IN THE SUPREME COURT OF FIJI

PRACTICE DIRECTION NO. 1 OF 1986

APPEALS (SKELETON ARGUMENTS)

SIR TIMOCI TUIVAGA, CJ:

As from 13th January, 1986, counsel in appeals before the Supreme Court (now the High Court) and the Court of Appeal should submit "skeleton arguments" for the hearing of the appeal.

"Skeleton arguments" are, as their name implies, a very abbreviated note of the argument and in no way usurp any part of the function of oral argument in court. They are an aide-memoire for convenience of reference before and during the hearing of the appeal.

The scope of "skeleton arguments" will of course depend upon the nature and peculiarities of the appeal concerned.

Before the appeal is called on, the judges will normally have read the notice of appeal, any respondent's notice and the judgment appealed from. The purpose of this pre-reading is not to form any view of the merits of the appeal, but to familiarise themselves with the issues and scope of the case and thereby avoid the necessity for a lengthy, or often any opening of the appeal. This process is assisted by the provision of "skeleton arguments" which are more informative than a notice of appeal or a respondent's notice, being fuller and more recently prepared.

During the hearing of the appeal itself, "skeleton arguments" enable much time to be saved because they reduce or obviate the need for the judges to take a longhand note, sometimes at dictation speed, of the submissions and authorities and other documents referred to. Furthermore, in some circumstances, a skeleton argument can do double duty not only as a note for the judges but also as a note from which counsel can argue the appeal. The usual procedure is for the "skeleton argument" to be prepared shortly before the hearing of the appeal.

"Skeleton arguments" should comply with the following requirements –

1. They should contain a numbered list of the points which counsel proposes to argue, stated in no more than one or two sentences, the object being to identify each point, not to argue it or to elaborate upon it.

2. Each listed point should be followed by full references to the material to which counsel will refer in support of it, that is, the relevant pages or passages in authorities, bundles of documents, affidavits, transcripts and the judgment under appeal.

3. They should also contain anything which counsel would expect to be taken down by the court during the hearing, such as propositions of law, chronologies of events, lists of dramatis personae, and, where necessary, glossaries of terms. If more convenient, these can of course be annexed to the "skeleton arguments" rather than being included in them. Both the court and opposing counsel can then work on the material without writing it down thus saving considerable time and labour.

4. They should be sent to the court as soon as convenient before the hearing. It is however more valuable if provided to the court in advance. A copy should of course at the same time be sent or handed to counsel on the other side.

It cannot be over-emphasised that 'skeleton arguments" are not formal documents to the terms of which anyone will be held. They are simply a tool to be used in the interests of greater efficiency. Experience also has shown that they can be valuable too. It is hoped that it will be possible to refine and extend their use.

Finally, even in simple appeals where "skeleton arguments" may be unnecessary, counsel should provide notes of any material such as have been mentioned which would otherwise have to be taken down by the court more or less at dictation speed, thereby saving considerable time and labour.

They are not envisaged to apply to criminal appeals against sentence only.

At Suva
2nd January, 1986