

GOVERNMENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI  
DECREE NO. 47

SUPREME COURT DECREE, 1991

A DECREE TO MAKE PROVISIONS FOR APPEALS TO THE SUPREME COURT AND  
MATTERS RELATING THERETO

IN exercise of the powers vested in me and pursuant to section 5 of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree, 1990 and as amended by section 2 of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990 (Amendment No. 1) Decree, 1990, I as the person appointed to perform the functions of the office of the President of the Republic of Fiji and acting in accordance with the advice of the Prime Minister and the Cabinet, hereby make the following Decree:

PART I—PRELIMINARY

*Short title*

1. This Decree may be cited as the Supreme Court Decree, 1991.

*Interpretation*

2. In this Decree, unless the context otherwise requires:

"appeal" means an appeal from a decision of the Court to the Supreme Court and includes according to the context a motion for leave to appeal or a petition for special leave to appeal;

"the Constitution" means the Constitution of the Sovereign Democratic Republic of Fiji, 1990;

"Court" means the Fiji Court of Appeal established by section 101 (1) of the Constitution;

"decision" includes an order, judgment or decree;

"Judge" means a justice of the Court or justice of the Supreme Court including the President as the context may require;

"President" means the President of the Supreme Court;

"record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and decisions) proper to be laid before the Supreme Court on the hearing of an appeal;

"Registrar" means the Registrar of the Court or other proper officer having custody of the records of the Court.

## PART II—SUPREME COURT OF FIJI

*Seal of Court*

3. The Supreme Court shall have and use as occasion may require a seal bearing a device or impression of the Coat of Arms of Fiji with the inscription "Supreme Court of Fiji".

*Precedence and seniority*

4.—(1) The judges of the Supreme Court, other than the Chief Justice, shall, as between themselves, take precedence and have seniority as the Chief Justice shall from time to time determine.

(2) In the determination of such precedence and seniority due regard shall be had to the date of appointment to, and the nature of, any judicial office held, or formerly held, by the judges respectively.

(3) In the absence of the Chief Justice the senior member of the Supreme Court present at any proceedings thereof shall be Vice-President and shall preside; such seniority being at all times determined according to the provisions of this section.

*Number of judges*

5.—(1) For the purpose of hearing and determining appeals the Supreme Court shall be summoned in accordance with directions given by the President and the Supreme Court shall be duly constituted if it consists of not less than three judges.

(2) In all appeals and applications brought before the Supreme Court determination of any question shall be according to the opinion of the majority.

*Sessions of Supreme Court*

6. The Supreme Court shall sit at such places from time to time as the President may direct.

*Registrar of Supreme Court*

7. The Registrar of the Court shall also be Registrar of the Supreme Court.

## PART III—APPEALS TO SUPREME COURT

*Appeals generally*

8.—(1) An appeal shall lie from decisions of the Court to the Supreme Court in the following cases, that is to say:

- (a) from final decisions in any appeal to the Court on any constitutional questions; and
- (b) from final decisions in any civil proceedings where the matter in dispute is of the value of 20,000 dollars or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of 20,000 dollars or upwards.
- (c) with the leave of the Court from decisions in any civil proceedings where in the opinion of the Court the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court.
- (d) in such other cases as may be prescribed by law.

(2) Nothing in this section shall affect the right of the Supreme Court to grant special leave to appeal from the decision of the Court in any civil or criminal matter.

*Judgments*

9.—(1) The decision of the Supreme Court in any proceedings under this Part or of any judge taking part in the determination of the proceedings may be delivered by or in the presence of the Supreme Court constituted differently from that which heard the proceedings, and may, at the discretion of the presiding judge, be delivered by a judge who was not present at the hearing of the proceedings in the presence of the Supreme Court as for the time being constituted.

(2) It shall be lawful for any decision to be delivered by the effect thereof being pronounced, in such terms as the Supreme Court or judge shall think appropriate provided that the full terms of the decision shall have been reduced to writing and that a copy thereof is made available to the parties.

*Continuation of appeal notwithstanding absence of a judge*

10.—(1) If, in the course of any proceedings under this Part, or in the case of a reserved judgment in any such proceedings at any time before delivery thereof, any judge taking part or having taken part in the hearing of the proceedings dies, or is unable through illness or any other cause to attend, or continue to attend the proceedings, or otherwise exercise his functions as a judge of the Supreme Court in relation thereto, the proceedings shall if the parties consent, continue before the remaining judges, and, without prejudice to the provisions of section 9, the judgement or reserved judgment, as the case may be, shall be given by the remaining judges of the Supreme Court, not being less than two, and the Supreme Court as so remaining constituted shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death, absence or inability to act of such justice as aforesaid.

(2) Where, in any such case as is referred to in subsection (1) proceedings continue to be heard before the remaining judges the proceedings shall be decided in accordance with the opinion of the majority of the remaining judges and, if there is no such majority the decision appealed against shall stand.

(3) If the parties do not consent that the proceedings should continue or that judgment should be given in accordance with the provisions of subsection (1), the appeal shall be re-heard:

Provided that the said remaining judges of the Supreme Court may sit as judge upon the re-hearing of an appeal.

*Power of single judge of Supreme Court*

11. A single judge of the Supreme Court may exercise any power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court, save that:

- (a) in criminal matters, if any such judge refuses or grants an application in the exercise of any such power any person affected thereby shall be entitled to have the application determined by the Supreme Court constituted by three judges which may include the judge who made or gave the order; and
- (b) in civil matter, any order other than an order or judgement made by consent of the parties, or any direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Supreme Court constituted by three judges which may include the judge who made or gave the order.

*Power of a single judge of the Court of Appeal*

12. A single judge of the Court shall have power and jurisdiction:

- (a) to determine any application to the Court for leave to appeal in any case under any provision of law;
- (b) generally in respect of any appeal pending before the Supreme Court, to make such order and to give such other directions as he shall consider the interests of justice or circumstances of the case require:

Provided that any order, direction or decision made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decisions.

*Jurisdiction of the Supreme Court with respect to special leave to appeal*

13.—(1) In exercising its jurisdiction with respect to special leave to appeal in any civil or criminal matter the Supreme Court may having regard to the circumstances of the case:

- (a) refuse to grant special leave to appeal;
- (b) grant special leave and dismiss the appeal or instead of dismissing the appeal make such orders as the circumstances of the case may require; and
- (c) grant special leave and allow the appeal and make such other orders as the circumstances of the case may require.

(2) With ..... criminal jurisdiction, ...  
..... question of general legal importance is involved ...  
..... the administration of criminal offence is ...  
..... injustice may occur.

(2) With respect to its criminal jurisdiction, the Supreme Court shall not grant special leave to appeal except where a question of general legal importance is involved or where a substantial question of principle affecting the administration of criminal offence is in issue or where otherwise substantial and grave injustice may occur.

(3) With respect to its civil jurisdiction, the Supreme Court shall not grant special leave to appeal unless the case raises a far-reaching question of law or matters of great general or public importance or otherwise of substantial general interest to the administration of civil justice.

#### PART IV—MISCELLANEOUS

##### *Costs*

14. Where the Supreme Court directs a party to bear the costs of an appeal, such costs shall be taxed, if no agreement is reached upon the matter by the parties, by the proper officer of the Court in accordance with rules for the time being regulating taxation in the Court.

##### *Enforcing order*

15. Any order made by the Supreme Court on an appeal from a decision of the Court may be enforced in like manner as any decision of the Court should or might have been executed.

##### *Power of the Supreme Court—General provision*

16. For the purposes of this Decree and any other law or rules relating to appeals to the Supreme Court, the Supreme Court shall have the power, authority and jurisdiction of the Court which according to the circumstances of the case may be exercised *mutatis mutandis*.

##### *Power to make rules of the Supreme Court*

17. The President of the Supreme Court may make rules for carrying this Decree into effect and for regulating generally the practice and procedure in the Supreme Court.

##### *Saving*

18.—(1) Any appeal which is pending before the Supreme Court prior to the coming into force of this Decree shall be treated as if the appeal was lodged pursuant to the provisions of this Decree and the Supreme Court Rules, 1991.

(2) Any intended appeal that may have arisen after the 25th day of July 1990 and before the coming into force of this Decree may be admitted by the Supreme Court provided that the notice of appeal shall be lodged within one month from the date of this Decree.

##### *Commencement*

19. This Decree shall come into force when it is made.

Made the 30th day of October 1991.

INOKE TAKIVEIKATA  
Person appointed to perform the functions  
of the office of the President