

2008 National Judicial Conference- Judges and Magistrates

Address by Ms Premila Kumar, Chief Executive Officer of the Consumer Council of Fiji on Consumer's Perspective of the Courts

Naviti Resort, Sigatoka- 5 December 2008

The Acting Chief Justice, Justice Anthony Gates
The Attorney General & Minister of Justice, Mr. Aiyaz Sayed-Khaiyum
Distinguished Judges & Magistrates
Ladies and Gentleman

I have been asked to speak to you today on the topic **“A consumer's perspective of the Courts”**.

2. Let me start by sharing with you a real case brought to the Council's attention just recently by a helpless consumer.
3. Franisese- a nurse by profession decided to take up nursing job in Dubai to improve quality of life for her husband and two children. She worked hard to save some money to invest in a 7 seater minivan upon return.
4. In October 2007, she bought a minivan at a cost of \$20,000. She paid \$16,000 cash and the remaining \$4,000 was to be paid over a period of time to the automotive company. Barely two weeks after the purchase the Van started giving trouble. She had to spend more money to get the van fixed but the problem continued. It came to a stage where the van could not start and she gave it back for repairs to the same company. The company was to return the van after Fancisese paid off the repair costs and clearing any arrears that may have accrued.
5. In May 2008, she saw her Van with new registration number driven by an unknown person. She called the automotive company to find out why the vehicle was sold without any notification.
6. Since she didn't get an answer from the company she lodged her complaint to the Consumer Council.

7. The Council carried out its investigation and established that the vehicle was sold to a new owner for \$22,000 with an additional profit of \$2000. By selling the vehicle the automotive company cashed in \$38,000 on the same vehicle rather than recovering the amount owed and balance to be given back to Franisese who had lost her money. However, the dealer made almost 6 times more than what was probably owed and that just within 7 months. ***Where is consumer protection for Franisese?***

8. Several issues/questions arise here:

▪ **Can she go to Small Claims Tribunal (SCT)?**

No, because the sum involved is more than \$5000.

▪ **Can she hire a lawyer?**

No, if she could not pay less than \$5,000 to the automotive company where will she get the money to pay lawyer's fee?

▪ **Can she get assistance from the legal aid?**

No, because there is no legal aid in the area of consumer protection. It provides assistance in only criminal cases.

▪ **Can she go to Enforcement Agencies for redress?**

Yes, under Consumer Credit Act, Franisese should get a refund from the automotive company after deducting the repayments, default repayments repair costs plus any penalty cost owed to the company. In our view Franisese should get a refund of \$14,000.

▪ **Did she get the refund?**

No, because the Consumer Credit Act passed in 1999 was shelved due to irregularities in the Act. The 2006 amendments is not in force. Also, we are dealing with seasoned traders who have been carrying out such unfair trade practices that it has escaped any law or enforcement agency in this country.

9. So what happens to Franisese? She went overseas, worked hard, came back and bought a minivan to start a business then she suddenly loses all the money she earned at a cost of being away from the family. Is the sacrifice worth it?

10. She is now earning \$100 a week which is barely enough to run her household. Her plan was that the income derived from the operation of the minivan would assist her with van payments and other needs. Unfortunately, she could not meet the payment and was in default for 4 months. She also had problems with the Van and

added to the costs which she could have paid if allowed some flexibility considering the Van did give problems.

11. Ladies and Gentlemen, the issue of consumer perspective of courts or access to justice is very close to the Consumer Council's heart because over the years we have encountered many facets of consumer related problems, grievances and frustrations. The rights granted to consumers are not effective because the amounts of money involved are generally too small to be worth litigating. Furthermore, the legal system and lawyers appear alien to the average consumer and only the more educated consumers are aware of and can articulate their complaints and take advantage of the law.

12. The Council received 1552 complaints from *January to November 2008 amounting to a total monetary value of approx. \$3.7m.* Relying solely on the alternative dispute resolution process, the Council has been successful in providing *1023 distressed consumers* with simple, speedy and inexpensive redress. 147 cases were referred to SCT and 131 cases were referred to other CPAs. For the remaining consumers, the Council advised them to hire lawyers or to file their cases with the magistrate's court.

13. The Council has identified institutional barriers, which directly or indirectly impact consumer's right to remedy/redress:

- **Firstly, old, inadequate and poorly drafted consumer protection laws in Fiji.** Most are outdated and fail to address consumer protection in the current times. For example, Second-hand Dealers Act does not cover second-hand motor vehicles. Fair Trading Decree is one failed piece of legislation currently operating without adequate offences or penalties. A legal right however is not enough unless the helpless consumer can have that right enforced. Therefore, one of the key challenges for businesses, consumers and government will be to examine our consumer policy framework to ensure it meets the needs of a modern economy. What we need is strong law, vigorous enforcement and educated consumers;
- Secondly, there is lack of information on consumer redress in non-technical language. In other countries students are offered legal studies in school to prepare them for the real world. Legal jargons are not understood by majority of the consumers and particularly those living in rural areas;

- Thirdly, laws that are amended are not consolidated which makes it harder to read and understand; and
- Fourthly, practical difficulties faced by **consumers in order to have access to reasonable, quick and cheap remedy**. This is a threefold problem:
 - First, the redress mechanism is absent or missing entirely in various industries/sectors/trade. Simply, consumer protection safeguards are lacking because the legislations were written to protect the interest of traders and service providers. Recently, we have encountered this in the telecommunications and energy sectors- both sectors have enjoyed long-term monopoly rights at the expense of the consumers of Fiji and their governing laws allow them full protection. For example due to power surge consumers lost electrical appliances and equipment. The governing laws of FEA do not make the industry responsible, whereas in many other countries, apart from legal protection system, independent bodies are set up to regulate and monitor such market practices.
 - Secondly, sector-specific Ombudsman-styled bodies are lacking in Fiji such as the Telecommunications Ombudsman or Financial Ombudsman, which are found in Australia, New Zealand and other countries. So consumers have no choice but to go to Courts of Fiji for some form of remedy.
 - Thirdly, legislations do not create tribunals that adjudicate on consumer claims. For example tenancy tribunal. The legal rules and procedures, for example under the Small Claims Tribunal is somewhat different and consumers are constantly struggling to strike a balance as to the informal systems and processes found under SCT and later the formal processes applied under Magistrate's Court when appeal is referred from SCT. For example, consumers often experience that the appeal process which is handled in the Magistrate's Court is not clear to them in terms of court rules and procedures which is fairly straightforward in the SCT system.

14. We then have to understand that accessing court system can be very frustrating for consumers particularly long delays before court hearings and the cost

that goes with it. The cost of hiring a lawyer is often greater than the amount in dispute, making a lawsuit unreasonable from a monetary standpoint. One may argue that you don't need a lawyer but the truth is the consumer finds the Magistrates' Court more formal in nature with set procedures unknown to common person and language difficult to comprehend. It is for this reason a consumer seeks assistance from a lawyer.

15. But then dealing with lawyers is another nightmare. From January to August 2008 the Council registered ten consumer complaints against lawyers. Specifically, these complaints related to:

- Long delays and lack of consultation with clients;
- Refusing to meet clients after payment of fees;
- Fees charged upfront but no services rendered;
- The manner in which the parties have entered into fee agreement (or lack of any); and
- The services that have been rendered either fall below the expected standard of the client or is incomplete, yet bill of costs are submitted for immediate payment; and

16. In August 2008, the former FLS President, Mr. Isireli Fa announced that 183 complaints against lawyers are still pending for the period 2006-2007. FLS has not given the 2008 statistics but I understand it's high.

17. It is unfortunate that this profession has been able to get away with their professional misconduct for a long time and it is high time necessary reforms happen in this complaint-riddled industry, which is costing consumers thousands of dollars. One complainant's lawyer passed away in September 2008, while the client waited for justice to be served by the FLS. He had given \$3,000 to the now deceased lawyer to serve his case involving his land issue. However, no service was rendered by his lawyer. The complainant had first written to the FLS in 2004 to seek redress but had to approach the Council in 2008 following inaction by FLS. **What becomes of his case now?**

18. We all know and appreciate that courts are formal forums with no place for emotions---only evidence speaks and tells the story. And perhaps that is the reason why this country needs to move away from the conventional systems and practices and introduce systems and processes where consumers can thrash out their case and only as a last resort go to formal courts for redress. A system found in India which is appreciated and admired by the Indian consumers.

19. I am not a legal professional but I am speaking to you both in my capacity as a consumer advocate and a consumer. I can freely state (although I have some hesitation) that all in all what is most frightening to hear from consumers is that they feel that courts do not listen to them---there is an air of formality that consumers are scared to open up and discuss their story, which in fact is just a mere plea for justice. So the challenge is how we can make legal action less expensive, less intimidating, less risky and more convenient.

20. I hope, given the limitation of time, I have been able to give you some perspectives Consumers have of our courts based on our interactions with aggrieved consumers.

21. I thank the organizers for the opportunity given to me for this presentation and you all for listening to me today. Remember, when we walk out of here and end up in a shop to buy a pen or a cup of coffee, we are then a simple consumer---you and I both. And we all need protection no matter how small the transaction is, if we are treated unfairly.