application under Rule 17 (1) (a) (ii) of the Court of Appeal Rules for the Registrar to fix the amount of security for costs. In support to the application, the Appellant filed a so-called affidavit of service for both the earlier “*amended*” Notice of Appeal as well as his application for fixing of security for costs, although the document contained nothing more than legal arguments, which was totally inappropriate and the document should have rightly been rejected by the Registry
9. The security for costs application was heard on 1 November, 2022 and fixed at \$3,000.00 to be paid within 28 days.
10. On 21 November 2022, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed their Summons to Strike out the 26 September Notice of Appeal under O 18 r 18 (1) (a) and pursuant to section 12 (2) (f) and 20 (1) (j) of the Court of Appeal Act and under Rule 6 of the Court of Appeal Rules 1949. A similar application to strike on the same grounds and also the failure of the Appellant to pay the security for costs at the requisite time as ordered by the court, was made.
11. At the same time on 21 November, 2022, additional grounds of appeal with leave was granted to the Appellant by the court on 21 October, 2022, “*subject to objections by the Respondents.*”

12. The Respondents' Summons to strike was heard by the President of the Court of Appeal Dr. Justice Guneratne on 5 June 2023, and the Decision delivered on 7 August, 2023.

### **The Decision**

13. The Appellant's "*Amended*" Notice of Appeal of 26 September, 2022, sought the following reliefs;

- "11. A court order that the appeal be allowed.*
- 12. A court order that the World Bank to give the funding on the merits of section 45 of the Constitution.*
- 13. A court order for the appellant to travel for employment.*
- 14. A court order of this Court for the interpretation of the word (poverty alleviation)*
- 15. A court order for cost and compensation against all respondents/defendant in this civil matter appeal No. ABU 0038/22.*
- 16. A court order for this court to disregard the court records of HBC 82 of 2021."*

14. The Court with great forbearance tried to make some sense to the reliefs sought by the Appellant, and concluded that:

- (i) in respect of prayer 11, the matter of whether to allow the appeal is for the full court to decide;
- (ii) that in respect of prayer 15, the reliefs sought are also for the full court to decide.
- (iii) in respect of prayers 12, 13 and 15, such reliefs are outside the purview of the court to grant or otherwise; and
- (iv) order is granted in respect of prayer 16.

15. The court in the process, dismissed the Respondent's Summons to strike out the appeal under Order 18 Rule 18 (1) (a).

## **The Non- Payment of Security for Costs**

16. The Court in dismissing the Respondent's Summary to Strike, nevertheless noted with concern the Appellant's failure to pay the security for costs within time as ordered on 1 November, 2022. With its discretion, it allowed a final further time for its payment to be effected, and the relevant Orders were as follows:

- "2) *Should the Appellant fail to pay security for costs of the appeal fixed by the Registrar at \$3,000.00 on or before the 30<sup>th</sup> September, 2023; the appeal stands dismissed.*
- 3) *The Registrar is directed to submit the file to a Judge of this Court by 1<sup>st</sup> October, 2023 or soon thereafter to ascertain compliance or otherwise with Order 2 above to enable the court to make appropriate orders."*

## **Present Proceedings**

17. On 21 September, 2023 the Appellant filed what appears to be a Notice of Motion for Non Compliance for Security for Costs seeking the following orders:

- "1. *That the court order be issued by this court to set aside non-compliance for security for cost Civil Appeal No. ABU 0038 of 2022.*
2. *That a court order be issued by this court for Fijian Competition and Consumer Commission be ordered to testify and give evidence how many traders have caused damaged to appellant's and what application taken by FCCC.*
3. *That a court order to be issued by this court for Consumer Council of Fiji to appear in this court and testify all the case which has been investigated by the council on the complaints.*
4. *That court order be issued to Human Rights and Discrimination Commission to give evidence in regards file ref: AR/PS/18 and file ref: AR/PS/19 and conciliation conference.*
5. *The Court Order be issued for refund of the security for cost paid a the Court of Appeal registry sum of \$650.00 Civil Appeal No: ABU 0038 of 2022."*

18. An affidavit in support was also filed on the same day, which were nothing more than legal arguments and case references, and attachments of documents not relevant to the motion and far removed from the matters at hand.
19. When the matter came before me on 11 October, I directed the Appellant to file submissions as to why the Court should not strike out the appeal pursuant to the Court's Decision of 7 August, 2023 and that the Respondent's may respond if they so wished.

### **Consideration**

20. The Court considered the Appellant's Notice of Motion for Non-Compliance on 25<sup>th</sup> October, 2023 together with the Appellant's Submission filed on 11 October 2023, as well as oral submissions by the Respondents.

### **Appellant's Submission**

21. The Appellant's submission dealt in great details with relevant case authorities, on the nature, the purpose and the guiding principles in the determination to the award for security for costs and the quantum thereof. It then in the end, sets out a totally different set of reliefs/orders being sought as those that appeared in the Appellant's Notice of Motion of Non-Compliance. The Orders sought were:

- “1. *Order dated 11 May, 2020 of the Chief Registrar is set aside.*
2. *The petition for special leave to appeal filed by the petitioner directed against the judgment and order of the Court of Appeal in Civil Appeal No. ABU 30 of 2017 is directed to be listed for consideration without the petitioner having to deposit any amount towards security for costs.*
3. *No order as to costs.*

22. This submission and the proposed orders are by far, the Appellant's most coherent submissions arguments made to the court.
23. There was however no submission made by the Appellant in response to the Court's direction of 11 October for submission or arguments to show cause why it should not enforce Order 2 of the 7 August 2023 Decision.

### **Respondent's Submissions**

24. The main thrust of the submissions by all the Respondents is that the Appellant's motion amounts to abuse of court process. The only way the Appellant may challenge the Decision of the President of the Court of Appeal of 7 August, 2023, in their view, is to appeal the decision, which he has failed to do, and within the prescribed time.
25. The Appellant furthermore may only argue on the merits of his appeal at the hearing by the full court, after he has complied with the Rules of the Court and the Orders of 7 August. He failed to do so.
26. The present Motion is in effect, the Appellant's attempt to challenge the Decision and for this Court to amend it, which clearly, I am not competent to do.

### **Conclusion**

27. It is clear that the Appellant has not complied with the Orders of the Decision of this Court of 7 August 2023. He has only paid \$650.00 of the \$3,000.00 Security for Costs ordered on 1 November, 2022.
28. The Appellants "*Notice of Motion for Non-Compliance for Security for Costs*" and supporting affidavits filed on 21 September, 2023 is not a proper Notice of Appeal against the Decision, but a confused jumble of ideas and social and human rights issues that do not relate to the settlement of security for costs.
29. At the very most, the Appellant's Notice of Motion is an application for some institutions such as the Consumer Council of Fiji and even the World Bank to defray the security for costs on his behalf. Even if it were possible for a single judge to address or decide on the issues raised by the Appellant, he is functus officio, and has no legal competence to deal with the matter.
30. In the end, the Court finds that the Appellant's Notice of Motion is without merit and is hereby dismissed.

### **Bar to Further Filing of Documents**

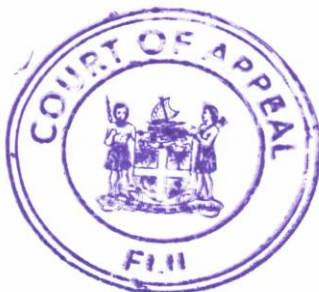
31. It is obvious from the records of this proceedings and the background to the Appellant and in particular, his medical history, that he is most susceptible to filing further applications in respect of this matter.
32. His somewhat litigious nature to file any documents to pursue legal actions which are unfounded to the extent of them being vexatious, must end. It does not deserve any further judicial attention.

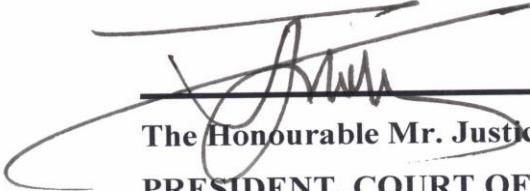
### **Direction**

33. Direction is made, that the Registry cease accepting any further documents for filing by the Appellant without the prior approval of this Court.

### **Orders**

34. This Court, acting in pursuance of the Court's Decision of 7 August 2023, and specifically in accordance with Orders 2 and 3 thereof, order as follows:
  1. *The Appellant's substantive appeal of 26 September, 2022 stands dismissed.*
  2. *No order as to costs, but the \$650.00 part-payment of security of costs by the Appellant is to be reimbursed by the Registry to the Appellant within 21 days.*



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