

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

HPP No. 72 of 2017

IN THE ESTATE OF VIDYA SAGAR

late of Waqadra, Nadi in the District of
Nadi, in the Republic of Fiji, retired,
Civil Servant, Deceased (Testate)

BETWEEN: SANGEETA SHALINI LATA of Navakai, Nadi, Waitress.

PLAINTIFF/RESPONDENT

AND: VINAL VILASH DEO of Wqadra, Nadi, Self-Employed.

DEFENDANT/APPLICANT

DECISION

*[Notice of Motion seeking an order for Transfer of case to Lautoka High Court in terms of
Practice Direction No. 02 and Order 33 Rule 4 of the High Court Rules 1988]*

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSELS: Mr. Chand A. - for the Plaintiff/Respondent.
Mr. Nandan S. (o/I of Pillai, Naidu & Assoc.) - for the Defendant/Applicant.

Date of Decision: 24th June, 2019 @ 9.30 am

INTRODUCTION

- [1] Before this Court is a **Notice of Motion** filed by the Defendant/Applicant seeking for the following Orders:
- (i) That since all parties, my counsel and the subject Estate property is in the Western Division, this matter be transferred to the Lautoka High Court being the nearest court in order to save costs.
- [2] The Defendant/Applicant relies on the Affidavit in Support deposited by him on 9th April 2019.
- [3] This application is made pursuant to Chief Justices' Minutes of 21st April 2011, Chief Registrar's Practice Direction No. 2 of 1994, Order 33 Rule 4 of the High Court Rules 1988 and under the Inherent jurisdiction of this Honourable Court.
- [4] Initially the Plaintiff's/Respondent's counsel had objected to this application for transfer but sought sometime to seek further instructions from his client.
- [5] The court proceeded to made directions for the Plaintiff/Respondent and Defendant/Applicant to file and Affidavit in Response and Reply respectively.
- [6] The Court further reminded both counsels that they were at liberty to communicate with each other on the pending issue before court seeking transfer orders.
- [7] The matter was adjourned for determination to 24th of June 2019.

Defendant's (Applicant's Case)

- [8] The Defendant/Applicant case contention is that all parties in this action reside in the Western Division.
- [9] That the Estate property in question is also located in Nadi within the Western Division.
- [10] That his counsel is based in Nadi in the Western Division.
- [11] That since all parties, his counsel and the subject Estate property is in the western division therefore sought for transfer of this file to the Lautoka High Court.

Plaintiff's (Respondent's Case)

- [12] That the civil proceedings within the HPP 72 of 2017 was commenced at the High Court in Suva.

ANALYSIS AND DETERMINATION

- [13] The Plaintiff filed his Writ of Summons on 25th September 2017 at the High Court Civil Registry in Suva.
- [14] Upon the service of the Writ of Summons being served on the Defendant, the Defendant subsequently filed his Statement of Defence and Counterclaim
- [15] The Plaintiff thereafter filed his reply to the Defendant's Statement of Defence and Defence to Counterclaim. Hereafter Summons for Direction was initiated and certain orders were sought to complete the cause of action which was duly complied with by the parties to this proceedings.


- [16] Subsequently copy pleadings were filed together with the Summons under order 34 of the High Court Rules for entry of action for trial before a judge of the High Court.
- [17] Orders in terms of Order 34 Summons was made on the 16th of May 2019 and the file was remitted to the Senior Court Officer for allocation of the same to a judge of the High Court for hearing and determination accordingly.
- [18] On 28th of May 2019 the Defendant/Applicant filed a Notice of Motion together with an Affidavit in Support and sought for an order that this particular file be now transferred to the High Court at Lautoka.
- [19] The motion came before the court on 24th of June 2019 to determine what orders ought to be made in the circumstances.
- [20] However, when this matter came before court on 24th of June 2019, the counsel for the Plaintiff informed court that the Plaintiff was consenting for transfer orders to be made and accordingly the file to be transferred to the High Court at Lautoka for hearing and determination.
- [21] Taking into consideration the nature of the substantive pending matter before this court and that the Plaintiff was consenting to the Defendant's/Applicant's application for transfer of this case to the High Court at Lautoka, this court had no alternative but proceeded to make the transfer orders without imposition of any costs accordingly.
- [22] Following are the final orders:

FNAL ORDERS

- [23] By consent this file is now transferred to the High Court at Lautoka in terms of the Practice Direction No. 02/94 and Order 33 Rule 4 of the High Court Rules 1988.
- [24] Senior Court Officer, Suva is directed to remit this file with all document intact to the High Court at Lautoka with immediate effect so that necessities can be carried out by the Deputy Registrar High Court Lautoka.
- [25] There will be no order as to costs.
- [26] Orders accordingly

DATED at SUVA this 24th DAY of JUNE, 2019




VISHWA DATT SHARMA
JUDGE
SUVA
24th Day of June, 2019

cc. Messrs Amrit Chand Lawyers, Suva
Messrs Pillai, Naidu & Associates, Nadi