

IN THE HIGH COURT OF FIJI

AT SUVA

PROBATE JURISDICTION

Civil Action No. HPP 85 of 2022

IN THE MATTER of the Estate of Akash  
Shanil Sharma late of Koronivia, Nausori,  
Principal Accounts Officer, Deceased,  
intestate.

AND

IN THE MATTER of an application under  
Order 29 Rule 2(3).

**BETWEEN** : **AARADHYA KASHVI SHARMA** an infant by her next friend and mother  
**VINESHNI MANI DASS** of Olosara, Sigatoka, Administrative Clerk.

**FIRST PLAINTIFF**

**AND** : **VINESHNI MANI DASS** of Olosara, Sigatoka, Administrative Clerk.

**SECOND PLAINTIFF**

**AND** : **ALPNA DARSHIKA KUMAR** of 16 RL Sharma Road, Nadera, Court Officer.

**THIRD PLAINTIFF**

**AND** : **SASHI PRASAD** of Vuci Road, Nausori, Fiji, Retired as the previous  
Administrator in the Estate of **AKASH SHANIL SHARMA** of Koronivia,  
Nausori, Principal Accounts Officer, Deceased, Intestate.

**FIRST DEFENDANT**

**AND** : **BAADAL PRASAD SHARMA** of Vuci Road, Nausori, Fiji, Legal Practitioner as  
the Administrator in the Estate of **AKASH SHANIL SHARMA** of Koronivia,  
Nausori, Principal Accounts Officer, Deceased, Intestate.

**SECOND DEFENDANT**

**AND : THE REGISTRAR OF TITLES.**  
**THIRD DEFENDANT**

**AND : THE ATTORNEY-GENERAL OF FIJI.**  
**FOURTH DEFENDANT**

**BEFORE : Hon. Justice Vishwa Datt Sharma**

**COUNSEL: Mr. Henau G. with Ms Tavaqia L. for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Plaintiffs**

**Mr. Sashi Prasad as the previous administrator (Deceased 1<sup>st</sup> Defendant)**

**Mr. Baadal Prasad Sharma (In person) for the 2<sup>nd</sup> Defendant**

**Mr Ram V. for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants**

**DATE OF DECISION: 09<sup>th</sup> July, 2024**

## **DECISION**

***[Summons for Stay of Execution and of Proceedings Pending Appeal]***

**A. Introduction**

1. The 2<sup>nd</sup> Defendant [Baadal Prasad Sharma] in his capacity as the Administrator of the Deceased's Estate of Akash Shanil Sharma filed a Summons, on 23<sup>rd</sup> February 2024 and sought for the following orders:
  - i) That execution and all further proceedings to enforce and or in relation to the Judgment of the High Court given at Suva on the 13 February, 2024 at paragraph 23 including orders granted on Ex-Parte Basis on 29 July 2022 and proceedings in this matter BE STAYED pending determination of the Appeal by the Second Defendants to the Court of Appeal filed on 19<sup>th</sup> February, 2024.
  - ii) That the costs of this application be costs in the course; and
  - iii) Such further or other order as the Court sees fit and expedient.
2. The 2<sup>nd</sup> Defendant relies on the grounds set forth in his affidavit in support deposited on 22<sup>nd</sup> February 2024.
3. Both parties to this proceedings furnished Court with their respective written submission.

**Determination**

4. On 13<sup>th</sup> February 2024 and 29<sup>th</sup> July 2024, this Court made the following orders in respect of Two (2) impending Interlocutory applications filed by the Plaintiffs and subsequently by the 2<sup>nd</sup> Defendant Baadal Prasad Sharma:
  - a) Summons to vary interim injunctive orders of 29<sup>th</sup> July 2022 and [order no. 2];
  - b) Setting aside of interim Injunctive order granted on 29<sup>th</sup> July 2022 respectively.
5. The Hearing was proceeded with ex-parte summons filed on 29<sup>th</sup> July 2022 together with 25<sup>th</sup> August 2022 and 16<sup>th</sup> September 2022 impending applications.
6. The High Court Judgment was delivered on 13<sup>th</sup> February 2024 and in its Judgment the Court extended the Injunctive Orders of 29<sup>th</sup> July 2022.
7. The stay application filed by the 2<sup>nd</sup> Defendant Baadal Prasad Sharma is a kin or relates to the Injunctive order made by the Court on 29<sup>th</sup> July 2022 and further extended on 13<sup>th</sup> February 2024.

8. Reference is made to the case in **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd** [2005] FJCA 13; BU0011.20045 (18 March 2005) (Unreported) Fiji, Court of Appeal laid down the criteria for granting stay and held;

"[7] The principles to be applied on an application for stay pending appeal are conveniently summarized in the New Zealand text *McGechan on Procedure* (2005):

"On a stay application the Court's task is "carefully to weigh all of the factors in the balance between the right of a successful litigant to have the fruits of a judgment and the need to preserve the position in case to appeal is successful": **Duncan v Osborne Building Ltd** (1992) 6 PRNZ 85 (CA), at p.87.

### **Second Defendants Contention**

9. The Second Defendant's contention is that the Plaintiffs have not filed/served any affidavit in opposition. Thus, his affidavit filed herein should be completely accepted by the Court without any doubt.
10. He further submitted to the Court that based on the Court of Appeal precedent '**Uluivuda v Qarase** [2018] FJCA 116; ABU0078.2008 (20 November 2008)' stay should be granted as the injunctive orders contravene the State Proceedings Act.
11. The second Defendant is of the view that there is endangerment of itaukei Lease No. 33047 to mortgagee sale due to prohibitions on conducting any transactions including mortgage repayments as a result of the Ex-Parte Injunctive Orders of 29<sup>th</sup> July 2022 and further Extension of orders granted on 13<sup>th</sup> February 2024. Itaukei Lease No. 33047 has been advertised for mortgagee sale and that tender called for has now closed.
12. The second defendant brought to the Court's attention that:
- The Plaintiffs do not have any locus standi in bring these proceedings;
  - Plaintiffs are not suffering any loss; they have failed to oppose two (2) applications for letter of administrations,
  - Waited for 2<sup>nd</sup> Defendant to win a Medical Negligence Claim in HBC 43 of 2021 after which the Plaintiff have pursued the money settlement;
  - Waited for 2<sup>nd</sup> Defendant to complete building a home with the use of his money on iTaukei Lease no. 33047 before fraudulently pursuing this case.
13. For the above reasons, the 2<sup>nd</sup> Defendants contention is that he should be granted the 'stay' since the Plaintiff's will not be injuriously affected by the 'stay' and that his appeal filed with the Court of Appeal is 'Bona fides.'

### **Plaintiff's Contention**

14. The Plaintiff's main contention however is that the Appeal that the 2<sup>nd</sup> Defendant (Appellant) has made and filed is in its entirety is wrong and misconceived.

15. She further submitted that "the current orders that the 2<sup>nd</sup> Defendant (Appellant) wishes to stay pending his appeal does not prejudice either the 2<sup>nd</sup> Defendants (Appellant) nor the Respondents in the appeal matter. What this Court has ruled is to let the status quo to remain since neither parties to the proceedings are benefiting from the Deceased's Estate until the final determination of the case. The 2<sup>nd</sup> Defendant's (Appellants) stay application is a clear abuse of Court process in that the 2<sup>nd</sup> Defendant still seeks for the monies to be paid out to him, something that we have strongly opposed from the beginning of these proceedings.

### **Determination**

16. I will now dwell onto and consider the relevant principles applicable to an application for stay of execution or proceedings pending determination of the 2<sup>nd</sup> Defendant's (Appellants) Appeal.

### **Whether the Appeal will be rendered Nugatory if stay is refused?**

17. The pertinent question to be asked herein is that if a stay is refused and the 2<sup>nd</sup> Defendants Appeal succeeds, and the Judgment is enforced in the meantime, what are the risk of the Plaintiffs [Respondents] being able to recover what has been paid to the 2<sup>nd</sup> Defendant [Appellant] in terms of the settlement Judgment sum granted in civil case no. HBC 43 of 2021?
18. If the stay is granted and the Appeal fails, there are risk that the 2<sup>nd</sup> Defendant [Appellant] will be unable to enforce the substantive Judgment for settlement sum delivered in Civil Action No. HBC 43 of 2021.
19. It will be noted from the orders of this Court of 29<sup>th</sup> July 2022 and further extended on 13<sup>th</sup> February 2024, that the orders the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by their servants, agents, members or otherwise howsoever be restrained from receiving any settlement sum from the office of the Attorney General to be paid in Civil Action No. HBC 43 of 2021, there was a reason and purpose why this Court made the above-mentioned orders which is now being appealed to.
20. Once the substantive matter in the Civil Action No. HPP 85 of 2022 is determined, the settlement sum in Civil Action No. HBC 43 of 2021 will be paid out accordingly.
21. As of now, the current orders that the 2<sup>nd</sup> Defendant (Appellant) wishes to Appeal against seeking for 'Stay pending Appeal' does not prejudice either the 2<sup>nd</sup> Defendant [Appellant] nor the Respondents in the appeal matter.
22. This Court made the Orders to safeguard the settlement sum ordered in High Court Civil Action No. HBC 43 of 2021 and let the status quo to remain since neither parties to the proceedings are currently benefitting from the Deceased's estate, until the final determination of the current substantive matter.
23. As it is now, the 2<sup>nd</sup> Defendant [Appellant] is acting within his locus and powers in his capacity as the administration of the Deceased's estate, it has not been established as of yet until the hearing and determination of the substantive matter as to who have the beneficial interest and entitlement of the Judgment Sum of money ordered upon settlement by the Court in High Court Civil Action No. 43 of 2021.

24. For the aforesaid rational, I do not see any merits in the 2<sup>nd</sup> Defendants [Appellants] application that would prompt me to accede to his application seeking for stay of execution and of proceedings pending 'Appeal' at the Court of Appeal.
25. Accordingly, the 2<sup>nd</sup> Defendants [Appellants] application fails and is refused and dismissed in its entirety.


#### **Costs**

26. The application proceeded to full hearing with both counsels furnishing Court with their respective written submission and orally argued their side of the case.
27. It would not be fair to the Respondents [Plaintiffs] if summarily cost is not awarded to them.
28. It is only just and fair that I grant a sum of \$1,500 as summarily assessed costs to the Respondents [Plaintiffs] to be paid by the 2<sup>nd</sup> Defendant [Appellant] personally within a timeframe of 14 days.

#### **Orders**

- (i) The 2<sup>nd</sup> Defendant's [Appellant's] application seeking for Stay of Execution and of Proceedings pending Appeal is refused and dismissed in its entirety.
- (ii) The 2<sup>nd</sup> Defendant [Appellant] to pay the Respondent [Plaintiff] a summarily assessed cost of \$1,500 within a timeframe of 14 days.
- (iii) The substantive matters is adjourned for Mention for Directive on 17<sup>th</sup> September 2024 at 9.30am.

Dated at **Suva** this **9<sup>th</sup>** day of **July** ,2024.

   
VISHWA DATT SHARMA  
PUISNE JUDGE

cc. Legal Aid Commission, Suva  
Baadal Prasad Sharma, Laucala Beach, Nasinu