

## IN THE SOLOMON ISLANDS COURT OF APPEAL

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of The High Court of Solomon Islands (Keniapisia J)
<b>COURT FILE NUMBER:</b>	Civil Appeal Case No. 21 of 2021 (On Appeal from High Court Civil Case No.208 of 2019 )
<b>DATE OF HEARING:</b>	26 September 2022
<b>DATE OF JUDGMENT:</b>	4 November 2022
<b>THE COURT:</b>	Goldsbrough P Palmer CJ Gavara-Nanu JA
<b>PARTIES:</b>	LB CONSTRUCTION AND JOINERY  -V-  ATTORNEY GENERAL
<b>ADVOCATES:</b>	
APPELLANT:	Laurere, N
RESPONDENT:	Banuve, S
<b>KEY WORDS:</b>	Security for costs unpaid
<b>EXTEMPORE/RESERVED:</b>	RESERVED
<b>ALLOWED/DISMISSED</b>	DISMISSED
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**JUDGMENT OF THE COURT**

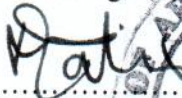
1. In this appeal, an order for security for costs was made but not met. The Registrar has listed the matter for formal dismissal.
2. Briefly, when in a directions hearing, the Registrar made an order for security for costs. After that, the Appellants made application for further time to pay the security into court. The application was in part successful, in that the Appellant was given a further fourteen days to pay the security into court. It was only partly successful because the Appellant had asked for twenty-one days to pay.
3. On this application for dismissal, counsel for the Appellant confirms that even had his client been allowed the time requested, the security would still not have been paid on time.
4. In the response to a show cause notice, the Appellant submits that he could pay the security of given further time to pay and that the amount of security is excessive. That second issue was not raised before the Registrar. It is noted that the person now seeking further time seeks it as an individual rather than as the corporate entity which brought the claim and undertook the remedial work which the claim is all about.
5. The Notice of Appeal was filed on 3<sup>rd</sup> September 2021 and the order for security made on 8<sup>th</sup> September 2021, and the grant of additional 14 days on 28<sup>th</sup> October 2021. The effect of the Court of Appeal Rules is that the appeal is stayed until payment of security is made.
6. A further Directions Order was made on 28<sup>th</sup> March 2022 and a final letter written on 29<sup>th</sup> June 2022. As of the date of this hearing, nothing by way of security for costs has been paid. The first anniversary of this appeal passed a few weeks ago and still nothing has been paid into court.
7. The Respondent to the appeal has filed submissions on the question of whether non-compliance with the Direction Order made by the Registrar should result in a dismissal of the appeal. The submissions on the Appellant in that regard were filed on 11 July 2022.
8. We are of the view that the appeal should now be formally dismissed. The order for security for costs was not excessive and time was given to the Appellant to meet that

order. There was no complaint made before the Registrar that the amount of security was excessive, until now. By now one year has passed since the appeal was filed and even today the Appellant is seeking further time to meet the order. That is unacceptable and demonstrates a position that the Respondent, in the event of the appeal being dismissed, will be waiting an inordinate amount of time before recovering costs.

9. If the amount of the security is challenged, the time to make that challenge is at direction hearings, not when the matter has been listed for dismissal before the Full Court. Security could have been paid at any time after the order was made yet still remains outstanding today. It appears that the Appellant has no intention of settling the security and that means the appeal must be dismissed.

The appeal is dismissed. We make no order as to costs of this application

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Goldsbrough (P)



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Palmer (CJ)  
Member



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Gavara-Nanu (JA)  
Member