

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 69 of 2019

The Registrar of Titles

First plaintiff

The Attorney General of Fiji

Second plaintiff

v

Saunaka Land Purchase Co-operative Society Limited

First defendant

Anil Kumar Nandan

Second defendant

Yathi Rajan Narayan

Third defendant

Ram Dulare and Indar Narayan

Fourth defendant

Hari Ram

Fifth defendant

Pushpa Chandra Naidu

Sixth defendant

Fariyad Ali

Seventh defendant

Namaka Land Development Company Limited

Eighth defendant

Counsel: Ms M. Faktaufon for the first and second plaintiffs
Mr A. Reddy for the third defendant
Mr A. Nadan for the fifth and eighth defendants
Mr V. Singh for the sixth defendant

Date of Hearing: 24th October,2022
Date of Ruling : 31st January, 2023

Ruling

1. The third defendant seeks leave to appeal the decision of the Acting Master of 26th January, 2022, and stay of proceedings until determination of this application.
2. The third defendant had moved that the originating summons filed by the plaintiff be struck out on the grounds that it discloses no reasonable cause of action against him; it is frivolous and/or vexatious; and, otherwise an abuse of process of Court. The supporting affidavit stated that it was unclear under what provision of the High Court Rules or legislation the summons was filed.
3. The Acting Master declined the application to strike out the summons. She held that the summons complies with the rules and outlines the relief sought. The affidavit in support outlines the particulars and identifies the causes of action. It is not frivolous or vexatious and/or otherwise an abuse of process of Court.
4. The third defendant, in his affidavit in support of the summons for leave to appeal states that it would be substantially unjust, unfair and prejudicial to him if the Ruling stands. He will be put to unnecessary expense to defend this action and the appeal would become “*at least partially nugatory*”, if subsequently leave is granted.

5. The proposed grounds of appeal of the third defendant read as follows:
1. *The Learned Master of the High Court erred in law and in fact and/or misdirected herself in law and in fact in holding at paragraph 19 of the Interlocutory Ruling that the Affidavit in Support of the Originating Summons was equivalent to a Statement of Claim.*
 2. *The Learned Master of the High Court erred and/or misdirected herself law and in fact in holding at paragraph 28 of the Interlocutory Ruling that the plaintiff's originating summons is in compliance with the rules.*
 3. *The Learned Master of the High Court erred and/or misdirected herself in law and in fact in holding that the affidavit in support of the originating summons outlined the particulars that identify the cause(s) of action against the 3rd Defendant. Further she erred in law and in act by failing to hold that the Plaintiff in the originating summons has failed to identify the specific cause(s) of action that exist against the Third Defendant.*
 4. *The Learned Master erred in law and in fact and misdirected herself in failing to consider that the following relevant matters:*
 - (a) *The Plaintiff's originating summons did not contain sufficient particulars to identify the cause of action against the Third Defendant;*
 - (b) *The Plaintiff issued Certificate of Title No. 39801 was issued to one Sakur Ali not the Third Defendant and the said Sakur Ali transferred the same to the Third Defendant, therefore the Plaintiff could have only issued a summons to said Sakur Ali under section 166 of the Land Transfer Act if the said title had been issued in error to Sakur Ali.*
 - (c) *There are no allegations that the said transfer was wrongly or fraudulently obtained by the Third Defendant; and*
 - (d) *For the reasons stated in the preceding sub-paragraphs above section 166 does not apply in this matter in so far as the Third Defendant is concerned and therefore the court proceedings would amount to an abuse of court process and frivolous.*
6. The first plaintiff, in her affidavit in opposition states that this summons and affidavit were not filed and served within the time period stipulated. The proposed grounds of appeal do not have real prospect of success.
7. At the hearing, Mr Nadan, counsel for the fifth and eighth defendants stated that the fifth and eighth defendants are not concerned with the striking out application. Mr Singh, counsel for the sixth defendant stated that the sixth defendant did not move for striking out of the originating summons.

The determination

8. The plaintiff has taken up the preliminary objection that the application for leave to appeal was served out of time. The Ruling was delivered on 26th January, 2022. The summons and the third defendant's affidavit were filed on 9th February, 2022, but served on 9th March, 2022.
9. Or 59,r. 11 states that an application for leave to appeal an interlocutory order shall be "*filed and served within 14 days of the delivery of the order..*"
10. Clearly the service on the plaintiffs was out of time.
11. The third defendant contends that the failure to serve the summons on the defendant was an irregularity that could be rectified under Or 2, r 1.
12. Calanchini J (as he then was) emphasized in *Gay v Resolution Trust Corporation*, [2010] FJHC 68; HBA01.2009 (26 February, 2010) that the
13. In *Panache Investment Ltd v New India Assurance*, [2015] FJHC 523; HBC 56.2014 (17 July, 2015) Sapuvida J said;

Rules in Part II of Order 59 have imposed a strict timetable for the filing and serving of documents at the Registry and on the Respondents

The purpose of the Rules was obviously to avoid delay at the interlocutory stage of civil proceedings and to make such appeals more efficient. (emphasis added).

I am of the firm view that the time limit of mandatory nature stipulated under any Order or Rule or Procedure is to be strictly followed and honored by any party but not to be dishonored and make haphazard (hit – or – miss) applications anticipating anything and taking things just for granted.

I am therefore observe with emphasis here that, the Defendant in the instant case is guilty of lashes for filing the present application at the expiration of the time limit stipulated under Order 59 rule 11 and seeking Leave for appeal the Ruling of the Master even without submitting any plea for extension of time and/or for not explaining reasons for the delay caused in the same.

Therefore, I decide that it is not necessary to explore the demerits of the ruling of the Master when the application effected by the defendant by way of summons dated 5 February 2015 before me is from the beginning misconceived in law.

14. The application for leave to appeal has been served on the plaintiffs out of time and fails.
15. In any event, in my view the proposed appeal would have minimal or no prospect of success. I am also of the view that the third defendant will not suffer irreparable harm if leave is not granted.
16. The originating summons seeks that the second to eighth defendants show cause why the Certificate of Titles issued to them out of CT No. 39114 and CT No. 10896(in the case of the eighth defendant) should not be delivered to the ROT to be corrected or cancelled, as by an oversight on the part of their office, a number of requests for new titles and partial transfers were registered and wrongly issued. The transfer by one “*Sakur Ali*” to the third defendant has to be cancelled or corrected.
17. Section 166 empowers the ROT to summon the person to whom “*any .. certificate of title has been issued in error*”. If he does not, the ROT may apply to Court to issue a summons for him to show cause why that CT should not be delivered to be cancelled or corrected.
18. Mr Reddy, counsel for the third defendant submitted that the ROT is empowered to issue summons to a person to whom a certificate of title has been issued, but not to the third defendant, a bona fide purchaser from “*Sakur Ali*”.
19. Ms Faktaufon, counsel for the plaintiffs submitted it would not make sense to issue summons to “*Sakur Ali*” who is no longer in possession of the instrument.

20. In my view, the originating summons and affidavit in support comply with Or 7,r 3 and contain a statement of the questions and relief claimed with sufficient particulars to identify the cause of action. The applicability of section 166 to a bona fide purchaser must be addressed extensively at the substantive hearing.
21. The Acting Master was correct in coming to the conclusion that the originating summons and affidavit comply with the rules and is neither frivolous, vexatious nor an abuse of process of Court.
22. On the principle of granting leave to appeal from interlocutory decisions, Calanchini P in *Shankar v FNPF Investments Ltd*, [2017] FJCA 26; ABU32.2016 (24 February 2017) stated at paragraph 16:

There is a general presumption against granting leave to appeal an interlocutory decision and that presumption is strengthened when the judgment or order does not either directly or indirectly finally determine any substantive right of either party. The interlocutory decision must not only be shown to be wrong but it must also be shown that an injustice would flow if the impugned decision was allowed to stand (Niemann –v- Electronic Industries Ltd [1978] VicRp 44; [1978] VR 431). See: Hussein –v- National Bank of Fiji [1995] 41 Fiji LR 130.

Calanchini P stated further that the dismissal of the striking out application “*did not affect the substantive rights of either party.*” (emphasis added)

23. In my view, the substantive rights of the third defendant is not affected. There is no injustice to him if the originating summons proceeds to hearing.
24. I decline the third defendant’s summons for leave to appeal and stay.

25. **Orders**

- a. The third defendant's summons for leave to appeal and stay of the Master's Ruling is declined.
- b. The third defendant shall pay the first and second plaintiffs costs summarily assessed in a sum of \$ 1000.00 within 15 days of this Ruling.

A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
31st January, 2023

