

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

MISCELLENEOUS ACTION NO. 12
OF 2007

BETWEEN: UDAY RAJ SEN AND VIREN KAPADIA Appellants

AND : ATTORNEY GENERAL Respondents

Hearing ex parte: 23 April 2007

Ruling : 1 May 2007

Counsel for applicants: Nagin

RULING

- [1] On 9 March 2007, Pathik J fined the first applicant \$1,000 for contempt in the face of the court and directed that the ruling be sent to the Fiji Law Society to take such action as it deemed appropriate in respect of the second applicant for unprofessional conduct.
- [2] The alleged contempt had arisen in the course of civil proceedings in which the first applicant was the general manager and the second applicant the lawyer of the first defendant. It was based on the use of the phrase "judge shopping" in an affidavit sworn by the first applicant.

- [3] The applicants have filed an ex parte notice of motion effectively seeking guidance on whether or not this appeal requires leave of the Court. They request orders:

“That the above named intended first and second appellants have a right of appeal to the Court of Appeal against the decision of Mr Justice D Pathik delivered on 9 March 2007 in Suva High Court Action 6 of 2007;

Alternatively that the first and second appellants be granted leave to appeal on such terms as may seem just to this Honourable Court including by joining the intended first and second appellants as a party to Action 6 of 2007.”

- [4] Thus, the real issue is whether the applicants need to seek to be added as parties to the original action or whether they have a right of appeal per se.

- [5] Mr Nagin cites the case of *Re Charles Gordon*; Civil Appeal No 49 of 1975, 16 March 1976, in which this Court accepted that a contempt in the face of the court is a criminal contempt and that an appeal lies as of right under the civil jurisdiction of this Court.

- [6] In the present case, although the ruling on contempt was instituted as part of the original civil proceedings, the learned judge starts with the words:

“This is my ruling on contempt proceedings against Virendra Kapadia ...and Uday Raj Sen ...”

- [7] He then passes on to deal with the facts and continues:

“This paragraph 12 I found was contempt in the face of the court so I adjourned the matter to 5 February 2007 to hear both Mr Kapadia and Sen to show cause on contempt hearing in court.”

- [8] He deals with the evidence given and makes the final order against which the applicants seek to appeal.

- [9] Section 12 of the Court of Appeal Act provides that an appeal shall lie in any cause or matter, not being a criminal proceeding, to the Court of Appeal "from any decision of the High Court sitting in first instance".
- [10] This was a decision in a clear cause of action to which the applicants were parties. There is no need to apply to be joined and no leave is required to appeal to this Court.
- [11] In those circumstances the applicants seek an extension of time to appeal to allow the notice of appeal to be filed. I give leave to file notice and grounds of appeal within 7 days of this ruling.



A handwritten signature in dark ink, appearing to read "Gordon Ward", is written above the printed name.

Gordon Ward
PRESIDENT