

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

1ST DEFENDANT

AND: REGISTRAR OF TITLES

2ND DEFENDANT

Before: Hon. Mr. Justice Vishwa Datt Sharma

Counsels: Ms. Sumer o/i of Lateef & Lateef Lawyers : for the Plaintiff
Mr Shelvin Singh : for the Defendant

Date: 08th August 2022 at 9.30am

JUDGMENT

[On Substantive Amended Writ Action]

Introduction

[1] The Plaintiff filed a Writ of Summons together with a Statement of Claim on 22nd June 2018 and later amended on 14th June 2019 and sought for the following Orders.

- [i] The 1st Defendant be restrained from uplifting her share of matrimonial money held at ASB Commonwealth Vault in New Zealand until such time she returns all the sacred relics.

- [ii] The 1st Defendant return all the religious items and relics removed from the property of the plaintiff;
 - [iii] Special damages to be awarded to the plaintiff in the sum of \$505,000.00;
 - [iv] That the 1st defendant forthwith remove the unsigned caveats and court orders lodged against Certificate Title Number 4517 and Certificate Titles Nos. 4518 on registered numbers 45 on folio 4517 and folio 4518.
 - [v] A declaration that the 1st defendant is not entitled to enter the plaintiff's properties or interfere with the same in any manner whatsoever.
 - [vi] That the 1st defendant be restrained from lodging any further documents against Certificate of the Title Number 4517 and Certificate Title No. 4518 on registered numbers 45 on folio 4517 and folio 4518.
 - [vii] General Damages.
 - [viii] Exemplary damages
 - [ix] Costs
 - [x] Such further and/or other relief as this Honourable Court may deem just and expedient.
- [2] A subsequent Statement of Defence and a Reply was filed accordingly.
- [3] Various Interlocutory applications were made in the proceedings and have been dealt with and determined by this Court.
- [4] The Substantive Amended Writ Action was scheduled for trial on 08th August 2022 and 09th August 2022 respectively.
- [5] On 25th July 2022 the Plaintiff filed a Summons and sought for the vacation and adjournment of the trial dates of 08th and 09th August 2022.
- [6] This Court had the Plaintiff's application and refused the vacation and adjournment of the trial dates and made its decision to proceed with the substantive trial of the matter.

- [7] At this stage, counsel representing the Plaintiff [Ms. Sumer] on instructions of Lateef & Lateef Lawyers informed court that she had no further instructions now to proceed with the trial.
- [8] The Court then had to stand down the matter and directed counsel [Ms. Sumer] to liaise with Lateef & Lateef Lawyers on the issue of proceedings to trial and take further instructions and inform Court on their status in the proceedings.
- [9] Counsel representing the Defendant submitted that the trial must proceed outlining his reasons and sought for the dismissal of the Substantive Writ Action together with costs of \$10,000.
- [10] This Court resumed and counsel in carriage of the Plaintiff's case [Ms. Sumer] told Court that she was unable to proceed to trial. There was no way that she could proceed since the Plaintiff was not in Fiji at the current time.
- [11] The Defence Counsel submitted giving reasons that the matter should be struck out with costs.

Determination

- [12] This Court had earlier on handed out the Decision on the Plaintiff's Summons refusing the vacation and adjournment of the trial dates of 08th and 09th August 2022.
- [13] The only issue left for this Court to determine then was the issue within the Amended Writ of Summons and the Statement of Claim.
- [14] I take myself back to the Affidavit in Support deposed by Nico Kuyt on 22nd July 2022.
- [15] Nico Kuyt is one of the Directors of the Radha Govinda Vedic Charitable Foundation (Plaintiff) and that he is the only witness in this case.
- [16] He filed the photocopy Affidavit in Support on 22nd July 2022. However, he did not thereafter file the original Affidavit as was required of him in terms of the High Court Rules, 1988.
- [17] Nico Kuyt further deposed in his Affidavit at paragraph 4 -

"That I am the only witness in this case, I reside in Thailand and I am now trying to generate income in South America. There are no other witnesses. I am now 73, in frail health, weak physical condition, and to travel such long distances to Fiji is very hard."

[18] At paragraph 5 he stated –

"That the hearing date was fixed on 22.02.2022 and scheduled for the 8 & 9 of August 2022 at 9.30am. I will be relying on documentary evidence to corroborate the Plaintiff's claim. These documents have been listed and inspected by the Defendant at discovery stage."

[20] However, the counsel in the carriage of the Plaintiff's case at trial told Court that she could not offer any evidence and that there was no way that the Counsel could proceed with the trial since the Plaintiff was not present in Fiji at the trial.

[21] The Court reiterated to Counsel [Ms. Sumer] to proceed to trial and her reply repeatedly was that she was unable to proceed to trial in absence of the Plaintiff as the only witness in this case.

[22] However, little did Counsel realize that Nico Kuyt in his Affidavit deposed on 22nd July 2022 at paragraph 4 and 5 stated that –

He is the only witness and will rely on documentary evidence to corroborate the Plaintiff's claim. These documents have been inspected by the Defendants at the discovery stage. (underline mine)

[23] The Plaintiff's Counsel representing in the circumstances could have proceeded and relied on the documentary evidence filed into Court. However, the Counsel failed in its bid to do so accordingly as was sought by Nico Kuyt in his Affidavit.

[24] The Court therefore concluded that the Plaintiff was not in a position to offer and/or tender any evidence at the trial. Hence, unable to proceed to trial. It is only the Plaintiff to be blamed in this circumstances as to the reason for not proceeding to trial and establish the Plaintiff's case accordingly.

[25] Further this Court took cognizance of the fact that -

- It was a 2018 matter.
- The Plaintiff changed 3 counsels during the pendency of the matter.

- No evidence or witnesses tendered by the Plaintiff to Court during trial to establish the Plaintiff's case.
- The trial was scheduled on 22nd February 2022 for 2 days on 08th and 09th August 2022.
- The Plaintiff was not in a position to proceed to trial.
- The Principle Counsel with the carriage of the matter [Lateef & Lateef Lawyers] were not present and that Counsel Ms. Sumer was instructed to take the carriage of the trial.

[26] For the aforesaid rational and in absence of any evidence tendered to Court and witnesses called by the Plaintiff at the trial to establish the Plaintiff's case against the Defendant, this Court had no alternative but proceeded to dismiss the Plaintiff's Action against the Defendant accordingly.

Costs

[27] Although the matter did not proceed to 2 days trial, but the Court had to deal with and determine with Interlocutory Summons for vacation and adjournment of the trial together with the Substantive Writ Action.

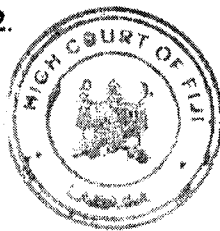
[28] Both parties made representations and oral submissions.

[29] It is only appropriate that I grant a sum of \$2,000 as summarily assessed costs to the Defendant to be paid by the Plaintiff within 14 days timeframe.

Orders:

- The Plaintiff's Amended Writ of Summons together with the Statement of Claim is dismissed.
- The Plaintiff to pay the Defendant a sum of \$2,000 as summary assessed cost within 14 days timeframe.

Dated at Labasa this 08th August, 2022.



Vishwa Datt Sharma

Vishwa Datt Sharma
Judge

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