

**IN THE HIGH COURT OF FIJI AT LAUTOKA**

**APPELLATE JURISDICTION**

**Civil Appeal HBC No. 53 of 2015**

[**IN THE MATTER** of an appeal on a Decision made by the Master of the High Court at Lautoka High Court in Civil Action No. 53 of 2015]

**BETWEEN** : **GYAN KAUR SINGH** of Kulukulu, Sigatoka in the Republic of Fiji Islands, Domestic Duties.

**APPELLANT/  
ORIGINAL PLAINTIFF**

**A N D** : **SITAL SINGH** of Kulukulu, Sigatoka in the Republic of Fiji Islands, Taxi Driver.

**1<sup>ST</sup> RESPONDENT/  
ORIGINAL 1<sup>ST</sup> DEFENDANT**

**A N D** : **IRINIETA RAWAQA** and **SERU** both of Kulukulu, Sigatoka in the Republic of Fiji Islands, Hotel Worker

**2<sup>ND</sup> RESPONDENT/  
ORIGINAL 2<sup>ND</sup> DEFENDANTS**

**Appearances**

Mr J. Singh for Plaintiff

Defendants in Person

**Date of Hearing:** 13 July 2015

**Date of Judgment:** 13 July 2015

## EX TEMPORE JUDGMENT

1. This is an appeal against Master's order striking out the action on 12.5.2015 which was a mention date.
2. The grounds of appeal are as follows:
  1. *That the learned Master on the 12<sup>th</sup> day of May 2015 on a date which was not listed as hearing date, erred in law and in fact in striking out the substantive action in the absence of the plaintiff;*
  2. *That learned Master erred in law and in fact in stating that the application for reinstatement filed on the 18 day of May 2015 was not permissible;*
  3. *The learned Master exceeded his jurisdiction in striking out this matter on the 12<sup>th</sup> day of May 2015 on which it was not listed for hearing and for which he had no power to strike out.*
3. The respondents did oppose the appeal.
4. The appellant then attempted to file an application for reinstatement. The High Court Registry at Lautoka refused to accept the reinstatement application. The High Court Registry advised the appellant's solicitors that directive have been given by the judicial officer not to accept the ex parte notice of motion.
5. On 16 March 2015 the appellant filed an originating summons under section 169 of the Land Transfer Act seeking vacant possession of the land. The summons was issued by the Registry for service returnable on 21 April 2015. The matter was not called in court on the returnable date. As such, the Registry issued a notice of adjourned hearing on all the parties for the matter to be called for mention on 12 May 2015. The notice of adjourned hearing issued by the Registry clearly states that the **matter will be called for mention** in the High Court at Lautoka at 8.30am on 12 May 2015. Only the defendants appeared on that day-12 May 2015. The appellant defaulted in appearance. The

learned Master struck out the matter. The learned Master's order made on 12 May 2015 reads as follows: - *'No appearance of the plaintiff. Matter is struck out.'* The current appeal is against this order. The appellant filed his appeal on 17 June 2015. The court granted leave to file appeal out of time.

6. The substantive action appears to have been struck out for non-appearance of the appellant on a mention day.
7. Counsel for the appellant, Mr J Singh contended that the learned Master exceeded his jurisdiction in striking out this matter (substantive matter) on 12 May 2015 on which it was not listed for hearing and for which he had no power to strike out. Mr Singh cited the case authority of **Prasad v Rup Investment Ltd** [2012] FJHC 1396; HBC 182.2006 (19 October 2012).
8. In **Prasad's case** (supra) is relevant to the present appeal. In that case Pradeep Hettiarachchi, J observed that:

*'When the matter was called before the Master on 20.9.2010, the Master could and should have set a time frame to have pre-trial conference since the plaintiffs had commenced their action by way of Writ of Summons. Therefore, it is my considered view that **the Master should not have struck out the plaintiffs' action solely on the ground solely on the ground of non-appearance.***

He further observed:

*... therefore it is my considered opinion that **the striking out of the action by the Master on a mention date due to non-appearance of the plaintiffs' counsel was legally unacceptable and also could not be***

***considered as an order made under Order 25 rule 9  
of the High Court Rules.*** (Emphasis provided).

9. Obviously, in the matter at hand the Master had erred in striking out the action on a mention date. Instead he could have taken the matter off the cause list with liberty to reinstate the matter with notice to other party.
10. Since the Master had struck out the matter on a mention date for non-appearance he had the necessary jurisdiction to hear and dispose of the application for reinstatement which the Master refused to accept and entertain.
11. I find merit in this appeal. I therefore set aside the Master's order dated 12.5.2015 striking out the action. I accordingly reinstate the matter back to cause list. The substantive cause is now adjourned to 16.7.15 for mention before me for mention only.
12. The final result of the appeal is as follows:
  - I. Order made by the Master on 12 May 2015 is set aside.
  - II. The action is reinstated back to cause list and adjourned before me for mention only at 9.30am on 16 July 2015.
  - III. Costd shall be in the cause.



*M H Mohamed Ajmeer*

**M H Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**13.7.15**

Appeal allowed.

Master's order set aside.