

IN THE COURT OF APPEAL, FIJI  
[APPELLATE JURISDICTION]

Civil Appeal No. ABU 0082 of 2019  
(Lautoka HBC No. 232 of 2017)

BETWEEN : NILESH NAND  
*Appellant*

AND : FOUR R ELECTRICAL & GENERAL CONTRACTORS  
LIMITED  
*Respondent*

Coram : Almeida Guneratne, JA

Counsel : Appellant in Person  
: Mr. S. Krishna for the Respondent

Date of Hearing : 31 July, 2020

Date of Order : 14 August, 2020

**RULING**

[1] I shall trace briefly the relevant background events that had culminated in the present application before I proceed to make a determination thereon.

### Background events

- [2] The Respondent instituted proceedings under and in pursuance of Section 169 of the Land Transfer Act (Cap 131) in respect of a parcel of land contained in CT No. 36513 and secured a judgment dated 21 June 2019 from “the Master” (in HBC C232 of 2017) against the Appellant who was ordered to “immediately” deliver vacant possession of the said land.
- [3] The Appellant lodged an appeal against the Judgment of “the Master” and pending the appeal sought a stay of execution of the said judgment. The High Court by its Ruling dated 27 September, 2019 refused the Appellant’s application for a stay.
- [4] Thereafter, the Appellant filed a summons before this Court seeking a stay of the Master’s Judgment dated 21 June, 2019 and the High Court’s Ruling of 27 September, 2019.
- [5] By order dated 4 October 2019, Calanchini, P struck out the Appellant’s said summons and ordered \$3000.00 to be paid as costs within 28 days from the said order.

### The Present Application

- [6] The nature of the present application is reflected in the Order dated 30 January 2020, made by Chandra J.A. His Lordship recorded thus:

*“Appellant has made an application seeking enlargement of time on 16/12/2019. Respondent has received the same.  
Respondent to file affidavit in opposition within 21 days.  
Appellant to file a reply if any within 14 days.  
Mention on 27 March 2020 at 9.30 am”*

[7] It is consequent thereto that the matter of the present application came before me and after some dates of calling I finally made order listing the matter for hearing on 31 July, 2020 having directed the parties to file their Written Submissions as well.

#### The Relative Submissions

[8] The Appellant in his written submissions which he virtually read out, the Appellant focused attention on:-

(a) The plight he and his family have been placed in, on account of the successive orders made by “the Master” “the High Court” and finally the Court of Appeal order (per Calanchini, P).

(b) Consequently, the Appellant (citing several authorities) referred to such criteria as

- (i) the bona fides of his application.
- (ii) the effect on third parties
- (iii) the novelty and importance of questions involved
- (iv) the facts and evidence and the grounds of Appeal (in respect of which he adverted to several exhibits annexed to his written submissions dated 17 July, 2020).

[9] For his part, learned Counsel for the Respondent addressed on Rule 26, Rule 27 and the case of Prasad v. Sagayam [2019] FJCA 15(on Rule 34) of the Court of Appeal Rules.

[10] Counsel referred to a gamut of authorities in the context of the said Rules.

[11] Examining the said submissions of the Respondent I thought it apt to extract the essence of those submissions.

[12] The Respondent submitted that:

1. "The above rules are clear. If the stay is refused by the court below, the Appellant ought to have renewed its stay application in the Court of Appeal. However, the Appellant failed to renew its application but appealed the decision of the Judge refusing stay."
2. "Therefore, the Respondent submits that the application is bad in law and the same should be struck out and dismissed with Cost".
3. "...based on the law and case authorities ... the High Court had rightly applied and followed the principle in Natural Waters of Fiji Ltd case [2005]FJCA 13... and dismissed the application for stay and hence there is no merits in the proposed Notice and Grounds of Appeal..."

Determination and the Factors that I addressed in making the ensuing determination

[13] Taken on that face value I have no quarrel with any of the submissions which I have recounted in paragraph [12] above although I refrain from commenting further on the interplay of those Rules for I consider it not necessary for the determination I propose to make. That I say on account of the Order made by Calanchini, P (as a Single Judge) which I have referred to at paragraph [5] of this Ruling.

The Order made by Calanchini, P, on 4 October 2019

[14] By that order, His Lordship struck out the Appellant's summons seeking a stay of the Master's Judgment dated 21 June, 2019 and the High Court Ruling of 27 September, 2019.

[15] When His Lordship made that order (even assuming for the reasons adduced by the Respondent as re-capped by me at paragraph [12] above) the jurisdiction vested under Section 20(1) on a single Judge stood expended.

- [16] Could then, I, as a single Judge have re-visited the matter? There is no provisions in the law that gives such jurisdiction.
- [17] Surprisingly, the Respondent did not raise that issue, which struck me as a fundamental issue if the Respondent should have opposed, the Appellant's present application.
- [18] Likewise, if the Appellant was aggrieved by the said Order of Calanchini, P, his remedy (if any) lay elsewhere.
- [19] Few other matters (apart from that jurisdictional issue) I felt were needed to be touched on.
- (i) The Master's judgment was in June, 2019 and the High Court Ruling was in September 2019.
  - (ii) The hearing of the appeal against the Master's Judgment in the High Court is scheduled for 5 October, 2020.
  - (iii) Nearing almost 1 ½ years, the Respondent has not moved to have the Master's Judgment executed on account of the spate of stay orders the Appellant had been urging for.
  - (iv) Indeed, an unsuccessful party litigant could not have asked for more tolerance from a successful party.

Submissions of Respondent in seeking indemnity Costs in a sum of \$5,000.00

- [20] This is the final issue I was called upon to address by Respondent's counsel.
- [21] In that regard I gave my mind to the cases of Lok v Singh [2010] FJHC 7 (an informative decision), Anderson v Salaitoga [1999] 45 FLR 241 and Glesbrecht v Cros [2009] FJHC 87 (another decision of the High Court).

[22] In the light of the principles enunciated in the said cases, I took account of the fact that the learned Master in his judgment had ordered the Appellant to pay costs in a sum of \$500.00 within 14 days of the said Judgment and Calanchini, P. in his Order striking out the Appellant's application had ordered \$300.00 to be paid within 28 days of the said Order.

[23] There was no dispute that, the said orders have not been complied with to date.

Orders made by Courts for Costs and other procedural steps

[24] I have found in my experience serving the Fijian Judiciary for the last seven years that such consequential orders have been disregarded. I myself confess I have not paid adequate (or no regard) to the same.

Caution to Parties in Litigation

[25] However, there will soon come a time when Courts take a stringent view on those aspects as to what consequences would follow for such non-compliance.

[26] That time I feel has come.

Balancing of factors in the Instant Case

[27] On the one hand, there is the default on the part of the Appellant in failing to comply with the order made by "the Master" and Calanchini, P's order totally a sum of \$800.00, which were made as orders in the respective causes. On the other hand, there is the fact in the Respondent failing to file an affidavit in opposition to the Appellant's Summons for stay of execution dated 4 December, 2019 filed before this Court on the personal plight he has been placed in, the Respondent relying on the premise that, its opposition was based on matters of law which I found to be unacceptable.

[28] Consequently, I hold, balancing the said issues, I am not inclined to award a sum of \$5,000.00 in this application, although the Appellant has even taken a “second bite at the cherry” (so to speak) before this Court. However, a reasonable award for costs in favour of the Respondent would be a sum of \$2,000.00 which I award to the Respondent as costs which the Appellant is ordered to pay before the prosecution of his appeal in the High Court scheduled to be taken for hearing on 5 October, 2020.

[29] I leave it open to the High Court however, to exercise its jurisdiction and discretion to take whatever decisions it may feel appropriate to take in that regard.

Conclusion

[30] On the basis of the foregoing reasons, I found no basis to entertain the Appellant’s present application and proceed to make my orders as follows.

Orders of Court:

1. The Application of the Appellant is refused and accordingly dismissed.
2. The Appellant is ordered to pay a sum of \$2,000.00 to the Respondent before the scheduled date of hearing of the appeal in the High Court on 5 October, 2020 (leaving it open however to the High Court to exercise its Jurisdiction and discretion to take whatever decisions should the Appellant fail to comply with this Order).



*Almeida Guneratne*  
.....  
**Almeida Guneratne**  
**JUSTICE OF APPEAL**