

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 94 of 2018

IN THE MATTER of an application for possession of land under Section 169 of the Land Transfer Act, Cap 131.

BETWEEN : **SHAKUNTLA DEVI** of Hazrat Building, 61 Suva Street, Flat Number 8, Suva, Fiji.

APPLICANT/DEFENDANT

AND : **HARI KRISHNA THAKORLAL NARSEY** and **MAHENDRA KUMAR MOTIRAM** of businessman and Medical Practitioner both of Suva and **RAJENDRA JAGMOHAN NARSEY** of 40 Investigator Drive, Woodcraft S.S 5126, Australia, Business Manager and **HEMANT JAGMOHAN NARSEY** of 17 Kansas Place, Toongabbie, NSW 2146, Australia, Computer Programmer.

RESPONDENTS/PLAINTIFF

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSELS: Applicant in Person
Mr Nand - for the Respondents

Date of Ruling: 30th January, 2019 @ 9.30 am

DECISION

[Whether the Orders made by the Master of the High Court on 5th December 2018 be stayed until the determination of the Appeal]

1. The Applicant (Original Defendant) filed a Notice of Motion on 19th December, 2018 and sought for the following Orders:
 - (i) That the Orders of 5th December, 2018 in Civil Court Action HBC 94 of 2018 be stayed until the determination of the Appeal;
 - (ii) Any other Orders that this Court deems just.
2. The Motion was filed in Support of an Affidavit deposed by the Applicant on 19th December, 2018.
3. The Applicant appeared in person and chose to represent her own case and did not file any written submissions.
4. Counsel for the Plaintiff/Respondent opposed the Application for Stay and tendered in his written submissions accordingly.
5. The Plaintiff commenced civil proceedings against the Defendant on 5th April, 2018 seeking an Order for Vacant Possession of the property comprised and described in Certificate of Title Number 5890 on Lot 1 Deposited Plan Number 565.
6. The Defendant filed her Affidavit Response and the matter was heard and determined by the Master of the High Court on 5th December, 2018 as follows-
"The Defendant to deliver the property Flat 8 on Land comprised and described in Certificate of Title Number 5890 on Lot 1 Deposited Plan Number 565 on or before 31st January, 2019 and pay costs of \$1,000".
7. The Defendant/Applicant has now filed a Notice of Motion and an Affidavit in Support seeking an Order for Stay until the determination of the Appeal together with any other Orders that this Court deems just.
8. Counsel representing the Respondent/Plaintiff raised the following preliminary issues-
 - a. That in terms of *Order 59 Rule 9* of the *High Court (Amended Rules) 2006*, no Appeal was filed by the Applicant/Defendant within 21 days as required thereof.
 - b. That there is no Appeal on foot, furthermore, there is no Application to enlarge the time for filing and serving a Notice of Appeal and therefore it would be premature for this Court to deal with the Application for Stay Pending Appeal.
 - c. That *Order 59 Rule 17* provides the procedure after filing an Appeal and submitted that the Applicant has failed to comply with the said Rule hence the Appeal if any would be deemed to have been abandoned.
 - d. That this Court has no basis to Grant a Stay Order as there is no Appeal on foot.
9. In response to the preliminary issues raised herein, the Applicant/Defendant informed Court that she had sent the Notice of Stay on 17th December, 2018 and that this was a fraud case. She further said that she was confused now.
10. In light of above proceedings, since the Applicant/Defendant was unrepresented, this Court thought fit and proper to meet the ends of justice by hearing the entire Stay Application of the Applicant/Defendant to which the Plaintiff/Respondents' Counsel has no objection to as confirmed in his written submissions at paragraph 1.4.
11. The only issue therefore for this Court to deliberate upon and determine are as follows-

"In absence of any Leave to Appeal and Petition or Grounds of Appeal being filed herein whether this Court should accede to the Applicant/Defendant's Application for an Order for Stay of Proceedings."

12. The Courts have laid down set procedures in place as to what action should be taken by the aggrieved party to a Court decision in terms of Order 59 of the High Court Rules 1988.
13. In this case, the Applicant/Defendant being the aggrieved party ought to have filed and served Notice of Appeal within 21 days from the date of the Judgment on or before 26th December, 2018. If the calculation of time period during the legal vacation was accounted for then the Applicant/Defendant had time till 27th of January, 2019 to file and serve the Appeal but she had failed to do so.
14. Initially, this matter was listed before me on 21st January, 2019. This Court did point out to the Applicant/Defendant that there was no Petition and/or Grounds of Appeal filed herein when seeking an Order for Stay and that she must seek advice. In the interim, the Respondent/Plaintiff was given three (3) days' time to file a Response.
15. The Application for Stay was adjourned for hearing to 28th of January, 2019 bearing in mind the Order for Vacant Possession made by Master against the Applicant/Defendant to deliver up Vacant Possession on or before 31st January, 2019.
16. I have perused the Applicant/Defendant's Affidavit in Support of Motion for Stay and find that she has reiterated what she had said in her Affidavit in Response filed on 11th of May, 2018 except for the fact at paragraph 7 and 8 she is bringing in new evidence before this Court. I find that there is no merit in her application seeking for stay order.
17. Further, on the hearing date of the Application for Stay, there was still no Petition and/or Grounds of Appeal filed nor any Application seeking for enlargement of time in order to Appeal the decision out of time.
18. The Applicant/Defendant should have filed her Petition and grounds of Appeal and/or Leave to Appeal out of time since her Notice of Motion is asking for an Order for Stay until the determination of the Appeal.
19. In absence of any Petition and grounds of Appeal and/or Leave to Appeal out of time by the Applicant/Defendant, this Court cannot just grant a stay of application in vacuum. The Court must be satisfied that there is a foundation and/or basis laid down in terms of the Petition and/or grounds of Appeal and see the merits of the case in terms of the Petition filed for its success.
20. Accordingly, for the aforesaid reasons, I have no alternative but to refuse the Applicant/Defendant's Application for Stay of Proceedings. I further Order that the Applicant/Defendant to pay summarily assessed costs of \$500 within 14 days time-frame.
21. Following are the Orders of the Court-

FINAL ORDERS

- a) The Application for Stay of Proceedings is hereby refused.

- b) The Applicant/Defendant to pay summarily assessed costs of \$500 to the Respondent/Plaintiff within 14 days time-frame.

Dated at Suva this 30th day of January, 2019



Cc. Shakuntla Devi, Suva
Nands Law, Suva

VISHWA DATT SHARMA
JUDGE
SUVA