

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

Civil Appeal No: HBA 5 of 2008

**BETWEEN:**            **ISLAND GLASS & MIRROR LIMITED**

*Appellant*

**AND:**                 **DOMINION INSURANCE LIMITED**

*Respondent*

**Coram:**                **Hickie J**

**Date of Hearing:**    **24 February 2009**

**Date of Ruling:**    **24 February 2009**

**Appearances:**

**Mr R.K. Naidu for the Appellant**

**Mr G. O'Driscoll for the Respondent**

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**RULING ON COSTS**

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**A. BACKGROUND**

- [1] This is a ruling matter as to costs where an Appeal was withdrawn.
- [2] The original dispute concerned an insurance policy which was heard in the Magistrates' Court at Suva with judgment delivered in favour of the insurance company on 12 March 2007.
- [3] The Plaintiff then filed in the High Court at Suva an appeal against that decision.
- [4] The following appearances are recorded in the High Court at Suva file as follows:

1. **18 March 2008** – first appearance before the Master – orders made as to timetable or filing of submissions with matter adjourned until 28 April 2008 to fix a hearing date;
2. **28 April 2008** – second appearance before the Master – further orders made for Appellant to file and serve written submissions with matter adjourned until 26 May for mention;
3. **26 May 2008** – third appearance before the Master – order made for Respondent to file and serve written submissions with matter adjourned until 20 June for mention;
4. **20 June 2008** – fourth appearance before the Master – no appearance for Appellant, further order made for Respondent to file and serve written submissions by 27 June 2008 with matter adjourned until 30 June for mention;
5. **30 June 2008** – fifth appearance before the Master – adjourned until 14 July 2008 before Hickie J to fix hearing date;
6. **15 July 2008** – first appearance before me – matter set down for hearing on 11 November 2008;
7. **11 November 2008** – second appearance before me - by consent (at request of Solicitors for Appellant) hearing vacated, matter adjourned for mention on 13 January 2009;
8. **13 January 2009** – third appearance before me – first appearance by Mr R.K. Naidu on behalf of the Appellant advising that his firm had just taken over the matter the day before and was seeking an adjournment of 14 days to obtain instructions, consented to by Counsel appearing for Respondent – matter adjourned for mention on 17 February 2009 with Appellant liberty to file supplementary submissions by 27 January 2009 and Respondent liberty to file supplementary submissions in reply by 10 February 2009;
9. **17 February 2009** – fourth appearance before me - Mr R.K. Naidu sought to withdraw Appeal – by consent leave to withdraw Appeal granted and matter adjourned until 24 February 2009 on question of costs;
10. **24 February 2009** – fifth appearance before me - Mr R.K. Naidu sought an Order for his client to pay \$400 costs, Mr G. O’Driscoll for the Respondent sought \$1200 costs on a party-party basis.

[5] Therefore, there have been in total ten (10) appearances recorded in the High Court at Suva file in relation to this matter.

## **B. SUBMISSIONS**

### **1. Appellant's Submissions**

[6] At the hearing, Counsel for the Applicant submitted in summary as follows:

- (a) That whilst there may have been 10 appearances, most of these were incurred prior to his firm's involvement in the matter;
- (b) That although the Respondent had filed written submissions, he questioned whether many of them may have been repetitious;
- (c) That appeals from the Magistrates' Court to the High Court are normally in the range of \$250-\$400 and in support he tendered –
  - (i) ***Vosaniveibuli v Brighton Garments Ltd*** (Unreported, High Court of Fiji at Suva, Appellate Jurisdiction, Civil Appeal No.HBA 13 of 2004, 18 February 2005, Singh J); Paclii: [2005] FJHC 28, <http://www.paclii.org/fj/cases/FJHC/2005/28.html>) – appeal dismissed with costs fixed in the sum of \$300 to be paid in 14 days;
  - (ii) ***Country Wide Construction Limited*** (Unreported, High Court of Fiji at Lautoka, Appellate Jurisdiction, Civil Appeal No.HBA 12 of 2005, 10 March 2006, Connors J) – appeal allowed in part with costs fixed in the sum of \$250;
  - (iii) ***Khan v Labasa Town Council*** (Unreported, High Court of Fiji at Labasa, Appellate Jurisdiction, Civil Appeal No.1-6 of 2005, 22 December 2006, Pathik J) – appeal allowed in part with costs payable to the Respondent fixed in the sum of \$400 payable within 21 days;
  - (iv) ***Tuvaduadua v Chand and Anor*** (Unreported, High Court of Fiji at Suva, Appellate Jurisdiction, Civil Appeal No.HBA 2 of 2008, 24 June 2008, Singh J); Paclii: [2008] FJHC 129, <http://www.paclii.org/fj/cases/FJHC/2008/129.html>) – appeal dismissed with costs fixed in the sum of \$400.

### **2. Respondent's Submissions**

[7] Counsel for the Respondent submitted in summary in reply as follows:

- (a) That normally appeals from the Magistrates' Court involve 2-3 attendances including the hearing – here there have been 10 appearances with most due to the

Appellant not the Respondent and none of the four cases tendered by the Counsel for the Appellant reveal such numerous attendances ;

(b) That, in addition, the Respondent filed written submissions and prepared for the hearing last November which was vacated at the request of the Appellant;

(c) That the Respondent's costs on a party-party basis are –

(i) \$100 per attendance x 10 = \$1000;

(ii) \$150 for taking instructions;

(iii) \$100 for approval of documents;

(iv) \$1250 in total but asking for \$1200 which is quite reasonable.

[8] When the Court indicated that it was fixing costs at \$1000, Counsel for the Appellant asked for written reasons to be provided, hence this published Ruling.

## C. CONCLUSION

### 1. The Law

[9] Finnigan J noted in *Scofield v Hollows* (Unreported, High Court of Fiji at Lautoka, Civil Action No.HBC 73 of 2005, 30 November 2005), that challenges on taxation should be as to reasonableness. In that case, after challenge, he allowed costs of \$7,480.00 incurred on an interlocutory application as reasonable.

[10] As Byrne J noted earlier in *Anderson v Salaitoga* [1999] 45 FLR 241; Paclii: [1999] FJHC 104, 3 September 1999, <http://www.paclii.org/fj/cases/FJHC/1999/104.html>):

*“The principles governing party and party costs are set out in the Supreme Court Practice 1976 Vol. 1 Order 62 Rule 28 (note 62/28/3) thus:*

*“It is of great importance to litigants who are unsuccessful that they should not be oppressed by having to pay an excessive amount of costs. The costs chargeable under a taxation between party and party are all that are necessary to enable the adverse party to conduct the litigation, and no more. Any charges merely for conducting litigation more conveniently may be called luxuries, and must be paid by the party incurring them.”*

In Anderson, Byrne J ruled that he considered “*the employment of counsel from overseas in this case, let alone Queen’s Counsel, was, with respect, a luxury for which the Defendant should not have to pay*”.

[11] Thus, in short, the Court will allow costs on party-party costs upon what it considers to be reasonable.

### **Findings**

[12] Taking into account the above, the findings of the Court are:

- (a) That there have been 10 appearances on this matter, the majority incurred due to the conduct of the Appellant not the Respondent;
- (b) That the hearing of the Appeal was set down for 11 November 2008 which was vacated at the request of the Appellant;
- (c) That the costs as set out orally by Counsel for the Respondent are reasonable but rather than attending to formal taxation, the Court exercises its discretion pursuant to Order 62 rule 3 of the *High Court (Amendment) Rules* 1998, to summarily fix such costs on a party-party basis as reasonable in the amount of \$1,000.00.

### **2. Orders**

[13] **The Court orders as follows:**

- 1. That the Appellant is to pay the costs of this withdrawn Appeal on a party-party basis fixed at \$1,000 payable within 28 days.**

Thomas V Hickie

**Judge**

### **Solicitors:**

**Naidu Law, Barristers & Solicitors, Suva**

**O’Driscoll & Co, Barristers & Solicitors, Suva, City Agents for AK Lawyers, Ba**