

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 165 of 2019

Teng Hui Construction Company Pte Ltd

Plaintiff

v

Jagdishwar Prasad

Bindra Mati

Defendants

Counsel: Mr S. Fa for the plaintiff
Mr F. Haniff for the defendant

Date of Ruling: 6th February, 2020

Ruling

1. By inter partes summons filed on 19 November, 2019, the plaintiff moves for a stay of execution of my Ruling of 6th November, 2019, "*until the Plaintiff has been given the right to be Heard in opposing the Defendant's injunction application*" and that my Ruling "*be wholly set aside*".
2. The affidavit in support of the summons states that on 13th September, 2019, at the commencement of the hearing, the solicitors for the plaintiff moved for an adjournment to permit the plaintiff to file affidavit in opposition to the defendant's application for an injunction and possession. I declined the application and proceeded with the hearing. On 6th November, 2019, I ruled in favour of the defendant's application for injunction and possession.

3. On 2nd December,2019, I directed the parties to filed affidavits in opposition and reply to the summons and fixed the matter for hearing on 24th January,2020. On 24th January,2020, Ms U. Fa moved for an adjournment of the hearing on the ground that Mr S. Fa, counsel for the plaintiff was indisposed. Subsequently, I directed Mr Rabuka, counsel for the plaintiff to file written submissions in reply to the written submissions filed by the defendant.

The determination

4. The plaintiff seeks to stay execution of my Ruling of 6th November, 2019, and set it aside.
5. On 13th September, 2019, at the commencement of the hearing, Mr Lanyon, counsel for the plaintiff at that time, sought an adjournment of the hearing to file affidavit in opposition. I declined the application for the following reason. On 19th August,2019, the plaintiff was directed to file affidavit in opposition on 2nd September, 2019. An application for extension of time should have been made prior to 2nd September, 2019.
6. An application for an injunction must be heard and disposed of expeditiously. Accordingly, on 13th September, 2019, I heard both counsel on that application. Mr Lanyon made submissions opposing the application for an injunction on the ground that the plaintiff has an equitable lien to remain on the premises on the sums unpaid by the defendants.
7. In my view, the application for a stay of my Ruling in order to give the plaintiff the right to be heard is misconceived.
8. In any event, I am now functus officio in respect of my Ruling .

9. In *Diana Giesbrecht v Rowena Grace Cross and Douglas Bamlet*, Civil Appeal No. ABU 117 of 2017(30th April,2019) as cited by Mr Haniff, counsel for the defendant Calanchini P said:

The Oxford Dictionary of Law provides that "a person who has discharged his duty and whose office or authority is at an end is said to be "functus officio". There is also a statement that "once a judgment has been given the Judge is functus officio and he has no power to make changes in his decision which can only be questioned by others in the further courts of appeal". That definition does provide a useful starting point in this application.

10. The plaintiff also seeks a stay of execution of my Ruling. I note that the plaintiff has not filed an appeal against my Ruling. It follows the issue of stay does not arise.

11. **Order**

- (a) The plaintiff's application is declined.
(b) The plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 1000 within 15 days of this Ruling.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

6th February.2020