

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

Appeal No. 322 of 2018

**BETWEEN** : LEONE VAKARUSAQOLI

**APPLICANT**

**AND** : VIJENDRA PRASAD

**RESPONDENT**

**Before** : M. Javed Mansoor, J

**Counsel** : Mr. N. Waqavanua, for the Applicant  
Mr. A. Nand, for the Respondent

**Hearing** : 27 September 2019

**Date of Ruling** : 23 October 2019

## RULING

APPEAL: Stay of execution pending appeal – High Court Rules, Order 59 – Land Transfer Act, Section 169 – defendant’s failure to file affidavit in opposition – relevance of other legal proceedings – absence of Applicant at the hearing – object of the Land Transfer Act

Cases referred to:

- a. Harakh Narayan v Chotu Bhai Patel, Civil Appeal No.26 of 1985
  - b. Morris Hedstrom Limited v Liaquat Ali, Action No.153 of 1987
  - c. Maureen A. Young v Linda Verma, Civil Action No. HBC 13 of 2019
  - d. Suva City Council v Suva City Council Staff’s Association, Civil Action No.389 of 1995
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1. The Applicant initially moved this Court by Notice of Appeal dated 18 July 2019, appealing the order dated 15 July 2019 of the Master. This was followed by *inter partes* summons dated 8 August 2019, supported by an affidavit, seeking a stay of execution of the Master’s order dated 15 July 2019, pending the outcome of the Appeal. The Master’s order was made pursuant to an application by the Respondent in terms of Section 169 of the Land Transfer Act. The Applicant relied on Order 59 Rules 1 and 2 of the High Court Rules 1988 and in the inherent jurisdiction of this Court as the basis of his Application.
2. Order 59 Rule 16 (2)<sup>1</sup> states that the filing of a notice of appeal or an application for leave would not operate as a stay of execution of proceedings unless the court directed otherwise. The Applicant acknowledged that there was no automatic stay of proceedings upon the filing of the Notice of Appeal, and, therefore, sought an order staying proceedings. The Respondent resisted the granting of such an order.
3. Both parties were represented before the Master and on 15 July 2019, the adjourned date of hearing, the Master made order directing the Applicant

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<sup>1</sup> High Court Rules 1988

(originally Defendant) to give to the Respondent (originally Plaintiff) vacant possession of the land comprised in the Crown Lease No.12625 being Lot 5 on SO Plan No.3141, being part of Kuku containing an area of 5958 square meters. Execution was stayed for 30 days, and the Applicant was directed by the Master to pay costs in a sum of FJD 1,000.00. The Applicant appealed that order.

4. The Applicant's Notice of Appeal is couched on the following lines:  
*that the Applicant seeks orders in terms of the Appeal wholly against the orders made by the Master on 15 July 2019 on the grounds that the Master erred in fact and in law in her orders wholly because technically there is a pending case that is before the High Court, namely, Judicial Review Action No.04 of 2019 between Leone Vakarusaqoli and the Central Agricultural Tribunal.*
5. On the face of it, the parties in Judicial Review Action No.04 of 2019 do not appear to be the same as the parties in this action. The Applicant has not made available the pleadings in that case to this Court, which, therefore, cannot take that dispute into consideration in reaching a decision on this matter.
6. When the Appeal was mentioned in this Court on 29 July 2019, both parties were represented. On that day, counsel for the Applicant sought time to perfect the Applicant's documentation. The Appeal was thereafter mentioned on 16 August 2019. On that day the Applicant informed Court that *inter parte* summons (dated 8 August 2019) was filed seeking a stay of execution of proceedings. Both parties were, thereupon, directed to file written submissions within two weeks of that day and the hearing of the Applicant's summons was fixed for 27 September 2019.
7. On 27 September 2019, the date of the hearing, the Applicant was absent and unrepresented. Counsel for the Respondent moved that the matter be dismissed due to non-prosecution of the proceedings. He submitted that the Applicant had consistently defaulted even before the Master, and, thereby, caused an unnecessary delay in the proceedings, and that this had caused prejudice to the Respondent. The Court, however, decided to take up the hearing notwithstanding the absence of the Applicant. Counsel for the Respondent made

oral submissions and tendered written submissions. Written submissions were not filed on behalf of the Applicant.

8. The Respondent initiated proceedings for ejectment against the Applicant by way of Originating Summons dated 25 October 2018. Counsel for the Respondent submitted that on 29 November 2018, when the case was first mentioned, the Master ordered the Applicant to file and serve the Affidavit in Opposition within 14 days, and the Respondent was given 14 days within which to reply. Parties were directed to file and serve submissions within 28 days and the matter was fixed for hearing on 4 April 2019. On 6 February 2019, however, the Master vacated the hearing. On that day, the Applicant moved for further time to file and serve the Affidavit in Opposition. The Master granted the Application for adjournment and the hearing was adjourned to 15 July 2019. The Applicant was given 7 days to file and serve the Affidavit in Opposition, and the parties were granted 21 days to file submissions.
9. The parties appeared before the Master on 15 July 2019, and the Applicant again moved to vacate the hearing and sought time to file and serve the Affidavit in Opposition, which had not been filed up to that point. It is on record that sufficient instructions were not provided to the Applicant's solicitor to prepare the affidavit. The Master has noted that the Respondent's solicitor was not put on notice regarding the Application, and has drawn attention to the failure to file written papers when seeking to vacate a hearing or file documents out of time. The Respondent's counsel opposed the application to vacate the hearing on that day, and the Master decided to take up the matter for hearing.
10. Counsel for the Respondent submitted *inter alia* that the Master made an order for vacant possession upon being satisfied that the Respondent was the last registered proprietor of the land<sup>2</sup>, and as no cause was shown by the Applicant as provided by Section 172<sup>3</sup>; and, that the Applicant failed to file his Affidavit in Opposition despite the Master having granted additional time to do so. These submissions are borne out by the record before the Master.

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<sup>2</sup> Section 169 of the Land Transfer Act

<sup>3</sup> Land Transfer Act

11. Section 169 of the Land Transfer Act provides for expeditious relief to registered proprietors of land<sup>4</sup>. The Master is not even obliged to grant an adjournment for a defendant to show-cause when the matter comes up for the first time<sup>5</sup>. The Applicant ought to have shown some right to possession which would preclude the granting of an order for possession under Section 169. The Master, however, has been indulgent and granted time to the Applicant to file affidavits opposing the Application. The object of the legislation in these cases is to speedily dispose such matters by way of summary disposal. The Applicant's tardiness in complying with the Master's direction to file the Affidavit in Opposition frustrates that objective of the enactment. In fact, the record reveals that no affidavits were filed opposing the Respondent's application for ejection of the Applicant. That lends itself to the possibility that the Applicant had no reasonable cause to show when called upon by the Master. The Applicant's leisurely responses raise the question whether there was a *bona fide* defence to the Respondent's action for ejection.
12. In his Notice of Appeal, the Applicant refers to the existence of another case. No details have been furnished to Court by the Applicant in respect of this litigation. In any event, I agree with the approach of the High Court in Suva City Council v Suva City Council Staff's Association<sup>6</sup>. In that case, the Court was mindful that the existence of other proceedings before the Court was not, in itself, a cause sufficient to resist an application under Section 169 of the Land Transfer Act.
13. In these circumstances, the Applicant has failed to satisfy this Court that there is merit in the Application to stay execution of the Master's order pending the hearing of the Appeal. Counsel for the Respondent raised several preliminary objections in respect of the Appeal itself. This hearing, however, is limited to the Application for stay of execution. This Ruling will not affect the prosecution of the Appeal proceedings.

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<sup>4</sup> Harakh Narayan v Chotu Bhai Patel, Civil Appeal No.26 of 1985; Morris Hedstrom Limited v Liaquat Ali, Action No.153 of 1987

<sup>5</sup> Maureen A. Young v Linda Verma, Civil Action No. HBC 13 of 2019

<sup>6</sup> Civil Action No.389 of 1995, 24 November 1995

## ORDERS

- A. The Applicant's Application, by *inter partes* summons, dated 8 August 2019, seeking a stay of execution of the Master's order, dated 15 July 2019, pending the outcome of the Appeal, is dismissed.
- B. The Applicant is directed to pay the Respondent costs summarily assessed in a sum of 1,000.00 dollars in respect of these proceedings within two weeks of the date of the Ruling.

Delivered at Suva this 23<sup>rd</sup> day of October, 2019



*M. Javed Mansoor*  
M. Javed Mansoor  
Judge of the High Court