EXTRAORDINARY

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 34 MONDAY, 31st OCTOBER 2016

[LEGAL NOTICE NO. 84]

CONSTITUTION OF THE REPUBLIC OF FIJI

Supreme Court Rules 2016

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IN exercise of the powers conferred upon me by section 103(1) of the Constitution of the Republic of Fiji, I hereby make these Rules—

PART 1—GENERAL

Short title and commencement

- 1.—(1) These Rules may be cited as the Supreme Court Rules 2016.
- (2) These Rules come into force on a date or dates appointed by the Chief Justice by notice in the Gazette.

Interpretation

- 2. In these Rules, unless the context otherwise requires—
 - "appeal" means an appeal to the Supreme Court after leave has been granted under section 98(4) of the Constitution;
 - "Constitution" means the Constitution of the Republic of Fiji;
 - "Court" means the Supreme Court;
 - "decision" includes an order, judgment or decree;
 - "High Court Rules" mean the High Court Rules 1988;
 - "judgment" includes any decree, order, sentence, ruling, decision, or finding of the Court of Appeal or of any Court, judge, master, magistrate or Registrar of the Supreme Court;
 - "Petition" means an application for leave to appeal under section 98(4) of the Constitution;
 - "Petitioner" means the party applying for leave to appeal;
 - "President" means the President of the Supreme Court;
 - "record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before the Supreme Court on the hearing of a Petition, referral or any application which by these Rules may be made to the Supreme Court;
 - "Registrar" means the Registrar of the High Court who shall also be the Registrar of the Supreme Court;

"Respondent" includes Intervener; and

"Supreme Court" means the Supreme Court established under section 98 of the Constitution.

Right of audience

3. Any party to a Petition for leave to appeal under these Rules may appear before the Court either in person or by a legal practitioner of his or her own choice.

Petition for leave to appeal and form of Petition

- 4.—(1) An application to the Court for leave to appeal under section 98(4) of the Constitution must be by way of Petition.
 - (2) A Petition under paragraph (1) must—
 - (a) state succinctly and clearly all facts it may be necessary to state relating to the Petition;
 - (b) deal with the merits of the case only so far as is necessary to explain the grounds upon which leave to appeal is sought; and
 - (c) be signed by the Petitioner's legal practitioner or by the party if the party appears in person.
- (3) A Petition must be supported by an affidavit verifying the allegations made in the Petition.
- (4) For the purposes of this Rule, Forms 6 and 7 set out in Atkin's Encyclopedia of Court forms (Second Edition) Volume 5 (1984 issue) at page 189 *et sequentes* must be used with any modifications or variations the circumstances of the particular case may require. These forms are set out in Schedule 1.

Time for lodging Petition and service

- 5. A Petition and affidavit in support must—
 - (a) be lodged at the Court registry within 42 days of the date of the decision from which leave to appeal is sought;
 - (b) be served upon the Registrar and all parties to the proceedings who are directly affected by the Petition and such service to be effected within the same 42 day period fixed for the lodgement of the Petition at the Court registry in paragraph (a) above; and
 - (c) an affidavit or affidavits of service establishing compliance with paragraph(b) above must be lodged at the Court registry within 10 days of such service.

Security for costs

6.—(1) The Registrar must, within one month of the lodging of a Petition, notify the Petitioner of the sum to be deposited as security for costs, or for which recognizance is to be given by bond in Form 3 of Schedule 1 with one or more sureties as the Registrar directs.

- (2) The sum mentioned in paragraph (1) is for the due presentation of the Petition and for the payment of any costs that may become payable to the Respondent in the event of the Petition being dismissed for non-presentation, or the Court ordering the Petitioner to pay the Respondent's wasted costs.
- (3) The sum mentioned in paragraph (1) is to be fixed by the Registrar but must not exceed \$30,000 per Respondent.
- (4) The security for costs or the bond must be deposited with the Registrar or executed as the case may be, within 30 days of the sum being notified to the Petitioner.
- (5) The Court may, if necessary, require security for costs for the performance of any order to be made on the Petition or on any interlocutory application, in addition to the sum determined under the preceding provisions of this Rule.

8 copies of Petition to be lodged together with affidavit in support

- 7. A Petitioner must lodge—
 - (a) 8 copies of the Petition and of the judgment from which leave to appeal is sought; and
 - (b) 8 copies of every affidavit in support of the Petition.

Record to be transmitted to Supreme Court registry

- 8. After the Petition has been lodged, the Registrar must transmit to the Court registry the record, comprising the following documents—
 - (a) a certified copy of the record of the Court of Appeal;
 - (b) a certified copy of the proceedings of the Court of Appeal;
 - (c) a certified copy of the judgment appealed from;
 - (d) a certified copy of the drawn up order of the judgment appealed from;
 - (e) a signed list of all the exhibits forming part of the record of the Court of Appeal together with the originals of all such exhibits; and
 - (f) all other documents the Registrar deems necessary for the prosecution of the Petition.

Settling record of appeal

- 9. On receipt in the Court registry of the record prescribed under Rule 8, the Registrar must—
 - (a) issue a summons as set out in Form 4 of Schedule 1 requesting the parties and their legal practitioners to appear before the Registrar at the time and place stated in the summons to settle the documents to be included in the record of appeal or of revision; and
 - (b) whether any of the parties attend to the summons or not, settle and sign, and in due course, file a list of such documents.

Exclusion of unnecessary documents from the record

- 10.—(1) The Registrar, the parties and their legal practitioners, must endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the Petition, referral, or other application and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the unnecessary repetition of documents and headings and other merely formal parts of the documents.
- (2) The documents so excluded must be enumerated in a list to be attached to the record by the Registrar.

Documents objected to

11. If, in the course of settling the record, one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the record, as finally prepared, must with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers, or otherwise the fact that, and the party by whom, the inclusion of the document was objected to.

Petitioner to deposit sum for record

- 12.—(1) The Petitioner must within such time as the Registrar directs, deposit with the Registrar a sum fixed by the Registrar to cover the estimated cost of making up the record.
 - (2) In special circumstances the time may be extended by the Registrar.

Notice to be served on parties that record is ready

13. The Registrar must, after the record is prepared and made up, cause to be served a notice on all parties mentioned in the Petition that the record is ready for collection after payment of the costs as advised by the Registrar.

Typewriting, duplicating or printing of record

14. The record may be typewritten, duplicated or printed.

Withdrawal of Petition, referral or application

- 15.—(1) If a Petitioner who has lodged a Petition, referral or application desires to withdraw the same, must give notice to that effect to the Registrar and all parties to the proceedings who are directly affected by the Petition, referral or application and upon whom a copy of the Petition, referral or application has been served in accordance with these Rules.
- (2) Subject to any agreement to the contrary between the Petitioner and the Respondent, the Respondent is entitled to apply for costs to the Court by motion supported by affidavit.

Default in prosecution of Petition

- 16.—(1) If a Petitioner who has lodged a Petition makes default in doing any act or taking any step within the time provided by these Rules, the Registrar must inform the President of the default and the President may cause the Petition to be entered on a list of the Court for mention on a particular day and time.
- (2) The Registrar must give not less than 10 days' notice to the parties of a day, time and place fixed for mention under paragraph (l).
- (3) On the day fixed for mention, the Court may order that the Petition or other application be struck out for want of prosecution, or make any other order as in the circumstance appropriate including an order of costs to be paid by the Petitioner.

Non-compliance with conditions of Petition or orders of the full Court or single judge

- 17.—(1) If a Petitioner has not fulfilled the conditions of a Petition imposed by these Rules or orders of the full Court or single judge, the Registrar must certify the fact to the Court by means of Form 7 in Schedule 1 and the Court may thereupon after giving notice to all parties order that the Petition be dismissed with or without costs.
- (2) If a Respondent alleges that the Petitioner has failed to fulfil any of the conditions of the Petition imposed by these Rules or orders of the full Court or single judge, the Court may, if satisfied that the Petitioner has so failed, upon notice to all parties dismiss the Petition for want of prosecution, non-compliance with Rules or orders, or make any other order as the justice of the case requires.
- (3) A Petitioner whose Petition has been dismissed pursuant to this Rule may apply by notice of motion to have the Petition restored, and the Court may, for good and sufficient cause, order that the Petition be restored upon such terms as it thinks fit.
- (4) Notwithstanding the preceding provisions of this Rule, a Petitioner may apply to the Court for an extension of time in which to fulfil the conditions of the Petition imposed by these Rules or by the full Court or single judge and the Court may, for good and sufficient cause, grant an extension of time subject to any conditions the Court may impose.

Substituting parties

18. If at any time between the lodging of a Petition and the hearing of the Petition the record becomes defective by reason of the death or change of status of a party to the appeal or Petition, the Court may, on any application in that behalf made by any person interested, grant an order showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of that person is thereupon deemed to be so substituted or entered on the record without further order.

Consolidation of Petitions

19. If there are 2 or more Petitions arising out of the same matter and the Court is of the opinion that it would be for the convenience of the Court and all parties concerned that the Petitions should be consolidated, the Court may order the Petitions to be consolidated.

PART 2—HEARING

Mode of binding record etc. for use of Supreme Court

- 20. The Registrar must cause to be bound not less than 8 copies of the record for the use of the Court at the hearing. The several documents must be arranged (as applicable) in the following order—
 - (a) Petition for leave to appeal (if leave granted by Supreme Court);
 - (b) record (all parts being paged at the top of the page);
 - (c) supplementary record (if any),

and the short title and Supreme Court number of the appeal shall also be shown.

Call-over of pending Petitions

21. The Registrar must arrange a call-over of all pending Petitions before the President or a single judge to appoint the dates for the hearing of each Petition and when dates are appointed for hearing of any Petition, the parties must be ready to be heard on the day so appointed.

Statement of written submissions to be lodged

- 22.—(1) A Petitioner must file a statement of written submissions within 42 days before the date appointed for the hearing of the Petition, and must serve a copy of the statement on the Respondent within 7 days of filing it unless the judge provides for a lesser time.
- (2) The Respondent must file in the Supreme Court registry 21 days before the hearing of the Petition, a statement of written submissions and serve the same upon the Petitioner within the same period.
- (3) A statement of written submissions must set out succinctly and clearly the issues giving rise to the Petition and the argument in support of any such issues, with supporting authorities whether learned text or copies of cases to be cited in argument.
- (4) A statement of written submissions shall not exceed 25 pages of typewritten or printed foolscaps with one and a half spacing between the lines.

Oral argument—time limitation

- 23.—(1) At the hearing of a Petition each side is allowed to present its case in oral argument for not longer than 40 minutes.
- (2) The Court may extend the time prescribed under paragraph (1) as it thinks necessary, but any such additional period must not exceed 15 minutes.
- (3) A reply to oral argument may be allowed at the discretion of the Court for a period not exceeding 10 minutes.

Power and authority of High Court and Court of Appeal

24. In exercising its jurisdiction under this Part the Court has in addition, the power and authority of the High Court and Court of Appeal.

PART 3—DELIVERY OF JUDGMENT

Judgment on an appeal

25. After hearing oral argument on an appeal, the Court may reserve its judgment to be delivered during the same session of the Court or at a later session of the Court, as circumstances require.

Decision on the Petition for leave to appeal

- 26. After hearing oral argument on a Petition, the Court may—
 - (a) refuse the Petition;
 - (b) grant the Petition and treat the matter as an appeal and reserve its judgment on the appeal to be delivered during the same session of the Court or at the next following session; or
 - (c) grant the Petition and adjourn the matter for further argument during the same session of the Court or at the next following session or make such other orders as the circumstances may require.

PART 4—MISCELLANEOUS

Reference by way of case stated

- 27.-(1) A matter referred to the Court under section 91(5) and 98(3)(c) of the Constitution seeking the Court's opinion must be by way of case stated.
 - (2) A case stated must contain—
 - (a) a summary of the facts or circumstances which make the reference necessary; and
 - (b) the particular matter upon which the interpretation or application is sought.

Costs

28. The costs of any Petition, referral or other application are at the discretion of the Court.

Foos

- 29.—(1) The fees set out in Schedule 2 are prescribed for the services to which they respectively relate, and subject to paragraph (2) must be paid to the Registrar by the person who applies for the service at the time of application.
- (2) The State, any Commission as defined by the Constitution or any Government department, are exempt from the fees.
- (3) If any person is ordered to pay the fees of the State, any Commission as defined by the Constitution or of any Government department in any case, the fees payable under this Rule are recoverable from that person.

State bound by Rules

30. The State is bound by these Rules except for those provisions relating to security for costs.

Application of High Court Rules and of the Court of Appeal Rules

31. The High Court Rules and the Court of Appeal Rules and the forms prescribed in them apply with necessary modifications to the practice and procedure of the Supreme Court.

Revocation and savings

- 32.—(1) The Supreme Court Rules 1998 is revoked.
- (2) Every act or thing done before the commencement of these Rules or under the Rules repealed in paragraph (1) is deemed to have been done under these Rules.

Made this 20th day of October 2016.

A. H. C. T. GATES
President
The Supreme Court

SCHEDULE 1

FORM 1

		EME COURT JURISDICTION				
		Petition No				
		[Court of Appeal Action				
		No of 2]				
BETWE	EEN	: PETITIONER				
AND		:				
		RESPONDENT				
		PETITION for leave to appeal				
THE H	JMBL	E PETITION of the above-named Petitioner shows:				
1.		he Petitioner prays for leave to appeal from the judgment of the Court of dated20				
2.		ground/procedural history of the Petitioner's case in the High Court and the				
	_	ourt of Appeal.				
3.	That 1	That the Petitioner respectfully submits that by reason of the foregoing the Petition—				
	(a)	in relation to a criminal matter should be granted as—				
		(i) it raises a question of general legal importance;				
		(ii) it raises a substantial question of principle affecting the administration of criminal justice; or				
		(iii) substantial and grave injustice may otherwise occur; or				
	(b)	in relation to a civil matter should be granted as it—				
		(i) raises a far-reaching question of law;				
		(ii) is a matter of general or public importance; or				
		(iii) is a matter that is otherwise of substantial general interest to the administration of civil justice.				
4.	That t	he principal grounds on which this Petition is based are:				
5.		eliefs sought by the Petitioner are:				
		day of 20				

Barrister and Solicitor for the Petitioner (Counsel's signature)

To:

Barrister and Solicitor for

IN THE SUPREME COURT
APPELLATE JURISDICTION

APPEL	LATE JURISDICTION				
	Petition No				
	[Court of Appeal Action				
	No of 2]				
DETW	EEN .				
BETW.	EEN : PETITIONER				
AND	:				
	RESPONDENT				
	AFFIDAVIT in support for leave to appeal				
	AFFIDAVIT OF E.F.				
1.	I, E. F., Solicitor of the Supreme Court, a partner in the firm of E. F & Co, of (address) Solicitors make oath and say as follows:				
2.	That the said E. F. & Co received from				
3.	That to the best of my knowledge, information and belief the allegations contained in the Petition for leave to appeal lodged herewith are true.				
	SWORN at (address)				
	20				
	(Deponent's signature)				
	Before me,				
	(Signature)				

		Petition No[Court of Appeal Action No
	BOND FO	R COSTS ON A CIVIL APPEAL (Rule 6(1))
BETWEEN	:	PETITIONER
AND	:	RESPONDENT
		RESPONDENT
Know all pers	ons by these presen	its, that we
of		
and		ofofofof
executors, adn		lawful money to be paid to the saidhis or her as, of us for himself or herself, in the whole our and every d with our seals.
Dated the	day of	20
Whereas a sui	t is now pending be	efore the Supreme Court wherein
	ntionednd the said	
And whereas a	a judgment was give	n by the Court of Appeal, on the day of 20
for the said		
and the said		

hac	filad	ο.	Petition	from	tha	bios	indama	nt
Has	mea	а.	Peuuon	HOIII	une	Said	Judgine	Πt.

And whereas it is by law provided that the party appealing shall give security to the	ne
satisfaction of the Registrar of the Supreme Court for the due prosecution of the appeal ar	nd
for the payment of any costs which may be ordered to be paid by the Petitioner:	

And whereas the above named
and
Now the condition of this obligation is such, that if the said
Signed, sealed delivered in the presence of
(L.S.)
(L.S.)
(L.S.)

FORM 4

APPELLATE	JURIS	DICTION		
				Petition No
				[Court of Appeal Action
				No of 2]
	SI	JMMONS TO	D PARTIES TO SETTI	LE RECORD
			$(Rule\ 9(a))$	
BETWEEN	:			
				PETITIONER
AND	:			RESPONDENT
				RESI ONDENT
	_		_	nd before me at my office at
on	(lay the	day of	20
011		14y the	day 01	20
at the hour of of appeal here		clock in the	noon to pr	oceed with settling of the record
Dated this		day of	20	
				Registrar, Supreme Court

			Petition No
			[Court of Appeal Action No of 2]
BETWEEN	:		PETITIONER
AND	:		DECDONDENT
			RESPONDENT
		DISMISSAL OF	F PETITION BY CONSENT
			ned Petitioner and Respondent, who are <i>sui juris</i> , the Petition in the above matter with no order as to
DATED this		day of	20
MESSRS			MESSRS
Per Solicitors for			PerSolicitors for the Respondent
Endorsement	-		
Order in term	ıs.		
Hon. Justice			
President, Su	preme	Court	
Date:		•••••	

					Petition No
					[Court of Appeal Action No of 2]
					110
BETWI	EEN	:			PETITIONER
AND		:			RESPONDENT
			DISMIS	SSAL OF PETITION	
I, the So	olicito	r for tl	ne above named Pe	etitioner, who is <i>sui jur</i>	is—
(1)	HER	EBY (·	natter has not been served on
(2)	HER costs		REQUEST the disi	missal of the said Petiti	on matter with no order as to
DATED) this .		day of	20	
MESSR	RS				
Per Solicito					
Endorse	ement				
Order in	n term	s.			
Hon. Ju	stice.				
Preside	nt, Sup	preme	Court		
Date:					

Petition No
[Court of Appeal Action
No of 2

CERTIFICATE OF NON-COMPLIANCE WITH CONDITIONS OF PETITION $\it Rule~17(1)$

BETWEEN	:		
			PETITIONER
AND	:		
			RESPONDENT
To: The Pre	esident	/Single Judge of the Supreme Court	
with the cond	litions	the Petitioner (s) in the above mentioned ca of Petition imposed by the Rules, namely:	-
DATED this	• • • • • • • • • • • • • • • • • • • •	day of20	
			Registrar, Supreme Court

ALLEL	LAIL JURISDICTION
	Petition No [Court of Appeal Action No of 2
BETW	EEN :
AND	PETITIONER
AND	: RESPONDENT
	BAIL TERMS AND CONDITIONS (For Retrial in High Court)
and the	atter having been called before the Supreme Court on day of, 20, Court having ordered that the conviction of the Petitioner/Respondent be quashed set aside, the case is remitted to the High Court sitting at for retrial on o be fixed.
The Pet	titioner is granted bail on the following terms and conditions:
1.	That the Petitioner /Respondent secure his or her own attendance at the
2.	To provide 2 sureties suitable to the Court namely
3.	To attend Court when told to do so for mention, any pre-trial applications, and the trial of his or her case and to attend next on
4.	To be of good behaviour and not to commit any offence whilst on bail.
5.	To reside at [give full address].
6.	And not to change that address without the written leave of the Chief Registrar of the High Court which leave must be obtained before any change of address is made. The DPP at its [division] office must also be informed beforehand by the Petitioner.

7.	Is not to approach any prosecution witnesses, directly or indirectly, or to interfere with, or harass them, in any way.				
8.	Accused is not to leave the country or to apply for any travel documents and must surrender all passports held before close of business on [date]				
9.	Acci	used confirms having no passport/ or tha	at he/she holds the following passports:		
	i.	Passport No:	Country:		
	ii.	Passport No:	Country:		
	iii.	Passport No:	Country:		
10.	And is warned that breach of any of these conditions is likely to result in the cancellation of his or her bail and the issuance, if necessary, of a warrant for his or her arrest and a return to custody on remand till he or she is tried.				
11.	Accused to report to the				
12.	Is to sign this bail form in acknowledgement of having understood these terms and conditions and in acknowledgment of agreeing to be bound by them during the period of bail.				
Dat	ted at	Suva this day of	20		
 Na	 me of	Petitioner/Respondent	Signature of Petitioner/Respondent		
Na	me of	Surety	Signature of Surety		
		Surety	Signature of Surety		
		•	2		

Petition No[Court of Appeal Action
No of 2]
Surety Form
Surety Form Full Name of Surety:
Residential Address:
Telephone No.(At Home):(Mobile):
Occupation:
Work Address:
Telephone No. (At Work):
Date of Birth:
Relationship to Petitioner/Respondent:
Photographic Evidence of Identity:
(FNPF card, Driving License, Passport, EVR Card or other ID card).
Evidence of Address:
(Invoice, bill, envelope)
Sketch of Residential Address: (If necessary)
Have you been convicted by any Court in Fiji? Yes No
(If yes, provide case numbers and details)

I certify that the information I have provided to the Court is true and accurate and I
acknowledge that I may be liable for prosecution if the given information is false.
I consent to routine police and other checks being made as to the accuracy of this information

Date:	
Date	
	Signature of Surety

Note:

- 1. Spouses of Accused persons will not be acceptable to the Court as sureties.
- 2. It is the duty of a surety to ensure the attendance of the accused person at Court for all required attendances such as call over mentions and hearings.
- 3. The surety must ensure that the Petitioner/Respondent abides by all conditions of bail including reporting to a designated police station.
- 4. Failure by the Petitioner/respondent to abide by the bail conditions will result in the surety being brought before the Court. The Court can order such surety to pay the surety sum either in full or in part, OR that the surety be imprisoned for non-payment of the surety sum.

SCHEDULE 2 (Rule 29(1))

SUPREME COURT FEES

		\$
1.	Lodging Petition for leave to appeal	100
2.	Lodging of any other notice of motion or interlocutory application	25
3.	Cost of Supreme Court record—	100
	(a) to Respondent; and	
	(b) to Petitioner as advised by the Registrar depending upon the extent of the record—Rule [13]	
4.	Filing affidavit or document	10
5.	Filing motion against taxation by taxing officer/Registrar	25
6.	Sealing of Orders	
	(a) determining an appeal	25
	(b) interlocutory or other Orders	15
7.	Certified copy of Order	25
8.	Inspection of record	20