

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 069 OF 2004
(High Court Civil Action HBC 316/02L)

BETWEEN:

JOSEPH JASWANT NARAYAN

(f/n Joel Narayan Sami)

and

GOVINDAMMA NARAYAN

(f/n Challappa)

Appellants

AND:

SHRI RAMLU

(f/n Sukwa)

Respondent

Coram: Scott RJA

Date of Hearing: 23 September 2005

Counsel: Ms. T. Draunidalo for the Appellants
Mr. E. Moapa for the Respondent

Date of Decision: 30 September 2005

DECISION

- 1) The first Appellant is the son of the second Appellant who is the widow of the Respondent's brother Joel Narayan Sami (Sami). The Appellants live in one of six flats in an apartment block in Nadi. The registered owner of the block is the Respondent.

- 1) On 5 April 1999 Chandramu the mother of the Respondent and his brother Sami died. The Respondent was the executor and trustee of his mother's will dated 31 March 1999. Under the provisions of the will the block of flats was left to the Respondent.
- 2) On 4 November 1999 Sami commenced proceedings in the High Court at Suva. He challenged his mother's will. He alleged undue influence and/or fraud and propounded an earlier will dated 22 January 1987. He sought various consequential orders against the Respondent and alternatively he sought relief under the Inheritance (Family Provision) Act (Cap 61). As appears from the Statement of Claim Sami was at the time blind, suffering from advanced Steven Thomson Syndrome and was without independent means.
- 3) I was told from the bar that a defence was filed to the Statement of Claim and that an application had been made for the proceedings to be transferred to Lautoka (where they should originally have been instituted) but that otherwise the 1999 proceedings had made no further progress.
- 4) On 1 October 2002, by which time Sami had died, the Respondent commenced proceedings for recovery of possession of the apartment now occupied by his sister in law, the second Appellant, and her son.
- 5) On 25 February 2004 the High Court at Lautoka (Connors J) granted the order for possession.
- 6) On 4 June 2004 an appeal against the High Court's decision was filed. On 10 September 2004 the appeal was deemed abandoned for failure to comply with the Court of Appeal Rules.
- 7) On 30 September 2004, a second appeal was filed. Security for costs, fixed at \$1,000, has been paid. The record of the proceedings in the High Court has been prepared.
- 8) On 5 August 2005 the present application was filed by the Respondent. It is an application to dismiss the appeal for want of prosecution. Apart from general delay, the Respondent relies in particular on the Appellant's failure to file written submissions required by paragraph 1 of Court of Appeal Practice Direction 1 of 2004. A copy of the written submission was filed on 17 August 2005.
- 9) The principal ground of appeal is that the High Court should have stayed the summary possession proceedings to allow the validity of the disputed will to be finally determined. Had those proceedings gone in favour of the Appellants then the Respondent would not have been entitled to an order for possession.

- The direct consequence of striking out the appeal at this stage would be to evict the Appellants. According to an affidavit filed on 29 May 2004 by the first Appellant, the second Appellant is physically incapacitated, unable to look after herself and requires constant care and attention. By contrast, the Respondent, who derives income from the other five flats in the apartment block, is being inconvenienced by loss of income from the flat occupied by the two Appellants.
- 12) There is no doubt that there has been quite unnecessary delay, not only in the prosecution of the appeal but also in the probate proceedings. At the same time, it will be noted that the Respondent himself took three years to initiate the possession proceedings against the Appellants after he was granted probate of his mother's will.
- 13) I am advised by the Registry that the appeal, if allowed to proceed, can conveniently be included in the February session of this Court. In my view the overall ends of justice would be met by allowing the appeal to proceed to hearing. The application is dismissed.



M.D. Scott
Resident Justice of Appeal

30 September 2005