

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 257 of 1979

10/  
000102

BETWEEN:

SAILASA CAKAU

Plaintiff

A N D :

CAUTATA BUS COMPANY

Defendant

Mr. S. Matawalu

Counsel for the Plaintiff

R U L I N G

The plaintiff sued the defendant company for damages in respect of a bus accident. The defendant was the owner of the bus involved. In the absence of any appearance judgment was given against the defendant for damages to be assessed. A date was fixed for the assessment of damages and at that hearing the defendant was represented by its manager or director. Apparently no objection to the judgment was raised at that time, but now the same director who appeared for the company at the assessment hearing is applying to have the judgment set aside, the main ground being that the defendant could not proceed adequately with the action since the driver of the bus at the material time was then serving in the Lebanon. The defendant may or may not have a valid defence to the action, but nowhere in the directors' affidavit is any reason given why appearance was not entered before, or why no objection was raised at the time of the assessment of damages. The only reason why this present summons was taken out seems to be because a winding up petition has been taken against the company. It may be that the defendant has been wrongly cited in the petition and <sup>may</sup> this/cause difficulty to the plaintiff in attempting to execute judgment, but that is a difficulty the plaintiff must face himself.

This application is dismissed with costs, to be taxed if not agreed.

(sgd.)

G. O. L. Dyke

JUDGE

LAUTOKA,  
21st November, 1980