

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 413 of 2006

BETWEEN : PHUL WATI aka FEROZA BIBI aka PHULMATI aka
FIROZA BIBI
Plaintiff

AND : BYEONG BAK KWON and EUI TAE KIM
First Defendants

AND : NAZIR HUSSAIN
Second Defendant

AND : ACTING REGISTRAR OF TITLES
Third Defendant

AND : ATTORNEY-GENERAL OF FIJI
Fourth Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr P. Niubalavu for the Plaintiff
Mr V. Singh for the First named First Defendant
Mr J Sherani for the Third and Fourth Defendants

Date of Hearing : 15 March 2018

Date of Decision : 20 March 2018

DECISION

1. This is the Plaintiff's Notice of Motion (motion) filed on 7 December 2017 to stay my Judgment delivered on 3 March 2017, a full 9 months and 4 days earlier. It seeks to have my Judgment stayed pending the determination of the Plaintiff's appeal to the Court of Appeal.

Alternatively

That the Third Defendant (be ordered) not to register any other transfer or enter any encumbrance or dealing on the stated Certificate of Title (property) until the determination of the said appeal.

2. The Motion is supported by the affidavit of the Plaintiff sworn on 8 June 2017 in Auckland. This was 1 day short of 6 months before the motion was filed. In the affidavit the Plaintiff alleges that if the property is sold and transferred to a third party, her appeal will be rendered nugatory.
3. At the hearing of the motion, Counsel for the Plaintiff submitted that although aware of the conflict of interest on the part of Mr Suresh Chandra, he did not do anything about that conflict and carried on with the hearing to its completion. He conceded an order for stay will not be practicable as the property has already been transferred. He therefore applied under Order 45 r 10 of the Rules of the High Court for other relief. This would be that the Third Defendant (ROT) not register any other dealings until the appeal before the Court of Appeal is determined.
4. Counsel for the 1st named First Defendant now submitted. He said the above Order and rule applied to matters arising after judgment. The Plaintiff in her

affidavit did not refer to anything arising after judgment. The judgment was a dismissal of the action and thus there was nothing to be stayed.

5. Counsel for the Registrar of Titles said there was nothing before the Registrar of Titles on 15 March 2018 affecting the title.
6. Counsel for the Plaintiff in his reply said the judgment was registered on 19 July 2017 and the transfer registered on the same day. The Application for stay was filed on 7 December 2017. He agreed with the Court that this is a case of closing the stable door after the horse has bolted. Counsel said he was not asking for a stay.
7. At the conclusion of the arguments I said I would take time to consider my decision. Having done so I shall now deliver it.
8. At the outset, I will say that the motion for a stay has now been abandoned by the Plaintiff. It therefore no longer falls to this Court to have to pronounce upon it. In any event, the Plaintiff did not have a leg to stand on as the dismissal of the action meant there was nothing for the Court to stay, absent any order compelling the Plaintiff to do something.
9. Even more so how could a motion filed on 7 December 2017 prevent a transfer which became a fait accompli on 19 July 2017, more than 4 months earlier.
10. I therefore turn now to the (alternative order) sought by the Plaintiff that of preventing the Registrar of Titles from registering any other transfer or entering any encumbrance against the said title until the determination of the appeal.

11. If I may say so with respect, this is yet another application which did not have a leg to stand on. This is because going through the Amended Statement of Claim with a fine tooth comb the Court was unable to discern even a trace of a claim against the Registrar of Titles. Consequently the Plaintiff cannot now attempt to pluck out of thin air a supposititious right to a remedy against the Registrar of Titles.
12. In the result I hereby dismiss the Motion filed on 7 December 2017 with costs summarily assessed at \$500 to be paid by the Plaintiff to the first named First Defendant only.

Delivered at Suva this 20th day of March 2018.



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David Alfred
Judge
High Court of Fiji