

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 141 of 2017

- BETWEEN** : **ESTATE MANAGEMENT SERVICES LIMITED** a duly incorporated company having its registered office situated at c/- G. H. Whiteside & Co., Chartered Accountants, 211 Ratu Sukuna Road, Suva.
- PLAINTIFF**
- AND** : **YANG CHIEN-CHU** formerly of 53A James Evans Drive, Northcote, Auckland, NZ and Current Occupation unknown to the Plaintiff.
- 1<sup>ST</sup> DEFENDANT**
- AND** : **TEIGORO TOMITA** formerly of 2-10-7 Sumiyoshiyamata, Higashinada-Ku, Kobe-Shi 658 and Current Occupation unknown to the Plaintiff.
- 2<sup>ND</sup> DEFENDANT**
- AND** : **REX HOROI** formerly of Level 2, Office 2, Victoria Corner Building, Suva and Current Occupation unknown to the Plaintiff.
- 3<sup>RD</sup> DEFENDANT**
- AND** : **N. R. LAMB** formerly of 65 Thornton Avenue, London, Sw2 4BD, England and Current Occupation unknown to the Plaintiff.
- 4<sup>TH</sup> DEFENDANT**
- AND** : **KENSUKE KAWAKAMI** formerly of 4-2-43 Mizuo, Ibaraki City, Osaka, Japan and Current Occupation unknown to the Plaintiff.
- 5<sup>TH</sup> DEFENDANT**
- AND** : **ARTHUR WILLAM PULLEN** formerly of No. 4 Warrangarree Drive, Woronoa Heights, New South Wales 2233, Australia and Current Occupation unknown to the Plaintiff.
- 6<sup>TH</sup> DEFENDANT**
- AND** : **JARDINE MATHESON & COMPANY LIMITED** a limited liability company incorporated to the Plaintiff's belief to be in Hong Kong and formerly having its registered office at c/- Jardine Pacific Limited, Center Fincial Department, 28<sup>th</sup> Floor, World.
- 7<sup>TH</sup> DEFENDANT**

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Mr. O'Driscoll for the Plaintiff  
No appearance of the Defendants

Date of Ruling: 13<sup>th</sup> July, 2017

## RULING

*[Ex-Parte Notice of Motion seeking an order for substituted service by way of advertisement in widely circulating newspaper in Fiji pursuant to Order 65 Rule 4 of the High Court Rules, 1988]*

### APPLICATION

1. This is Plaintiff's Ex-Parte Notice of Motion seeking that the Plaintiff be given liberty to serve the Originating Summons, Affidavit in Support and Acknowledgment of Service in this action by way of substituted service by way of advertisement in a widely circulating newspaper in Fiji.
2. The Plaintiff relies on the grounds contained in the Affidavit in Support of Julian Crocker deposited on 01<sup>st</sup> June, 2017.

### THE LAW

3. *Order 65 Rule 4 of the High Court Rules, 1988* provides as follows-
  4. (1) *If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or a document to which Order 10, rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.* (underline mine for emphasis)
  - (2) *An application for an order for substituted service maybe made by an affidavit stating the facts on which the application is founded.*
  - (3) *Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.*

**Plaintiff's Case**

4. The Affidavit in Support of the Plaintiff's application deposited by Julian Croker in summary states the following-

- (i) *She makes this affidavit in support of an application for an order that the Plaintiff be given liberty to serve the Originating Summons, Affidavit in Support and Acknowledgement of Service in this action by way of substituted service by way of advertisement in a widely circulating newspaper in Fiji.*
- (ii) That this action against the Defendants concerns enforcement of Judgments obtained by the Plaintiff against them in the Navua Magistrates Court whereby the Plaintiff is seeking Orders for sale of properties and consequential Orders by way of an Originating Summons supported by the Affidavit of Seth Maharaj, the managing director of the Plaintiff. The originating documents have been filed and given a date for first call on 21<sup>st</sup> June 2017. Since the inception of these matters in Navua Magistrates Court and with the exception of the 3<sup>rd</sup> Defendant the Defendants have not been located.
- (iii) In respect of the 3<sup>rd</sup> Defendant he was last in Lami according to the Plaintiff's records but despite searching for him he has not been found and the Writ in Navua and the Default Judgment obtained were both advertised against in during the course of the Navua Magistrates Court action against him.
- (iv) She is informed by her solicitors and believe that in respect of all the other Defendants all previous attempts to serve the Defendants by way of courier were unsuccessful as I am advised that the Defendants were no longer found at the address on the Plaintiff's record, which is the same as that appearing in the relevant Defendant's address in the heading on this action. There have been attempts made by the Plaintiff to reach out to newspaper agencies in the various countries in which the Defendants are noted as being resident in attempts to serve these Defendants by way of advertisement which was unsuccessful as well.
- (v) It is difficult to effect personal service as the Defendants' various addresses as given in the heading to this action are no longer valid for them. The Plaintiff is unaware about any of the Defendants' current-Chu's current whereabouts but is of the belief that they are resident in the various countries noted in the heading.
- (vi) The Plaintiff now wishes to serve the originating paperwork as the Plaintiff but has been unable to locate the Defendants for the past year or more even though many efforts have been made to do so, as referenced above.
- (vii) That since the beginning of the actions in the Navua Magistrates Court the Plaintiff has had difficulty locating the Defendants to effect personal service and as result the Plaintiff's pursuit of justice has been unduly delayed.
- (viii) She is advised by her solicitor and do believe that the Defendants, being the registered proprietors of land in Fiji subject to this action, have an interest in Fiji and can therefore by reasonably expected to keep an awareness of the goings on in Fiji, especially in relating

to their property by reading the local newspaper, especially since the local newspapers in Fiji also publish online editions which can be accessed anywhere in the world.

- (ix) That she is informed by her solicitor that in these circumstances it would be just and expedient to serve the originating paperwork in this matter by way of advertisement in a widely circulating local newspaper.

#### ANALYSIS and DETERMINATION

5. The issue for this court to determine is whether the Plaintiff should be given the order to serve the Originating Summons, Affidavit in Support and the Acknowledgment of Service in this action by way of substituted service by an advertisement in a widely circulating newspaper in Fiji?
6. Reference is made to *Order 65 Rule 4 of the High Court Rules, 1988* which deals with the service of documents by substituted service.
7. There are altogether seven (7) Defendants in this action to whom the Plaintiff needs to serve his application on in terms of his Originating Summons together with the Affidavit in Support and the Acknowledgment of Service in order to bring to their attention the nature of the claim made by the Plaintiff against each of the Defendants to enable them the claim and appear before this Court on the returnable date accordingly.
8. The addresses of each of the Defendants and their current whereabouts are reflected on the application filed herein.
9. With the exception of the 3<sup>rd</sup> Defendant, Rex Horoi, the remaining six (6) Defendants addresses of abode are overseas as is evident from the Plaintiff's application. Further the Plaintiff also states that their current addresses are unknown.
10. Firstly, in order to seek for an alternative order for service, in this case by substituted service by way of an advertisement, the Plaintiff must first satisfy this court that exhaustive efforts have been made to serve the Defendants at their former addresses of abode and if unsuccessful then the Plaintiff may then seek an order for substituted service by way of an advertisement accordingly.
11. It is evident from the affidavit in support of Julian Cocker that 3<sup>rd</sup> Defendant was last in Lami but despite searching for him he has not been found. In respect of the remaining six (6) Defendants, previous attempts to serve the Defendants by way of courier were unsuccessful as Defendants were no longer found at the addresses on the Plaintiff's records, which is the same as appears on the application.

12. With the exception of the 3<sup>rd</sup> Defendant, whose former addresses reflected on the application is 'Level 2, Office 2, Victoria Parade Corner building, Suva, and current address and occupation unknown, the court will accede to the Plaintiff's application for substituted service by way of advertisement in the local daily but not for the remaining six (6) Defendants whose addresses reflected on the application are overseas.
13. How can the Plaintiff seek an order to serve by local newspaper advertisement in Fiji when the addresses of the remaining six (6) Defendants are overseas?
14. It is impossible and obvious that the service of the Plaintiff's application on the remaining six (6) Defendants should be effected personally on the Defendants and for any substitute service by advertisement, should be done and appear in the newspaper of that particular jurisdiction wherein the remaining six (6) Defendants reside overseas.
15. Following are the final orders:

#### ORDERS

- a. Originating Summons, Affidavit in Support and Acknowledgment of Service in this action on the 3<sup>rd</sup> Defendant only to be served by Advertisement in one of the local dailies in Fiji;
- b. Originating Summons, Affidavit in Support and Acknowledgment of Service in this action with the exception of the 3<sup>rd</sup> Defendant is not granted and the Plaintiff to make alternative appropriate necessary application to serve the remaining six (6) Defendants.
- c. No order as to costs at the discretion of this court.

DATED AT SUVA THIS 13<sup>th</sup> July 2017



cc: O'Driscoll & Co, Suva

MR VISHWA DATT SHARMA  
Master of High Court