IN THE COURT OF APPEAL, FIJI ISLANDS

CIVIL JURISDICTION

MISCELLANEOUS APPLICATION NO. 3 OF 2004S

Between:

NATIVE LAND TRUST BOARD

Appellant

and

MUNSAMY
(f/n Subaiya)

Respondent

Vuataki for the Appellant

DECISION

This is an *ex parte* application for a stay of two Orders made by Connors J in the High Court at Lautoka on 19 April 2004.

Where, as in this case, the Orders in question are interlocutory Rule 16 of the Court of Appeal Rules allow an Appellant 21 days in which to appeal.

Under Section 12 (1) (f) of the Court of Appeal Act (Cap 12) interlocutory Orders are not ordinarily appealable without the leave of the High Court or of the Court of Appeal.

Under Rule 26 (3) of the Court of Appeal Rules where the leave either of the High Court or of the Court of Appeal is required then application must be made first to the High Court.

Although the 21 day period has expired since the Orders were made no application for leave to appeal against those Orders has been made to the High Court.

Where the 21 day period has expired application may be made to the Court of Appeal for the 21 day period to be extended (Jope Ugeuge v. Housing Authority - FCA 42/98, FCA Reps 98/415). Such an application must be accompanied by an affidavit explaining why the application was not first made to the High Court within the 21 day period as required

by the Rules. No such affidavit accompanied the present application and no explanation at all was offered to why the Rules had not been complied with.

As has already been noted this application is brought *ex parte*. It is said that there is extreme urgency since a number of computers and other office equipment belonging to the Appellant are about to be seized on behalf of the Respondent under writ of Fi Fa. Contrary to what is stated by the Deputy General Manager (Operations) in paragraph 21 of his affidavit filed in support of this application, Mr. Vuetaki advised me that the writ was to be executed on or about 6 or 7 July, next week.

I am not impressed by the submission. Mr. Vuetaki conceded that the Appellant had sufficient funds to comply with the Orders made by the High Court without the need for its office equipment be seized under a writ of Fi Fa.

In view of the fact that the Sheriff's Officer took his inventory of the Appellant's premises as long ago as 18 June, there is no reason at all why this application could not have been made *inter partes* (see generally, The White Book, 1988 edition, paragraph 59/13/4).

The Orders which it is now sought to stay were made after the Appellant withdrew from an assessment of damages which had been listed for hearing almost three months previously and after its application for an adjournment of the hearing was refused. As appears from the Ruling no satisfactorily reasons for the request for an adjournment were advanced.

It will have become clear from what has already been said that the Appellant's conduct of this litigation has been inexcusably unsatisfactory. The fact that the NLTB is a hugely important national body is no excuse at all for ignoring the Orders of the High Court and disregarding its procedures. The question, however, is whether the indolence of the NLTB should be allowed to redound to the disadvantage of the Native Land owners.

Mr. Vuetaki submitted that the first Order that $10,000 be paid out by way of costs and legal fees was wholly unprecedented. He also submitted that the correct procedures for the award of $50,000 by way of interim payment had not been followed. Mr. Vuetaki also told me that the Appellant had received further information which suggested that the Respondent's claim was in any event inflated: $50,000 might eventually turn out to be more that the total amount of compensation to which he was entitled.

As appears from the Ruling, Connors J invoked the inherent jurisdiction of the Court when making his Orders. Where there are specific Rules and procedures governing the making of Orders I am not sure that the inherent jurisdiction of the Court can be resorted to. The amount of costs awarded is, in my experience, unprecedentedly large. I have some anxiety to whether the $50,000, once paid out, would be available for recovery if there were a successful appeal.

In all these circumstances of the case a stay will be granted of both Orders until mid-day 9 July 2004. On that morning I will consider, *inter partes*, whether the stay should be extended and, if so, on what terms.

M.D. Scott
Justice of Appeal

5 July 2004