

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Case No.: HBC 43 of 2017

BETWEEN : **B D LAKSHMAN & SONS PROPERTIES LIMITED** a limited liability company having its registered office at 12 Deuba Freeholds in Pacific Harbour, Fiji.

PLAINTIFF

AND : **ABRAHAM MORRELL**, of Waiyanitu Road, Waiyanitu, Naivakarokuro, Navua

DEFENDANT

Counsel : **Ms. N. Choo for the Plaintiff**
Mr. K. Chambers for Interested Party

RULING

INTRODUCTION

1. The Defendant- Applicant (Defendant) filed the 'summons to vacate the hearing and stay enforcement' on 22nd January, 2018. This is a matter where the Defendant is seeking extension of time against the Master's decision regarding an eviction proceeding in terms of Section 169 of the Land Transfer Act. The Defendant had appeared before the Master and was represented by a legal practitioner and had consented to the orders delivered by Master on 19th July, 2017. Inter partes summons was filed on 4th September, 2017 inter alia seeking enlargement of time for appeal of the Master's Order made on 19th July, 2017. This summons was adjourned since there were numerous summons filed subsequent to that. First of that was filed on 29.9.2017 by the Plaintiff-Respondent (Plaintiff). Next was an 'inter partes application' seeking inter alia, to addition of a party (Tomu Mari) who allegedly lived outside the premises and this summons also sought to set aside the Master's order made on 19th July, 2017. There was a further summons for 'Interested party's 2nd Inter Partes Summons' for jointder and consequential orders. The judgment delivered on 8th December, 2017 refused the application of Tomu Mari to be joined to this proceedings at this time. On 12th December, 2017 the adjourned summons of the Defendant seeking

enlargement of time was fixed for hearing on 5th February 2018. On the verge of hearing that the present summons seeking vacation of that hearing was filed on 22nd January, 2018 and it was first mentioned on 31st January, 2018 and parties were directed to file written submissions and Defendant's counsel said that no reasoning is needed but a 'yes' or 'no' would be sufficient. The oral ruling was delivered on 2nd February, 2018 refusing the said application in order to facilitate the parties for the hearing on 5th February 2018 and for the completion I informed the parties that written reasons for the refusal will be given on following working day on 5th February.

ANALYSIS

2. The Master had delivered an order on 19th July, 2017. It was a consent order. The Defendant was represented by a legal practitioner.
3. The same legal practitioner had made an application seeking enlargement of time for appeal and also for stay of the execution and also for consolidation of this matter with a pending civil litigation (HBC 219 of 2017) by Tomu Mari, on 4th September, 2017.
4. The above summons was adjourned due the numerous applications filed subsequently by parties to this action as well as Tomu Mari.
5. The present summons is filed by Defendant seeking following orders

That a hearing of the application for leave to appeal in this matter set down for 5th February, 2018 shall be vacated.

*That the application for leave to appeal shall be stayed until final determination of the application for Constitutional Redress in **Mari v BD Laksman & Sons (Properties)Ltd.** HBM 145 of 2017.*

That enforcement of the said consent orders made on 19th July, 2017 for vacant possession of the land in CT 25/2495 known as Vivakaroko shall be stayed until final determination of the said application for leave to appeal.

Any other relief that this ...

6. This summons was filed on 22nd January, 2018, when the hearing was already fixed for the long overdue summons seeking enlargement of time for the consent order of the Master made on 19th July, 2017.
7. The purported summons was made in terms of Order 59 rule 16 of the High Court Rules of 1988.
8. Order 59 rule 16 of the High Court Rules of 1988 states as follows
'16(1) The filing of a notice of appeal or an application for leave shall not operate as a stay of execution or proceedings, or any step therein unless the Court so directs.

*(2) An application under paragraph (1) shall be made by way of an inter-
parte summons supported by an affidavit.*
9. The Order 59 rule 16 does not allow a party to seek vacation and or postponement of a belated hearing of a summons seeking enlargement of time for the appeal against Master's order made on 19th July, 2017. A postponement of hearing is a discretionary matter of the judicial officer (Judge). (see Maxwell v Keun [1928] L.B 645 followed in Barclays Bank Plc v Coleman et al [2000] 1 All ER at 394.
10. The basis of the application seeking vacation of the hearing of the summons for enlargement of time is that Tomu Mari had sought Constitutional Redress. This is a separate matter before another judge.
11. I have refused Tomu Mari be added to the summons seeking enlargement of time for Master's order made on 19th July, 2017 by consent of the parties. So, a Constitutional Redress application by a party who was refused to be added cannot be a reason to postpone the hearing of the summons for enlargement of time.
12. The summons for enlargement of time was filed on 22nd September, 2017 and it could not be heard earlier due to numerous applications filed subsequently, at least two such applications were filed by Tomu Mari who was not even a party to the action before Master.


13. So there is no reason to postpone the hearing of the summons seeking enlargement of time for appeal against consent order delivered on 19th July, 2018. There is no material in affidavit in support of the summons that show that applicant will be denied of justice if hearing proceeds on 5th February, 2018.
14. The summons filed on 22nd January, 2018 is struck off and the cost of this application is summarily assessed at \$500.

FINAL ORDERS

- a. The summons filed on 22nd January, 2018 seeking vacation of the hearing fixed for 5th February, 2018 is struck off.
- b. Cos of this application is summarily assessed at \$500.

Dated at Suva this 5th day of February, 2018




Justice Deepthi Amararatunga
High Court, Suva