

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 160 OF 2015

BETWEEN : **AMI CHAND** of Votualevu, Nadi in Fiji, Farmer.

1ST PLAINTIFF

RITESHNI SHALINI LATA of Votualevu, Nadi in Fiji,
Domestic Duties.

2ND PLAINTIFF

AND : **SUBHAG WATI** of Votualevu, Nadi in Fiji, Domestic Duties as
Executrix and Trustee of the Estate of Chandu Lal.

1ST DEFENDANT

: **AVINESH PRASAD & RAGNI DEVI** of Votualevu, Nadi.

2ND DEFENDANT

: **ITAUKEI LAND TRUST BOARD** a body incorporated under
the iTaukei Land Trust Act Cap 134 with its registered office at
431 Victoria Parade, Suva.

3RD DEFENDANT

Appearances : Mr E. Maopa for the plaintiffs
No appearance for the second defendants
Date of Hearing : 28 February 2019
Date of Ruling : 28 February 2019

R U L I N G

[on examination of judgment debtor]

[01] This is an *ex-parte* application filed by the plaintiff seeking an order directing the second defendants (Avinesh Prasad and Ragni Devi) ("*the judgment debtors*") to appear before the Registrar or the Magistrate for means test for the purpose of enforcement of the judgment delivered by the Court against them on 3 July 2018, where the court ordered, among other things, the second defendants must pay a sum of \$40,000.00 to the plaintiffs with post interest.

[02] The application seeks the following orders:

1. *That the second defendant Avinesh Prasad and Ragni Devi of Malawai, Votualevu, Nadi to appear before the Master of the High Court to be orally examined on questions:*
 - a) *Whether any and if so what debts are owing by the Judgment Debtor; and*
 - b) *Whether the Judgment Debtor has any if so what other property or means of satisfying the Judgment Creditor.*
 - c) *That the Judgment Debtor to produce his bank accounts and any other related bank account under his/her name or under their business name and all registration of business under his/her or combine names or any other names including registrations of property on Housing Authority lease at Malawai and any other property and all vehicles registered under their names whether individual or both names or under any business names.*
2. *Cost of this application to be paid by the second defendant.*

[03] The application is made under Order 48, Rule 1 (1) of the High Court Rules 1988, as amended ("*HCR*"). An application under this order may be made *ex parte* without a supporting affidavit because the Rule does not require an affidavit to be filed along with such an application. Rule 1 (1) provides:

"Order for examination of judgment debtor (O 48, R 1)

1 (1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as "the judgment debtor") of money, the Court may, on an application made ex parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar or such Magistrate as the Court may appoint and be orally examined on the questions-

*(a) whether any and, if so, what debts are owing to the judgment debtor, and
(b) whether the judgment debtor has any and, if so, what other property or
means of satisfying the judgment or order,*

*and the Court may also order the judgment debtor or officer to produce any books
or documents in the possession of the judgment debtor relevant to the questions
aforesaid at the time and place appointed for the examination.*

*(2) An order under this rule must be served personally on the judgment debtor
and on any officer of a body corporate ordered to attend for examination, and
appropriate conduct money must be paid or tendered.*

- [04] The plaintiff seeks an order from this Court directing the defendants to appear before the Magistrate to be orally examined on questions: (a) whether any and, if so, what debts are owing to the judgment debtor, and (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order. In addition, the court may also order the judgment debtor to produce any books or documents in the possession of the judgment debtor relevant to the questions.
- [05] The plaintiffs invite this court to exercise its jurisdiction under O 48. However, the plaintiff could have made a direct application to the Magistrate without coming to this Court. The Magistrate is also empowered to summon a judgment debtor to appear before him or her for the purpose of examining means of satisfying the judgment or order under Order 36, R 16 of the Magistrates Court Rules ("MCR"). The MCR, R 16, states that:

*"Where Judgment summons applied for at a court in which
judgment was not obtained*

16. Where a judgment creditor desires to apply for a judgment summons to a court other than the court in which the judgment or order was obtained, he or she shall obtain from the clerk of the last-mentioned court a certified copy of the judgment or order in the action and file the same with his or her application. The certificate shall, where the amount to be paid was directed to be paid into court either forthwith or at a specified time or by instalments, state the date on which

the last payment into court, if any, under such judgment or order was made, or, if no payment into court has been made, the date upon which default was made.

[06] If an application is filed in the Magistrates Court under R 16 for a judgment summons to enforce a judgment delivered by the High Court or any other court, the Magistrates Court will seize jurisdiction to hear and determine such an application according to law. It would be incorrect to say that the Magistrates Court has no power to hear and determine a judgment debtor summons to enforce a judgment or order obtained by other court.

[07] In any event, this Court has jurisdiction to grant the orders the plaintiff is seeking. I would, acting under HCR, O 48, R 1, grant the orders the plaintiff applied for. I accordingly order the second defendants to appear before the Magistrate sitting at Nadi for means test at 9.30 am on 7 March 2019 for means test.

The result

The judgment debtors, Avinesh Prasad and Ragni Devi shall appear before the Nadi Magistrate for means test at 9.30 am on 7 March 2019.

M.H. Mohamed Ajmeer
28/2/19

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
28 February 2019

Solicitors:

M/s Babu Singh & Associates, Barristers & Solicitors: for the plaintiffs