

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 227 of 2017

BETWEEN : **FIJI ROADS AUTHORITY** a statutory body established under the Fiji Roads Authority Decree No.2 of 2012 as amended, of Fiji Development Bank Building, Level 4, 360 Victoria Parade, Suva, Fiji

PLAINTIFF

AND : **STANTEC NEW ZEALAND LIMITED** (NZBN 9429040356297) a company incorporated in New Zealand and having its place of business at Kadavu House Level 2, 414 Victoria Parade, Suva and having a local agent MWH.

FIRST DEFENDANT

: **MICHAEL STEPHEN RUDGE** of B41/10 Ebor St, Te Aro, Wellington, New Zealand.

SECOND DEFENDANT

: **BRUCE RUXTON** of 324 Brighton Road, Waldronville, Dunedin, 9018, New Zealand

THIRD DEFENDANT

: **ANDREW MACNIVEN CASELEY** of Apartment 11, Montreaux, Apartments, 164 The Terrace, Wellington, New Zealand

FOURTH DEFENDANT

Before : **Banuve, J**

Counsels : **R. Patel Lawyers for the Plaintiff**
Howards Lawyers for the Defendants

Date of Hearing : **7 - 8 May 2024**

Date of Judgement : **8 January 2026**

JUDGMENT

A. Introduction

History

1. In 2009 Stantec New Zealand Ltd (hereinafter Stantec) won a bid to undertake a road development consultancy for the Government of Fiji, although no process was in place, at the time, for the determination of the entity to be engaged. Stantec was engaged, initially as the Central Road Coordination Agency (CCAR),¹ to advise Government.
2. The road infrastructure project was based on a capital investment structure of a magnitude hitherto unknown in Fiji.² Despite no established domestic processes and capacity to monitor implementation of a reform project of this magnitude, pressure was put on Stantec to get the reform started, to kick start and coordinate development. The Defendants role evolved from an initial coordination, advisory, change management one to a direct project management role between 2009 and 2016, before its services were severed. A formal Consultancy Agreement was signed in 2012
3. The challenges faced by Government to formulate and implement the road infrastructure project included the dis-establishment of a central road

¹ CCAR comprised of 1 Director and 2 Stantec employees (Buston and another employee)

² Prior to 2009 Government's road infrastructure management were centrally undertaken by the Department of National Roads of the Public Works Department financed by annual budgetary allocation,, determined along with other Government Ministries annually, and occasionally with finding from external aid providers such as the ADB for specific road projects.

development authority and the creation of the Fiji Roads Authority under the *Fiji Road Authority Decree 2012*, which realigned Government's responsibility from direct construction and maintenance to one of management (land provision, network planning, designing, constructing, maintaining, renewing).³ Due to the challenges it faced in engaging local capacity, (technical, supervisory, project design, contract management) and given the immediacy of the reform required, Government leaned on the First Defendant to guide it through the implementation of the project under various evolving roles. The engagement of the First Defendant as Project Consultant, under contract, commenced in 2012 with major amendments to the contract in 2013, 2014 and 2015 to cater for the increasing scope of works and the commensurate increase in fees levied. Government did not have a ready plan, capital works program or a ready contractual arrangement for the program of this magnitude. It relied on the First Defendant for guidance

4. The Consultancy Agreement, signed in 2012 was adapted from the General Conditions of Contract for Consultancy Services used by ACE New Zealand.
5. A dispute resolution mechanism was agreed to be governed under the ICC Rules, despite its implementation in Fiji under the *International Arbitration Act 2017*, not coming into force until 4 December 2018.⁴
6. A brief chronology of the contractual engagement of the First Defendant as a Project Consultant is required

B. CONTRACTUAL MATRIX-A Summary⁵

Consultancy Agreement

7. On 27 January 2012, the Government of Fiji entered into a consultancy agreement with Stantec for the provision of road engineering services.
8. The Consultancy Agreement was signed by the Prime Minister and Minister for Finance for the Fiji Government and by Mr Caseley⁶ for Stantec.

³ Section 6(a)

⁴ Commencement date for *International Commercial Arbitration Act* [2017]

⁵ Extracted from 'Final Award-Part II THE CONTRACTUAL MATRIX

⁶ Fourth Defendant

9. Under the Agreement, Stantec was to provide the following services (Appendix A)
- ➔ *Provide advice to the Fiji Government on how to transition from the existing DNR structure to a new Fiji Road Authority (FRA).*
 - ➔ *Transition from DNR, to [Stantec], to manage all roading activities on behalf of FRA. This includes:*
 - Maintenance of all national roads and municipal roads (sealed and unsealed)*
 - Reseals and Rehabilitation*
 - Bridge maintenance (management and replacement)*
 - Traffic Planning*
 - Safety*
 - ➔ *Prepare contracts for outsourcing of all physical works (overseas contractors to be preferred with a requirement for local subcontractors)*
 - ➔ *Provide service program management services /design /supervision services for Capital Works programs*
 - ➔ *Develop/improve asset management systems and be accountable for how/where approved budgets are spent.*
 - ➔ *The term of the Consultancy Agreement was five years commencing on 31 December 2016*
 - ➔ *Estimated fees payable under the Agreement was set out in Appendix B.*
10. By a deed of novation dated 24 May 2012, the Consultancy Agreement was novated to FRA so that it was substituted for the Government of Fiji and bound by the provisions of the Consultancy Agreement
11. FRA and Stantec entered into an agreement to amend the Consultancy Agreement on 7 June 2013 (**First Amendment**), due to the increased scope and quantum of works requiring prompt payment.
12. A new Appendix C governing Fees, Expenses and Payments was agreed to replace Appendix B, to be monitored regularly to ensure that the fees and expenses charged are within the parameters of the agreed FRA Budget.

13. FRA and Stantec entered into a further agreement to amend the Consultancy Agreement on 31 July 2014, (**Second Amendment**) due to the increased scope and quantum of works.
14. In June 2015 FRA and Stantec entered into a further amendment agreement (**Third Amendment**)

C. THE DISPUTE

a. The Plaintiff's Case

15. The Contract was amended three times in all, and was terminated by the First Defendant on 23 September 2016, following the failure of the Plaintiff to pay several invoices.
16. FRA instituted Civil Action 227 of 2017, on 4 August 2017 against Stantec, seeking the following relief:
 - (i) A declaration that the 1st Defendant unlawfully terminated the Agreement.
 - (ii) A declaration pursuant to section 147 of the *Commerce Commission Act 2010*, that the agreement was void in whole or part.
 - (iii) Return to the Plaintiff such amount found to have been excessively claimed, and received by the 1st Defendant.
 - (iv) On the alternative, damages on any or all the following basis;
 - i. Fraudulent misrepresentation;
 - ii. Under section 146(1) of the *Commerce Commission Act 2010*; and
 - iii. Under section 147(1) of the *Commerce Commission Act 2010*.

b. The Defendants Case

17. Instead of filing a Defence, the Defendants filed a Summons seeking the following orders on 12 September 2017;
 1. *The proceeding be stayed, pursuant to section 5 of the Arbitration Act, alternatively pursuant to the inherent jurisdiction of the High Court.*

2. *In the alternative to Order 1, the proceedings be stayed until after determination of Civil Action No.324 of 2016, pursuant to Order 4 of the High Court Rules 1988, alternatively pursuant to the inherent jurisdiction of the High Court.*
 3. *Costs.*
18. On 8 December 2017, Stantec filed another Summons seeking leave to amend the Summons for Stay by adding the following prayer;
- The proceedings be stayed and/or referred to arbitration pursuant to section 12 of the **International Arbitration Act [No 44 of 2017]**, alternatively, pursuant to the inherent jurisdiction of the High Court.*
19. The High Court on 1 March 2019, refused the orders sought by Stantec to stay the Writ action and refer the matter to the international arbitration process, and held that both parties were resident with places of businesses in Fiji, and the matter in dispute occurred in Fiji.
20. On 13 March 2019, Stantec filed two summonses in the High Court seeking leave to appeal the judgment of the High Court and have the execution of the judgment stayed until the hearing and determination of the appeal.
21. On 26 July 2019, the High Court refused to grant leave to appeal against its earlier decision.⁷
22. On 17 August 2020, Stantec filed a Summons seeking to stay High Court Action No 227 of 2017, seeking an order that the dispute be allowed to proceed to arbitration before the ICA. In the alternative, Stantec sought to stay the proceedings pursuant to section 5 of the *Arbitration Act [Cap 38]*
23. On 12 June 2020, the Court of Appeal issued a cumulative ruling in Civil Appeal No ABU017 of 2018 (HBC No 249 of 2016)⁸ and Civil Appeal No ABU074 of 2019 (HBC No 227 of 2017)⁹ wherein it granted the following orders;

⁷ Pursuant to a Court of Appeal decision of 28 February 2020 the Plaintiff agreed to have a mediation in Fiji which did not result in resolution.

⁸ FRA v STANTEC NEW ZEALAND –Civil Appeal No ABU 017 OF 2018

⁹ STANTEC NEW ZEALAND & 3 Others v FRA-Civil Appeal No ABU 024 of 2019

1. *Leave to Appeal application by the Appellant in ABU 017/2018 against the High Court Judgment dated 26 April 2017, is allowed.*
 2. *Leave to appeal the High Court judgment dated 1 March 2019 by the Appellants in ABU 074/2019 is allowed.*
 3. *Application for a “stay” by the Appellants in ABU 074/2019 is refused.*
 4. *There shall be no costs in the said two Applications.*
 5. *Parties are directed to take steps as required, by law, to prosecute their respective appeals.*
 6. *The Registrar is required to take steps as stated in paragraph [47]¹⁰ above.*
24. Despite the specific finding of the Court of Appeal, that the parties take steps, as required by law to prosecute their respective appeals, Stantec submitted an application for arbitration to the International Court of Arbitration.
25. The Defendants rationale for doing so may be extracted from relevant paragraphs of the *Affidavit in Reply of Josephine Caren Lewis (In Support of Summons for Stay)*, filed on 28 October 2020;
16. *THAT at paragraph 19 of the Plaintiff’s Affidavit, the Plaintiff alleges that there is no change of circumstances warranting a fresh stay application, and that the Court of Appeal decision refused a stay of HBC 227/2017. This is incorrect:*
 - a. *For the reasons stated above at paragraph 5, the Court of Appeal did not refuse to stay HBC 227/2017.*
 - b. *Since Seneviratne’s decision on 1 March 2019 in HBC 227/2017 circumstances have changed, in that:*
 - i. *The mediation was unsuccessful;*
 - ii. *The matter has been validly submitted to arbitration;*

¹⁰ **[47] In view of the fact that the main dispute is still on foot (that is the legality or otherwise of the termination of the Agreement vide paragraph [5] and [44] of this Ruling, the Registrar is directed to have these two Appeals listed for hearing by the Full Court on the earliest possible date. The Registrar is also directed to submit the Record in ABU024/2019 along with ABU017/2018 at the Full Court hearing.**

- iii. *The arbitrator has made interim orders restraining the Plaintiff from pursuing court proceedings for matters that are covered by the arbitration agreement [JL 09(Procedural Order 5),p 33-69*
 - iv. *The arbitrator's interim orders are binding on the Plaintiff and should be given effect by Fiji courts on the basis that Fiji has acceded to the United Nations on the Recognition and Enforcement (the 'New York Convention').*
17. THAT at paragraph 19(iii)-(iv) of the Plaintiff's affidavit, the Plaintiff alleges that the Defendants improperly filed a request for arbitration, and that the Plaintiff had no knowledge of this move by the Defendants. This is incorrect:
- a. *According to the ICC Arbitration Rules-which the parties agreed to in cl 10.4 of the Agreement –service of arbitration proceedings is effected by the ICC.*
 - b. *The Plaintiff validly filed the request for arbitration with the ICC on 6 December 2020.*
 - c. *The arbitration was properly served on the FRA by the ICC on or about 16 March 2020 [JL 10,p70-73]*
 - d. *There was no order of any Fijian court prohibiting the Defendants from exercising their contractual rights under cl 10.4 to submit the dispute to arbitration.*
 - e. *The Defendants actions in submitting the dispute to arbitration under clause 10.4 is entirely consistent with both the decision of this Court (finding that cl 10.3 did not make mediation a precondition to the commencement of arbitration) and was also entirely consistent with the Defendant's position before the Court of Appeal at the hearing on 6-7 February 2020 (where the Defendant's argument for leave to appeal against Seneviratne, J's denial of a stay of HBC 227/2017 was premised on the fact that the dispute resolution provisions under the Agreement had not been adhered to, and precluded the Plaintiff from filing proceedings in Court before those provisions were satisfied. The Defendants have consistently maintained and advanced the position that the Fiji courts have no jurisdiction and that the dispute should be determined through arbitration in accordance with cl 10.4 of the Agreement.*

D. ANALYSIS

26. The Court had set out earlier¹¹ the various applications filed by the parties leading to the cumulative ruling of the Court of Appeal cited.¹² There was a specific direction in paragraph 47, of the ruling, that in view of the fact that the main dispute is still on foot, (that is the legality or otherwise of the termination of the Agreement), the Registrar was directed to have the two appeals listed for hearing by the Full Court on the earliest possible date, and that the Records in both matters be submitted at the full hearing.¹³

27. The Defendants filed a **Notice and Grounds of Appeal** on 12 October 2020. The grounds of appeal are;

1. *The learned judge erred in law and in fact in failing to refer to and give effect to clause 10.3 of the Agreement, which provides;*

10.3 Neither party can commence any other dispute resolution or legal proceedings with the exception of an application for an injunction for urgent relief until and unless the mediation process has been completed and the parties have failed to reach an agreement for settlement of the dispute. This application shall be made in the High Court of Fiji.

2. *The Learned Judge erred in law and fact in holding that there “there is no absolute requirement for the parties to refer any dispute for mediation or arbitration at [6] when in fact clause 10.3 makes reference to mediation, and completion of the mediation process, a mandatory precondition to the commencement of any other dispute resolution or legal proceedings (including the High Court of Fiji, save for urgent relief)*

3. *The Learned Judge recognized that mediation has to be done of consent (at [7]) but erred in law and fact by failing to recognize that;*

i. In clauses 10.2 and 10.3 of their Agreement the parties have consented to mediation;

¹¹ Paragraphs 17,18,20,24 herein

¹² Paragraph 25 herein

¹³ On 21 January 2021, the Defendants filed a Summons seeking to amend the earlier summons filed on 17 August 2020, Stantec again filed a further summons on 21 January 2022 to amend their earlier Summons. The Defendants wanted to add a further order seeking to enforce the proceedings pursuant to section 5 of the Arbitration Act

- ii. *In clauses 10.3 of the Agreement the parties have, by consent, made completion of the mediation a mandatory precondition to the commencement of any other dispute resolution or legal proceedings;*
 - iii. *Stantec has referred the dispute in mediation in accordance with the parties agreement, but the FRA has refused to facilitate the appointment of a mediator and has in fact obstructed that process;*
 - iv. *The FRA has filed HBC 227 of 2017 in breach of clause 10.3 of the Agreement because the mediation process has not been completed (or initiated)*
4. *The Learned Judge erred in law and fact in finding that the word 'may' in clauses 10.2 and 10.4 means that the court has no power to compel the parties to refer a dispute for arbitration.*
5. *The Learned Judge erred in law and fact in refusing to grant a stay under the Arbitration Act [Cap 38]. When-*
- i. *In clause 10.3 of the Agreement the parties agreed that they would not commence any legal proceedings until and unless the mediation process has been completed;*
 - ii. *The proceedings in HBC 227/2017 was filed before the mediation process was completed or initiated;*
 - iii. *The proceedings should be stayed in order to enable the mediation process to be completed and then to enable either of the parties to elect to refer the matter to arbitration.*
6. *The Learned Judge erred in law and fact in refusing to grant a stay under the inherent jurisdiction of the Court when:*
- i. *In clause 10.3 of the Agreement the parties agreed that they would not commence legal proceedings until and unless the mediation process has been completed;*
 - ii. *The proceedings in HBC 227/2017 was filed before the mediation process has been completed and the mediation process has not been completed or initiated.*

- iii. *The proceedings should be stayed because it has been filed in breach of the parties agreement and in order to enable the mediation process to be completed and then enable either of the parties to elect to refer the dispute to arbitration.*
28. On 12 April 2022, FRA filed a Summons to Set Aside the Arbitral Award delivered by the ICA.
29. On 4 August 2022 Stantec filed a Summons seeking to enforce the Final Arbitral Award which is opposed by FRA.
30. Pursuant to the specific order of the Court of Appeal on 12 June 2020, the two appeals Civil Appeal ABU017/2018 (HBC 249 of 2016), and Civil Appeal ABU 074/2019 (HBC 227 of 2017), were to be listed for hearing before the Full Court, at the earliest possible date.
31. Consequent to the said orders the Defendants filed comprehensive grounds of appeal in Civil Appeal ABU074/2019 (HBC 227 of 2017), on 12 October 2020 which have been outlined. Of note is the specific ground seeking that proceedings be *stayed* because it has in effect been filed in breach of the parties agreement and in order to enable the mediation process to be completed, to enable either of the parties to elect to refer the dispute to arbitration.¹⁴ There is a dated slant in the nature of the grounds of appeal filed by the First Defendant on 12 October 2020, because at the relevant time it was already immersed in arbitration proceedings.¹⁵ The appeal has not been heard as yet.
32. Despite filing appeal grounds, in compliance with the Court of Appeal directive of 12 June 2020, (on the expeditious prosecution of the two appeals), the Defendant submitted an application for arbitration to the International Court of Arbitration.¹⁶
33. The parties have filed written submissions in this proceedings to clarify their respective positions which the Court has found useful in reaching its determination.

¹⁴ Ground of Appeal 6(iii)

¹⁵ Award of the International Court of Arbitration in **Case No 24947/HTG issued** on 4 November 2020

¹⁶ A **Partial Award (Claimant's Application for Determination of Jurisdiction) dated 4 November 2020 and an Addendum (Addendum and Decision on Costs) dated 5 August 2022-In the Matter of ICC Arbitration 24947/HTG** were issued by the International Court of Arbitration.

34. The rationale for the Defendants submitting the dispute to international arbitration, despite the subsistence of the cumulative appeals before the Fiji Court of Appeal, are
- (i) The Court of Appeal did not refuse stay;
 - (ii) Since the High Court issued its decision in Civil Action HBC 227 of 2017, (and despite an appeal subsisting before the Court of Appeal against that decision), *circumstances have changed* that warrant the Defendants submitting the dispute to arbitration specifically, that the matter has been validly submitted to arbitration and that the arbitrator has made interim orders restraining the Plaintiff from pursuing court proceedings for matters that are covered by the arbitration.
35. The Court will review the rationale of ‘changed circumstances’ which the Defendants state justify resort to arbitration (despite the subsistence of appellate proceedings before the Fiji courts).
36. A relevant issue is whether the submission of a dispute to arbitration under the *International Arbitration Act 2017*, curtails the review of the dispute by the Courts, *regardless of the fact parties hitherto had submitted the dispute to the appellate jurisdiction of the Courts of Fiji*. A related issue is whether an inferior court can deal with the request to affirm the Arbitration Award, regardless, that an appellate court is seized of the dispute as allowed under the Act, and directions have been issued by the appellate court, for urgent prosecution of the appeals.
37. A primary rationale for the passage of the *International Arbitration Act 2017*, (and the *Investment Act 2021*), is the protection of foreign investors by limiting recourse to the Court and to facilitate reference to internationally accepted principles aimed at promoting uniform understanding of the *Model Law on International Arbitration 1985*.¹⁷ (‘Model Law’)

¹⁷ The *International Arbitration Act 2017* was enacted in order for Fiji to comply with its obligations as a state party to the *New York Convention of the Recognition and Enforcement of Foreign Arbitral Awards 1958* which it ratified on 26 December 2010.

38. Limitation of recourse does not remove all court involvement, and the Model Law envisages court involvement in the following circumstances, firstly, a group¹⁸ comprising issues of *appointment, challenge and termination of the mandate of an arbitrator* (articles 11, 13 and 14), *jurisdiction of the arbitral tribunal* (article 16) and *setting aside of the arbitral award* (article 34).
39. Beyond the instances specified in the Model Law, (and adapted without modification in the *International Arbitration Act 2017*), no court shall intervene in matters covered under the Act, and matters not covered under it.
40. Given the peculiar circumstance of this case (HBM 227 of 2017), section 12 of the *International Arbitration Act 2017* needs review to elicit whether or not it prohibits recourse to the Court.

Arbitration agreement and substantive claim before court

12-(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued and an award may be made, while the issue is pending before the court.

(3) If the court refuses to refer the parties to arbitration, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings, in respect of any matter shall have no effect in relation to those proceedings.

(4) If the court refers the parties to arbitration under subsection (1), it shall make an order staying the legal proceeding in that action.

¹⁸ see: **Explanatory Note to the Model Law**. The Court will not discuss the second group comprising issues of court assistance.

(5) A decision of the court to refer the parties to arbitration under subsection (1) shall be subject to no appeal.

(6) For any appeal from any decision of a court to refuse to refer the parties to arbitration under subsection (1), leave of the court making that decision shall be required.

(7) A decision of the court to refuse leave under subsection (6) shall be subject to no appeal.

41. The Defendants had filed a Summons seeking the following orders on 12 September 2017, instead of filing a Defence to the Claim served on it in Civil Action No 227 of 2017;

1. The proceedings be stayed pursuant to the Arbitration Act, alternatively pursuant to the inherent jurisdiction of the High Court.

2. In the alternative to Order 1, the proceedings be stayed until after determination of Civil Action No. 324 of 2016, pursuant to Order 4 of the High Court Rules 1988, alternatively, pursuant to the inherent jurisdiction of the High Court

3. *Costs*

On 8 December 2017, the Defendants filed another Summons seeking leave to amend the Summons for Stay by adding the following prayer;

1. The proceedings be stayed and/or referred to arbitration pursuant to section 12 of the International Arbitration Act [No 44 of 2017], alternatively, pursuant to the inherent jurisdiction of the High Court.

42. On 1 March 2019, the High Court refused the application to stay the Writ action and refer the matter to international arbitration.

43. On 13 March 2019, Stantec filed two summonses in the High Court seeking leave to appeal the judgment of the High Court and to have the execution of the judgment stayed until the hearing and determination of the appeal.

44. On 26 July 2019, the High Court refused to grant leave to appeal against its earlier decision.
45. However, on 12 June 2020, pursuant to a further application for stay and for resort to arbitration, the Court of Appeal, in a cumulative ruling, granted leave to appeal in Civil Appeal No ABU017 of 2018 and ABU074 of 2019, with stay being refused, with a specific direction that the two appeals be listed for hearing at the earliest possible date before the Court of Appeal
46. Sections 12(6) and (7) of the *International Arbitration Act* [2017] are relevant;
- (6) For any appeal from any decision of a court to refuse to refer the parties to arbitration under subsection (1), leave of the court making that decision shall be required.*
- (7) A decision of the court to refuse leave under subsection (6) shall be subject to no appeal*
47. The Court notes that pursuant to section 12(6) of the Act, the dispute as amplified in the **Notice and Grounds of Appeal** filed by the Defendants on 12 October 2020 is properly before the Court of Appeal, after leave was granted on 12 June 2020.
48. In short, the Court has jurisdiction to deal with the dispute as governed under section 12(6) of the Act. It constitutes an allowable instance of recourse under the ‘first group’ allowed under the *Model Law on International Arbitration 1985*,¹⁹ and enacted in section 12 of the *International Arbitration Act* [2017].
49. On balance, the Court does not agree with the position taken by the Plaintiff that the High Court’s decision to refuse leave to appeal to the Defendants (to refer the dispute to arbitration...etc) as final, because of section 20(a) of the *Court of Appeal Act* [Cap 12], which allows the Defendants as a ‘party aggrieved’ by the refusal of leave to appeal to have the matter determined by a single judge of the Court of Appeal, as was done in this instance in the cumulative ruling of 12 June 2020.²⁰

¹⁹ See paragraph 38 herein

²⁰ Note Rule 25 of the *Court of Appeal Rules* [Cap 12] on stay of execution

50. The Defendants have obtained leave from the Court of Appeal pursuant to section 12(6) of the *International Arbitration Act* 2017 to pursue an appeal against the decision of this Court to refuse its request to refer the dispute to mediation and arbitration under the *Arbitration Act* [Cap 38] or, the *International Arbitration Act* [2017]. (underlining for emphasis)
51. The Court notes that whilst parties to arbitration agreements make a conscious decision to limit recourse to court over finality and expediency of the arbitral process²¹, court involvement is allowed in specific instances such as under section 12 of the *International Arbitration Act* [2017]
52. In summary, the Court is of the view that there is proper recourse to the Court in this instance pursuant to section 12(6) of the Act, despite the subsistence of an arbitration clause in the *Agreement for Engagement of Consultant: Provision of Road Management Services (2012)*,
53. Further, a direction for urgent hearing before the Court of Appeal has been pending since 12 June 2020.
54. The Court is not convinced, on the balance of probabilities, that there is a change in circumstance that warrant submission of the dispute to arbitration, as the Defendants assert, in that mediation was unsuccessful and the matter has been validly submitted to arbitration²² given the Court's view that there is a proper submission by the parties of the dispute to the jurisdiction of the Courts pursuant to section 12 of the *International Arbitration Act* [2017], which limits resort to arbitration, unless ordered otherwise by the Court of Appeal.
55. Pursuant to rule 25(1)(a) of the *Court of Appeal Rules* [Cap 12] the Defendants may also enliven their application for stay before the Court of Appeal and to that extent the Court agrees that the issue of stay is not moot, as asserted by the Defendants.
56. It is pertinent for the Court to point out that granted the ruling of the Court of Appeal, a superior court, of 12 June 2020, that leave to appeal in the cumulative appeals in Civil Appeal ABU017 of 2018 and ABU074 of 2019 and the appeals be

²¹ Greenberg, Kee, Weeramantry- *International Commercial Arbitration-An Asian Pacific Perspective*, Cambridge University Press (First Published 2011)

²² see affidavit of **Josephine Karen Lewis (in f Summons for Stay)** filed on 28 October 2020.

heard urgently, it cannot see how it can possibly accede to any of the orders sought by the parties without the Court of Appeal hearing and making a decision on the appeals.

57. Specifically, the composite orders sought by the parties are as follows;

1. The First Defendant, Stantec and the Second to Fourth Defendants (Former Employees) (together the Defendants) apply to this Honorable Court for orders:

(a) Recognizing the Final Award in ICC Arbitration 24947/HTG dated 17 January 2022 (Final Award) pursuant to section 53 of the *International Arbitration Act 2017*, or alternatively, under s 13 of the *Arbitration Act 1965*;

(b) As a result of (a), that proceeding Civil Action No 227 of 2017 brought by the Plaintiff (FRA) be stayed because:

(i) The issues in this proceeding have already been litigated and finally determined in the arbitration proceedings (issue estoppel);

(ii) Re-litigating the same claims in this Court is an abuse of the Court's process.

2. The Plaintiff (FRA) applies for orders:

(a) Issuing default judgment against the Defendants in Civil Action 227 of 2017, and

(b) Setting aside, pursuant to the Court's inherent jurisdiction':

(i) The Partial Award in ICC Arbitration in ICC Arbitration 24947/HTG (Partial Award) dated 4 November 2020

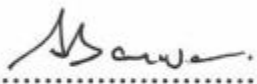
(ii) The Final Award.

58. The Court cannot possibly see a way for it to grant the composite orders sought by the parties, given the dispute is properly before the Court of Appeal,²³ for which comprehensive appeal grounds have been filed by the Defendants on 12 October 2020. This Court is limited by what it can do in the circumstance, and at the least is bound by the *stare decisis*²⁴ doctrine to apply the ruling of the Court of Appeal of 12 June 2020.
59. The Court would point out that it makes no determination on any of the grounds raised by the Defendants on appeal, indeed it does not have the authority to so, including the application of the provisions of the *International Arbitration Act* [2017] to the substantive dispute, other than in the instance covered under section 12 of the Act.
60. It can only direct that the parties make a concerted effort to have the cumulative appeals heard by the Court of Appeal.

FINDINGS:

1. **The composite orders sought by the parties as outlined in paragraph 57 herein are refused, pending the determination of the appeals in Civil Appeal ABU017/2018 and Civil Appeal ABU074/2019 by the Court of Appeal.**
2. **Parties to bear their own costs.**




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Savenaca Banuve
Judge

Dated at Suva this 08th day of January 2026.

²³ Including the judgment in default sought against the Defendants by the Plaintiff, once leave to appeal was granted by the Court of Appeal

²⁴ *Lautoka City Council v A.Narsey Properties Ltd*[2014] FJCA 25;abu019.2012(5March 2014)