

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

**Civil Action No. HBC 197 of 2014**

**BETWEEN**

**GAYA PRASAD aka MUKESH PRASAD and PRAVEENA PRASAD both of  
33 Tyndall Avenue, Toronto, Ontario, Canada,  
Businessman and Domestic Duties.**

**PLAINTIFFS**

**AND**

**SABIR HUSSAIN aka SABIR QAIYUM HUSSAIN of Ratu Dovi Road, Nadera,  
Nasinu, Fiji trading as SABIR BUILDERS and KHALIL HUSSAIN of  
Nausori, Fiji, Businessman.**

**DEFENDANT**

**Counsel** : Mr. Singh S. with Ms. Soumaki K. for the Plaintiffs.  
Mr. Kumar V. for the defendant

**Date of Hearing** : 27<sup>th</sup> August 2021

**Date of Ruling** : 10<sup>th</sup> September 2021

## RULING

[1] The plaintiffs filed the inter-parte summons seeking the following orders:

- (1) The judgment in favour of the plaintiffs delivered by the High Court on 27<sup>th</sup> January 2017 and registered on 30 March 2021 against the defendant Sabir Hussain aka Sabir Qaiyum Hussain's properties listed in the schedule herein be extended until completion of the sale of those properties.
- (2) The plaintiffs through their instant solicitors, pursuant to the registered judgment of 30 March 2021 sell the said defendant's properties listed in the schedule herein through a tender process advertise at least 5 times in the Fiji Sun Newspaper in a period of 30 days from the date of making of the orders herein.
- (3) The proceeds of the sale of the property be applied towards full satisfaction of the judgment obtained by the plaintiffs in the High Court on 27<sup>th</sup> January 2017 all interest accrued under the judgment up to the date of the sale and costs as ordered by the High Court and Fiji Court of Appeal and a further sum of \$8,000 + VAT being the costs of this sale application.
- (4) The Deputy Registrar Legal of the High Court, Suva Registry shall execute all documents required on behalf of the defendant to process the sale including the form of sale and purchase agreement with the purchasers, transfer, application for consent to assign to the Director of Lands, any applications for release and settlement of Mortgage on the properties and Capital Gains Tax clearance applications.
- (5) Within 7 days of the making of the orders herein, the defendant whether by his Banker, Bank of South Pacific, himself or his agent, his lawful Power of attorney Holder, shall provide the duplicate Original State/Crown Leases listed in the schedule herein to the plaintiffs' solicitors. If the defendant fails to hand in the duplicate Original State/Crown Leases, then the Registrar of Titles shall cancel the duplicate Original State/Crown Leases in the defendant's possession and issue fresh duplicate/provisional Crown/State Leases for use by the plaintiffs to achieve the sale by the plaintiffs of the properties listed in the schedule herein.
- (6) The defendant be refunded the extra/excess from the sale proceeds of the properties.

(7) Such further and/or other orders as this Honourable Court deems just.

(8) Costs on an indemnity basis.

- [2] When this matter came up before this court on 27<sup>th</sup> August 2021 the court decided to hear the parties on the application for extension of the registration of the judgment.
- [3] In this matter the final judgment was delivered on 27<sup>th</sup> January 2017 and the defendant subsequently filled summons seeking certain clarification of the judgment which was refused by the court. The defendant then sought leave to appeal the ruling to the Court of Appeal which was refused by the court. The learned counsel informed court that the matter is now before the Supreme Court.
- [4] The plaintiff has lodged the judgment of this court delivered on 30<sup>th</sup> March 2017 on lease title of the defendants. The plaintiffs have attached the copies of five residential leases bearing Nos. LD 4 / 14 / 3393 to LD 4 / 14 / 97 these residential leases are in respect of Lots 2 to 6 of KUKU (PT OF) LOT 1 SO 5796 and commercial lease No. LD 4 / 14 / 251.
- [5] The judgment has been registered on the above residential leases on 28<sup>th</sup> September 2020 and 30<sup>th</sup> March 2021 and on the commercial lease on 26<sup>th</sup> July 2017 (cancelled), 12<sup>th</sup> September 2017, 21<sup>st</sup> March 2018, 28<sup>th</sup> September 2018 (cancelled), 30<sup>th</sup> October 2018, 10<sup>th</sup> July 2019, 13<sup>th</sup> January 2020, 13<sup>th</sup> July 2020 and 02<sup>nd</sup> June 2021.
- [6] The law relating to registration of judgments is found in sections 104 and 105 of the Land Transfer Act 1971.

Section 104 -

- (1) No judgment, decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order issued prior to or after the commencement of this Act shall bind, charge or affect any estate or interest in land subject to the provisions of this Act unless and until the Registrar has been served with a copy of such judgment, decree or order certified by the court and accompanied by a statement signed by any party interested or his barrister and solicitor or agent specifying-
- (a) the estate or interest sought to be affected thereby;

- (b) the name, address and description of the person by whom or on whose behalf the same is lodged; and
  - (c) an address or place within Fiji at which notices and proceedings relating thereto may be served.
- (2) The Registrar, on being served with a copy of a judgment, decree or order under the provisions of subsection (1) shall, after marking upon such copy the time of service, enter the same in the register; and with effect from the time of service thereof upon the Registrar such judgment, decree or order shall, subject to the provisions of subsection (2) of section 105, have the effect of, and be deemed to be, a caveat lodged under the provisions of section 106, subject to any prior registered mortgage or charge forbidding the registration of any person as transferee or proprietor of and of any interest affecting, the estate or interest affected by such judgment, decree or order other than in pursuance of such judgment, decree or order.
- (3) Upon the estate or interest in respect of which a judgment, decree or order has been registered under the provisions of subsection (2) having been sold pursuant to such judgment, decree or order, the Registrar shall, on receiving a transfer thereof in the prescribed form (which transfer shall have the same effect as if made by the proprietor) enter a memorial of such transfer in the register; and on such entry being made the purchaser shall become the transferee and be deemed to be the registered proprietor of such estate or interest.
- (4) After the commencement of this Act, no unregistered instrument, document or writing and no equitable mortgage by deposit or otherwise without writing affecting any estate or interest in land shall prevail against a sale under the authority of a judgment, decree or order unless a caveat in respect of such unregistered instrument, document or writing or equitable mortgage shall have been lodged with the Registrar in pursuance of the provisions of section 106 before the service of the copy of the said judgment, decree or order on the Registrar but, in the absence of a caveat, all of the estate and interest of the judgment debtor as well as of any unregistered purchaser,



transferee, mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under the provisions of this section.

- (5) The Registrar may register a transfer under the authority of a judgment, decree or order without requiring the production of the duplicate instrument of title:

Provided that the Registrar shall give such notice of intention to register the transfer, at the cost of the transferee, and cause the same to be published, as in the case of the production of a duplicate certificate being dispensed with under the provisions of section 26.

#### Section 105 –

- (1) Upon production to the Registrar, by way of application, of sufficient evidence of the satisfaction of any judgment, decree or order registered under the provisions of section 104, he shall direct an entry to be made in the register of a memorial to that effect, and on such entry having been made, such judgment, decree or order shall be deemed to be satisfied.
- (2) Every judgment, decree or order shall cease to bind, charge or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such judgment, decree or order shall be presented to the Registrar for registration within six months, or such extended period as the court by order made on application to it upon summons shall determine, from the day on which the copy of such judgment, order or decree was served.

- [7] As I have stated in paragraphs 4 and 5 above the judgment has been registered several times. The question is whether a party is entitled to register same judgment more than once. If a party is unable to complete a sale under a registered judgment section 105(2) of the Land Transfer Act 1971 provides that such party must seek an extension of time. The law does not provide for reregistering the judgment.

- [8] The registration of the judgment on the commercial lease has expired 12<sup>th</sup> March 2018 and registration of the judgment on the residential leases on 28<sup>th</sup> March 2021. The summons seeking an extension of the registration of the judgment was filed on 17<sup>th</sup> August 2021 long after the six months period prescribed by section 105(2) of the Land Transfer Act 1971 expired.
- [9] The learned counsel for the plaintiff submits that the current law is that if the judgment has lapsed and no extension has been granted, the judgment creditor has the right to lodge a fresh judgment registration application under section 104 of the Act and have the Registrar of Titles register it under section 104(2) of the Act. In the present matter, the Registrar of Titles has been doing just that all this while since the time the judgment was obtained and the plaintiffs involved in a series of post judgment applications and appeals registering the judgment on the title each time on expiry of the 6 months instead of calling for extensions.
- [10] Sections 104 and 105 of the Land Transfer Act 1971 are absolutely clear and those provisions do not provide for more than one registration. If that was the intention of the legislature in enacting those provisions there was absolutely no necessity to make provisions for extension of time.
- [11] The learned counsel cited the decision in **Ambaram Narsey Properties Ltd v Khan** [2021] FJHC 193; HBC139.1996L (26 March 2021) in support of his submissions. However, the facts of that case are quite different from the matter before this court.
- [12] In that matter Tuilevuka J. in paragraphs 27 and 28 made the following observations:

I am of the view that, in the circumstances of this case, where the judgement creditor had applied on time, and should have obtained the order within time, and the indications are that they intended to lodge it with the Registrar of Titles within time, and where the other party had contributed to the oversight, this Court should step in to preserve the integrity of the execution processes which the judgment creditor has set in motion in execution of the substantial judgment which he has obtained from this court. I also rely on the principle of *nunc pro tunc* ("an act done retrospectively so as not to prejudice a party- what should have been done then could be done now by court") – with all the necessary time adjustments (**Southwick v State** [1997] FJCA 5; Aau0020u.96s (14 February 1997)).

So, while I will leave the question as to whether section 105(2) is mandatory or merely directive for another day for the Fiji Court of Appeal, and given Ms. Khan's concession that she would accept an application made under section 104, and in balancing the interests of justice and the consequences that would potentially flow from striking out the application for extension of time on account of the delay, and given all I have said above and all that Usha Kumar deposes in her affidavit, I am of the view that I can at least deem the application for extension of the registration of judgment as a fresh one made under section 104, and I do so accordingly.

- [13] It appears from the above in that matter there had been many appeals to the Court of Appeal and to the Supreme Court. In this matter the defendants against whom the judgment was given did not appeal. There was a subsequent application seeking some clarifications of the judgment which was declined by this court and an application for leave to appeal has also been refused by the Court of Appeal. It was informed that the defendant made an application to the Supreme Court.
- [14] It is also pertinent to note that the courts have no power to override statutory provisions. The courts are expected only to interpret the statutory provisions in the course of administration of justice.
- [15] The question here is whether the said application caused any delay in registering the judgment. In this jurisdiction preferring an appeal against a judgment does not stay the execution of the judgment by the judgment creditor unless the proceedings are stayed by an order of court. In this matter there is no appeal against the judgment nor is there a stay order staying the execution of the judgment.
- [16] The next issue is whether the word "shall" in section 105 of the Land Transfer Act 1971 makes the requirement to register a judgment within six months mandatory. The submission of the learned counsel for the plaintiff is the provisions of section 105(2) is directory and not mandatory. There may be instances where the word "shall" is not mandatory but directory.
- [17] When a statute prescribes period within which a particular act to be done, the word "shall" makes such provision mandatory. Otherwise prescribing a particular period to do certain act or acts will have no purpose. Therefore, I do not agree with the submission that the provisions of section 105(2) of the Land Transfer Act 1971 are directory and not mandatory.



[18] The other question is whether judgment creditor is entitled in law to register the judgment more than once. Section 104 and 105 of the Land Transfer Act 1971 provides for only one registration and the period of six months prescribed by section 105(2) can only be extended by court only on an application in that regard made by the judgment creditor. The power conferred upon the court by the statute cannot be exercised by the judgment debtor. Registering of a judgment amounts to an extension of the time prescribed by section 105(2) which a judgment creditor is not entitled in law to do. Therefore, the court will only take into consideration the first registration of the judgment. At the time this application is made by the plaintiffs the period of six months prescribed by section 105(2) has long been lapsed and the plaintiffs' application for extension of time to register the judgment is liable to be dismissed.

[19] For the reasons aforementioned the court makes the following orders.

#### ORDERS

- (1) The application for extension of the judgment is refused.
- (2) There will be no order for costs of this application.

  
Lyone Seneviratne

JUDGE

10<sup>th</sup> September 2021

