

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0040 OF 1997S

(High Court Civil Action No.HBC0127 of 1994)

BETWEEN:

ISHU RATNAM

APPELLANT

-AND-

RADHIKA PRASAD

RESPONDENT

Mr Haroon Ali Shah for the Appellant
Mr. Narayan for the Respondent

Date of Order:

27 August 1997

IN CHAMBERS

ORDER OF DILLON J.A.

On 1 November 1996 Lyons J. ordered that the appellant ".....give over vacant possession of that area of C.L. 6854 which he now occupies, to the plaintiff "- (i.e. the respondent in these proceedings). His Lordship also stayed execution of that order until 1 January 1997.

Then followed a succession of applications as follows:-

1. An appeal to the Court of Appeal dated 13 Jaunary 1997 rejected by that Court as being out of time;

- 2. an application for leave to appeal out of time which was dismissed by Lyons J. because the application was not made to the Court of appeal as the Rules required;

- 3. By application to the Court of Appeal dated 18 July 1997 the appellant sought leave to appeal out of time and for a stay of execution of the original Judgment. On 24 July 1997 it was ordered that this application be adjourned to 9 September 1997 subject to certain conditions with which the appellant has duly complied.

Counsel for the appellant and the respondent have now agreed -

- (a) That a single Judge of the Court of Appeal shall rule on the application for leave to appeal;

- (b) That an oral hearing is dispensed with and the issues are to be determined upon the affidavits filed by the parties and the submissions presented by Counsel on their behalf.

I proceed now to a determination of the issues involved, relying on both Counsels helpful submissions presented on behalf of the appellant and the respondent, their respective clients.

THE FACTS

The appellant worked for the respondent on a full time basis from 1972 to 1982 and thereafter until 1990 on a part-time basis. This arrangement included the appellants occupation of a house on a hectare section of the respondent's farm property. This house was destroyed by fire in 1992. The appellant constructed another house on the same site contrary to a verbal notice to quit given by the respondent.

The respondent as a result instituted proceedings under the Land Transfer Act seeking possession of his land. Those proceedings were by consent treated as a writ action and the affidavits filed treated as pleadings.

The action came before Lyons J. on 7 August 1996. He delivered his Judgment on 1 November 1996 and ordered -

- a) that vacant possession of the 1 hectare occupied by the appellant be delivered up to the respondent;
- b) that the order aforesaid was stayed to 1 January 1997;
- c) that the respondents claim for damages was dismissed.

From those orders followed the various appeal applications that have already been identified.

The Appellants Submissions

The appellant through his Solicitor makes the following submissions in support of his application for a stay pending appeal:-

- 1) *“There is no inordinate delay between the date of the Orders in the High Court and the Application for leave to Appeal out of time. The Applicant has been on the Respondent’s land for approximately twenty five (25) years. The Applicant asks that leave be granted.”*
- 2) *“It is respectfully submitted that the Appellant will be injuriously affected if a stay is not granted and he is evicted and he ultimately succeeds in his appeal. The Appellant and his family will be completely displaced from their home of twenty five (25) years if a stay is not granted pending the determination of his Appeal.”*
- 3) *“Counsel respectfully cites the decision of this Honourable Court in the matter of Ram Samy & Adi Narayan v. Padma Wati FCA Civil Appeal No. ABU0070/95s and in particular the stay orders granted at each stage of the Appeal hearings.”*

It is appropriate that I should consider the Court of appeal decision relied upon by the appellant in 3 above. That appeal was based on two grounds viz:-

- (a) *The questions involved in this appeal are of “.....great general or public importance or otherwise.....”(Section 117(2)(a) of the Constitution).*
- (b) *The appeal involves “..... a question respecting property or a right of the value of 20,000 dollars or upwards; “(Section 117 (1) (b) of the Constitution).*

On the question of “great general or public importance” this issue has never been argued in these proceedings; nor has there been any evidence of values exceeding \$20,000.00 or upwards as would make S.117(1)(b) of the Constitution available to the appellants’ cause. In that

case relied upon by the appellant the Court of Appeal refused to grant the leave to appeal sought. That decision was decided on the judgment of the High Court being based essentially on findings of fact special to that case. The same applied in this instance - ie. on the findings of fact established by Lyons J.

The Respondents Submissions

The respondent generally accepts the facts as already very briefly summarized. He refers to the appellants claim that the respondent agreed to transfer to him the original house. His Lordship dismissed that claim. The respondent also refers to a potential claim by the appellant for the 1 hectare under Alta. That claim was also dismissed by His Lordship. It is not necessary to consider those claims by the appellant any further, as they form no part of his application for leave to appeal.

It is however important to take into account the following submissions of the respondent -

- (1) upon delivery of judgment on 1 November 1996 the appellant was granted a stay until 1 January 1997 - a period of 2 months;
- (2) Mohammed Kazim Yasin has deposed that ".....the appellant or his sons, all of whom also work at Emperor Gold Mine, have acquired a residential lot being Lot 1 in the Emperor Gold Mine Nasivi Housing Subdivision. This lot has been levelled and is ready for building."

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- (3) The law applicable to applications for leave to appeal out of time has, Counsel submits, been clearly established. The respondent relies on the Court of Appeal decisions of -

Hart v. Air Pacific Ltd. FCA 23/1983

Singh v. Francis FCA 57/1973

Tevita Fa v. Oceanic Dev. Ltd. FCA 40/1994

Kuar v. Housing Authority FCA 21/1991

Swamy v. Wati - FCA 70/1995.S.

all of which it is submitted clearly establish that the rules of Court must prima facie be complied with. For this Court to exercise a discretion in favour of the appellant there must be some basis on which that discretion can in fact be exercised.

The facts in this case are patently obvious -

- (a) the appellant has been squatting on the respondents land since he stopped working for him in 1990 - 7 years ago;
- (b) The appellant was given verbal notice to quit in 1992 - 5 years ago;

- (c) The appellant was given a stay of the judgment delivered by Lyons J. - 2 months;
- (d) The appellant has, since the date of the judgment on 1 November 1996 to the present time refused to leave the respondents property - a period of nearly 10 months;

Of fundamental significance however is that the appellant has other property available and to where his house could have been shifted many months ago.

The appellant relies upon two grounds in support of his application for leave to appeal - viz. estoppel and inappropriate directions. Those grounds involve issues of fact which Lyons J. examined carefully and with the opportunity of evaluating the evidence tendered by the appellant.

bona fide

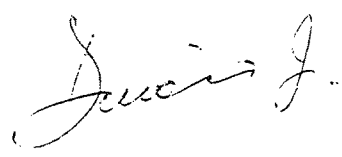
It is my view that this appeal is destined to fail if leave were granted. The appellant has failed to refer to any evidence or to give any valid reasons which would or could support an appeal. Sadly the totality of the evidence discloses that the appellant has been able to manipulate the judicial system and in doing so, delay the proper administration of justice, contrary to the legal rights and interests of the respondent.

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The application for leave to appeal is therefore dismissed.

The order granting a stay to 9 September 1997 is cancelled.

The appellant is to pay the respondent costs to be fixed by the Registrar if not agreed upon.



.....
Mr Justice J.D. Dillon
Justice of Appeal