

IN THE HIGH COURT OF FIJI

AT LABASA

CIVIL JURISDICTION

Civil Action No. HBC 28 of 2018

BETWEEN: **RADHA GOVINDA VEDIC CHARITABLE FOUNDATION**

PLAINTIFF

AND: **SOPHIA ANNA KUYT**

DEFENDANT

Before: **Hon. Mr. Justice Vishwa Datt Sharma**

Counsels: **Ms. Sumer for Lateef & Lateef :** **for the Plaintiff**

Mr Shelvin Singh : **for the Defendant**

Date: **08th August 2022 at 9.30am**

DECISION

[Vacation and Adjournment of Hearing Dates]

Introduction

[1] The Plaintiff filed a Summons on 25th July 2022 and sought for the following Orders:

- (i) That the scheduled hearing dates of 8th and 9th August 2022 be vacated; and
- (ii) Then there be no Order as to costs.

[2] The application was made pursuant to *Order 35 Rule 3 of the High Court Rules, 1988 and the Inherent Jurisdiction of this Honourable Court* and upon the grounds relied on in the Affidavits of Nico Kuyt.

[3] The Defendant filed his Affidavit to Opposition to the Affidavit of Nico Kuyt, on 02nd August 2022.

[4] Both Counsels representing the parties to the proceedings made oral submissions accordingly.

Submission

[5] The Defendant's contention was that the substantive action was filed in 2018 and has been pending since then to the current time for Court's determination.

[6] The Defendants further submitted that no consent was given for adjournment and/or vacation of the hearing dates.

[7] The Defendant pressed on that the matter must proceed to hearing.

[8] The Defendant's contention was otherwise. In that a formal summons was filed to seek the vacation of hearing dates and that the Defendant had earlier given a consent for vacation of the hearing date.

Determination

[9] The starting point is that this Substantive Writ Action was filed and commenced on 22nd June 2018 together with an Ex-Parte Notice of Motion.

[10] Restraining Orders were made in terms of the Ex-Parte Notice of Motion.

[11] As to the Substantive Writ Action, the Statement of Defence and the Reply to the Statement of Defence was filed resulting in the completion of the Cause of Action.

- [12] However, a summons was filed by the Plaintiff on 03rd May 2019 wherein the Plaintiff sought for an order to join the Registration of Titles as the 2nd Defendant to the proceedings and Leave to Amend the Writ and the Statement of Claim.
- [13] Upon the granted of the orders as sought on the Summons, an Amended Writ of Summons was filed by the Plaintiff on 14th of June 2019, joining Registrar of Titles as the 2nd Defendant to the proceedings followed by the Statement of Defence by the Defendant on 28th June 2019 respectively.
- [14] On 05th July 2019, the 1st Defendant Sophia Anna Kuyt, filed an Interlocutory Summons on 05th July 2019 and sought for the striking out of the Writ and/or Stay of proceedings and the Plaintiff filed an Opposition on 18th July 2019.
- [15] The Summons proceeded to hearing and a Decision was delivered.
- [16] On 22nd November, 2019 the Plaintiff filed yet another Summons and sought for an Order to further Amend the Statement of Claim and sought for a speedy trial.
- [17] Subsequently, the Defendant filed an Opposition accordingly.
- [18] Then again, the Plaintiff filed another Summons on 15th January 2020 and sought for the withdrawal of the earlier Summons filed on 25th November 2019, and to further amend the Statement of Claim and so on and so forth.
- [19] A decision in the above summons seeking striking out and stay was delivered by me on 25th February 2020.
- [20] It can be noted upon the perusal of the court file that there were other Interlocutory Applications filed and dealt with until the parties to this proceedings filed that Pre-Trial Conference Minutes [PTC] on 03rd December 2021. It had taken the parties some good 3 ½ years to complete the PTC and then seek an Order for Order 34 summons to enter the substantive action to trial before a Judge of the High Court.

- [21] The Master of the High Court assigned the 08th day of August 2022 for trial and for continuation to the 09th August 2022 accordingly.
- [22] On 25th July 2022, the Plaintiff opted to delay the trial of the proceedings further and filed a summons seeking for the vacation of the trial dates and matter to be adjourned.
- [23] Nico Kuyt as one of the Directors of the Plaintiff's Foundation deposed in his Affidavit in Support on 22nd July 2022 at paragraph 4 and 7 respectively that he was now 73 years old, in frail health, weak physical condition, and to travel such long distances to Fiji is very hard. He resides in Thailand and now trying to generate income in South America. He further deposed that he had no pension or stable income, his savings has dwindled, and that he was hard pressed to travel to Fiji due to financial constraints.

There is no medical evidence and/or other documentary financial evidence annexed to the Affidavit to establish his medical conditions and the financial status of Nico Kuyt.

Further the Affidavit deposed by Nico Kuyt is a photocopy and not an original as a requirement in terms of the High Court Rules and therefore cannot be given any weight to the material content therein.

- [24] In Summary the following is noted –
- Trial dates of 8th and 9th August 2022 scheduled on 22/02/2022.
 - 2018 matter.
 - The Plaintiff opposed the Application for adjournment and vacation of trial dates.
 - No consent given by the Defendant.
 - Savusavu Family matter 17/SAV/0122 refers and is impending determination but does not have a direct nexus to the current proceedings. Although there is a Form 9 property application pending therein.

- E-mail on file received from Senior Court Officer, Savusavu Court outlining details of actions taken and applications filed within the Family Division of the Magistrates Court.

[25] Bearing in mind the age and the conduct of the current proceedings before this court as can be ascertained upon the perusal of the court file, it does not allow me to accede to the Plaintiff's application for vacation of the trial dates and adjournment as sought for hearing.

[26] Prima facie, the question of vacation of the trial dates and/or adjournment or not is one for the discretion of the presiding trial Judge.

[27] Accordingly, I am not satisfied with the rational and explanation for seeking the vacation of the trial dates and an adjournment.

[28] In the circumstances, I have no alternative but to refuse the Plaintiff's application for vacation of trial dates and the adjournments.

Orders:

- (i) Summons seeking vacation of the hearing dates and the adjournment is dismissed.

Dated at **Labasa** this **08th August, 2022.**



Vishwa Datt Sharm
Judge

- cc: 1. Lateef & Lateef
Lawyers, Suva
2. Shelvin Singh
Lawyers, Suva