

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

ACTION NO. HBC 129 OF 2021

BETWEEN : **VINAL VINIT CHAND** **PLAINTIFF**

AND : **SANEL PRASAD** trading as **SANEL'S ELECTRICAL SERVICES** **1ST DEFENDANT**

AND : **AVIMUNI RAJ NAIDU aka AVEE MUNI RAJ NAIDU** **2ND DEFENDANT**

BEFORE : A.M. Mohamed Mackie -J.

COUNSEL : Mr. R. Chaudhary – for the Plaintiff / Respondent.

: Mr. R. Gordon- for the Defendant / Applicants.

DATE OF HEARING : On 9th December 2024.

WRITTEN SUBMISSION: Filed by the Plaintiff on 11th October 2024.
 : Filed by the Defendant on 09th December 2024.

DATE OF RULING : 7th March 2025.

RULING

A. INTRODUCTION:

1. This Ruling pertains to the hearing held before me on 9th December 2024 in relation to the Summons (“the Application”) filed by the 1st and 2nd Defendant – Applicants (“the 1st and 2nd applicants”) on 30th July 2024, seeking the following Orders.;
 1. *That leave be granted to the Defendant to appeal the order(s) and/or ruling and/or decision of the purported Master Azhar made and/or pronounced on 18 July 2024 in Lautoka High Court Civil Action Number 129 of 2021 together with the and/or necessary and required consequential procedural and/or ancillary orders.*
 2. *That the time within which to file the Notice of Appeal be enlarged so that the Notice of Appeal be filed within 21 days of grant of such leave together with the and/or any necessary and required consequential procedural and/or ancillary orders.*
 3. *That the order(s) and/or ruling and/or decision of the purported Master Azhar made and/or pronounced on 18 July 2024 in Lautoka High Court Civil Action Number 129 of 2021 be forthwith stayed pending the hearing and determination of this Summons/Application and the hearing and determination of and/or any substantive appeal.*
 4. *An order that the costs of this application be costs in the cause.*

2. The applicants rely upon the affidavit of FEHRIN NAFISA ALI sworn on 29 July 2024 and filed in support of this application.
3. The application is made pursuant to and under Order 59 Rules 8, 9, 10, 11 and 16 of the High Court Rules, 1988 and under the Inherent Jurisdiction of this Court.

B. BACKGROUND IN BRIEF:

4. The Plaintiff/Respondent ("the respondent"), on 9th December 2018, was a passenger in Motor Vehicle bearing Registration No- JD-802 owned by the 1st applicant and driven by the 2nd applicant, which collided with Motor Vehicle bearing No- DR-412 on Kings Road, Yalalevu, Ba. As a result of it the respondent allegedly sustained severe personal injuries.
5. The respondent on 15th June 2021 filed action against both the applicants, seeking reliefs, inter alia, special, general and other damages as prayed for in the prayers to the statement of claim, on the basis of the alleged negligence on the part of the 2nd applicant driver.
6. After the closure of the pleadings, the respondent's Solicitors on 20th September 2021 filed the summons for direction, and the same was heard inter-parte on 2nd December 2021 and the Counsel for the applicants objected to the same alleging that it does not comply with the Rules of the High Court, upon which the learned (then) Master ("the Master") made the following orders;

Orders:

- ***This is a personal injury matter. I give direction as follows disregarding the Summons.***
- ***Plaintiff and the Defendant to file Affidavit Verifying List of Documents before 16/12/ 21.***
- ***Mention on 20/01/22".***
- Sgd.
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- *Mater of the High Court.*

7. The above Orders being sealed on 6th December 2021, subsequently were amended on 09th December 2021 but still requiring both parties to file their Affidavit Verifying List of Documents (AVLD) by 16th December 2021, according to which the respondent filed his one on 14th December 2021. The applicants did not file their AVLD within the initial time period given and their junior counsel on 20th January 2022 moved for further 7 days period to file the same. Accordingly, the Master gave further 7 days' time to file the same and fixed the matter for mention on 24th February 2022.
8. However, instead of filing their AVLD, as per the direction given, the applicants' Solicitors on 31st January 2022 filed a Summons supported by an affidavit sworn by Ms. FEHRIN NAFISA ALI, Case Manager employed by the Accident Compensation Commission FIJI ("ACCF") seeking the following Orders;
 1. *That the Orders made by the Master on 2nd December 2021 and 20th January 2022 be set aside, revoked and/or rescinded.*
 2. *That the Plaintiff's Summons dated 21st September 2021 (and purportedly filed on 20th September 2021) be struck out and dismissed with costs.*
 3. *That the Plaintiff's List of Documents and/ or Affidavit verifying plaintiff's List of Documents be struck out and/or expunged from the case record.*

4. *That the plaintiff is in breach and/or non-compliance of/with order 25 Rule 8(1) (a) of the High Court Rules 1988.*
 5. *That all proceedings in this matter be stayed and/or be held in abeyance till the hearing and determination of this application/summons.*
 6. *That the costs of this application be paid by the plaintiff on an indemnity basis.*
9. The respondent's Counsel opted not to file Affidavit in opposition to the aforesaid summons, and accordingly after hearing both the learned Counsel on 3rd October 2022 and entertaining written submission from both parties, the Master by his impugned ruling dated 18th July 2024 made the following orders and dismissed the applicants' Summons; The relevant orders read as follows;
- a. *The Summons filed by the ACCF is dismissed.*
 - b. ***The ACCF is at liberty either to file or not to file an AVLD, and (emphasis mine)***
 - c. *The ACCF should pay a summarily assessed costs in a sum of \$1,500.00 to the plaintiff within 14 days.*
 - d. *Matter to be mentioned on 7/08/24 for further directions.*
10. It is against the aforesaid Ruling, the applicants are before this Court, through the Summons filed by ACCF, seeking, *inter alia*, Leave to Appeal, Extension of time to file and serve the Notice of Appeal plus Grounds of Appeal and for the Stay of the Master's impugned Ruling dated 18th July 2024.

C. GROUND OF APPEAL:

11. Followings are the proposed grounds of appeal; on which the applicants rely to seek orders from this Court, including the leave, and to argue in the appeal, if the leave is granted.
- 1) *The Learned purported Master erred in law and/or in fact in pronouncing and/or delivering a ruling in the matter when he no longer had jurisdiction to consider the application made by the Defendants and/or to consider the submissions in the matter and/or to give and/or pronounce a ruling in the matter.*
 - 2) *The Learned purported Master erred in law and/or in fact when he rushed his ruling in that he had been appointed on Acting Judge and had several outstanding rulings and rushed to deliver the same without giving proper judicial consideration of/to the same.*
 - 3) *The Learned purported Master erred in law and/or in fact in failing to conduct a proper hearing and/or consideration of the Defendant's application/summons filed on 31 January 2022 and thereby denied the Defendants procedural fairness and natural justice.*
 - 4) *The Learned purported Master erred in law and /or in fact:*
 - 4.1. *When he failed to make findings or otherwise address or respond in any way to the extensive argument and contentions put by the Defendants counsel that the Defendants were not required to file a List of Documents and/or Affidavit verifying the same and that the plaintiff was limited in law as to what he can/could discover, and that any order(s) to file the same were without jurisdiction, ultra vires, improper and/or not permitted by the High Court Rules 1988. The Learned purported Master thereby denied the Defendants procedural fairness and natural justice; and*

- 4.2. *When he incorrectly interpreted and/or failed to correctly interpret Orders 25 and 34 of the High Court Rules 1988; and*
- 4.3. *When he failed to set aside, revoke or rescind the orders made by the Master on 2 December 2021 and 20 January 2022; and*
- 4.4. *When he failed to expunge and/or strike out the plaintiff's summons dated 21 September 2021 (and purportedly filed on 20 September 2021); and*
- 4.5. *When he failed to expunge and/or strike out the plaintiff's List of Documents and/or Affidavit verifying plaintiff's List of Documents; and*
- 4.6. *When he incorrectly interpreted and/or failed to correctly interpret and/or apply Prasad v Lata [2005] FJCA 39; ABU0026J.2004 (4 March 2005); [2005] FJLawRp 10; [2005] FLR 56 (4 March 2005) and Venkatamma v Ferrier Watson [1995] 41 FLR 258; Mahesh Chand v Fairdeal Earthmoving Contractors Limited Labasa High Court Civil Action Number 16 of 2021 (Ruling dated 13 May 2022); Mahendra Prakash v Road Supervisor, Taveuni, Principal Engineer, Mechanical National Roads & Attorney General [2016] HBC 06 of 2013 (3 June 2016); Surya Narayan Pande and Anor v Ropal Rashka Kumar and Ors High Court of Fiji at Suva Probate Action Number HPP 79 of 2021 (Judgment dated 9 September 2022) and a host of other authorities cited and relied upon by the Defendants.*
5. *The Learned purported Master erred in law and/or in fact when he incorrectly interpreted and/or failed to correctly interpret Orders 18, 25 and 34 of the High Court Rules 1988.*
6. *The Learned purported Master erred in law and/or in fact when he ordered costs summarily assessed in the sum of \$1,500.00 against the ACCF contrary to established principles of awarding of costs.*
7. *The Learned purported Master in law and/or in fact when he had no jurisdiction and/or power and/or authority to make the orders he made and/or pronounced on 18 July 2024*
8. *Such further or other grounds as may be applicable upon a receipt of the Record of proceedings*

D. LAW & GOVERNING PRINCIPLES:

12. This Application is made pursuant to and under Order 59 Rules 8, 9, 10, 11 and 16 of the High Court Rules 1988 and under the inherent jurisdiction of this Court.
13. The relevant main Orders and Rules that requires consideration by this court in relation to the impugned Ruling made by the Master, and for the purpose of this application are Order 24 Rule 2(2) of the HCR and Order 25 Rule 8(1) (a) of the HCR, in terms of which the applicants are not under obligation to discover any documents.
14. Case Law authorities are in abundance, which govern the decision making in granting / refusing of the leave to appeal an interlocutory judgment/ ruling.
15. The principles relevant to an application for leave to appeal against interlocutory decisions were discussed in **Abdul Hussein v NBF [1995] FLR 130**, where Pathik J referring to Murphy J's statement in "Niumann " said:

“A useful summary of some of the matter which a judge may in practice consider on an application for grant of leave is to be found in the judgment of Murphy J in *Niemann* at p.141 which I adopt and they are as follows:

- **Whether** the issue raised is one of general importance or whether it simply depends upon the facts of the particular case;
- **whether** there are involved in the case difficult questions of law, upon which different views have been expressed from time to time or as to which he has been ‘sorely troubled’;
- **Whether** the order made has the effect of altering substantive rights of the parties or either of them; and
- **That** as a general rule there is a strong presumption against granting leave to appeal from interlocutory orders or judgments which do not either directly or by their practical effect finally determine any substantive rights of either party.”

16. In ***Niemann v. Electronic Industries Ltd. [1978] VicRp 44; [1978] V.R.431*** at page 441 where Supreme Court of Victoria (full Court) held as follows;

“... leave should only be granted to appeal from an interlocutory judgment or order, in cases where substantial injustice is done by the judgment or order itself. If the order was correct then it follows that substantial injustice could not follow. If the order is seen to be clearly wrong, this is not alone sufficient. It must be shown, in addition, to affect a substantial injustice by its operation.

It appears to me that greater emphasis is therefore must be on the issue of substantial injustice directly consequent on the order. Accordingly, if the effect of the order is to change substantive rights, or finally to put an end to the action, so as to effect a substantial injustice if the order was wrong, it may be more easily seen that leave to appeal should be given”

17. In the case of ***Khan v. Suva City Council [2011] FJHC 272; HBC 406.2008 (13th May 2011)*** the following observations were made in regard to application for leave to appeal;

It is trite law that leave will not generally be granted from an interlocutory order unless the court sees that substantial injustice will be done to the applicant.

Further, in an application for leave to appeal, it is incumbent on the applicant to show that the intended appeal will have some realistic prospect of succeeding.

18. In ***Kelton Investment Ltd & Tapoo Ltd v Civil Aviation Authority of Fiji and Mortibhai and Company Limited- Civil Action No. ABU 0034 of 1995***, the Court of Appeal observed as follows.

The Courts have thrown their weight against appeals from interlocutory orders or decisions for very good reasons and hence leave to appeal are not readily given. Having read the affidavits filed and considered the submissions made I am not persuaded that this application should be treated as an exception. In my view the intended appeal would have minimal or no prospect of success if leave were granted. I am also of the view that the Applicants will not suffer an irreparable harm if stay is not granted.

E. CONSIDERATION:

19. The ruling pronounced by the Master on 18th July 2024 is an interlocutory decision. The application for leave to appeal was filed on 30th July 2024 within 14 days from the date of impugned ruling. Thus, it was within the time period prescribed for that purpose. The parties hereof are not at variance in this regard, and in relation to the applicability of Order 59 Rules 8 to 11 and 16 of the HCR that was employed by the applicants for the purpose of making this application.
20. Learned counsel for the applicants in his oral and written submissions has submitted that there has been substantial injustice caused to the applicants and their proposed grounds of appeal have merits.
21. As correctly alluded to by the applicants' Counsel, this Court, at this juncture, is not required to take an in-depth look and analyze the grounds of appeal as it would be done at the stage of proper appeal subsequent to granting of leave and adherence to the necessary formalities thereafter.
22. However, this Court, at this leave stage, is not precluded from considering whether the proposed grounds of appeal are prima-facie meritorious warranting the intervention of this Court by way of an appeal.
23. For this purpose, it is the duty of the counsel for the applicants to demonstrate that the proposed grounds are with merits, there are serious questions to be tried and if the impugned ruling is allowed to stand as it is, substantial injustice would be caused to the applicants.

Merits of Grounds of Appeal (On the face of them):

24. The first and foremost ground adduced on behalf of the applicants is that the purported Master erred in Law and/or in fact in pronouncing and/or delivering a ruling in the matter when he no longer had jurisdiction to consider the application made by the applicants and/ or to consider the submissions in the matter and/ or to give and / or pronounce a ruling in the matter. I find that the purported grounds Nos. 2 and 7 also are raised on the same basis.
25. The crux of the argument advanced by the Counsel for the applicants on the said grounds No. 1,2 and 7 is THAT;
 - a. When the application was decided by the Master, he was no longer a Master,
 - b. He therefore had no jurisdiction to deal with the matter as a judge in the manner he did as a purported Master.
 - c. He ought to have referred the matter to a Master or dealt with it as a judge,
 - d. By dealing with it as a Master, when he no longer was a Master, but a judge was an error on his part.
26. It is not in dispute that when the Master heard the applicants' summons on **3rd October 2022**, he was functioning as a Master, clothed with necessary jurisdiction to do so. The pertinent question that would arise for consideration in appeal, if this Court grants leave, is whether the same Master had jurisdiction to consider the matter, prepare /write the ruling and pronounce it as he did on 18th July 2024 when he had become a judge of the High Court.
27. In this regard, I don't see any serious issue to be gone into, with leave being granted, since the appointment of former Master as a judge was on an acting basis and his substantial post as a Master of the High Court still remains as it was at the date of hearing the matter in question.

28. So, there could not have been any impediment for the Master (while **acting** as a Judge) to deal with the matter and pronounce the impugned ruling. As his substantive post as a Master remained as it was, he has correctly signed the said ruling as the “Master of the High Court”. Even if his present acting appointment as a judge is made permanent, he will still be clothed with necessary jurisdiction to dispose the matters heard by him by “sitting as a Master” and signing it to the effect “**Judge sitting as the Master**”.
29. Thus, in view of the above, the purported grounds 1, 2 and 7 above will hold no water and do not essentially warrant the leave of this court to appeal.
30. In relation to proposed ground No-3, it is alleged that the Master erred in law and/ or in fact in failing to conduct a proper hearing and/or consideration of the applicants’ summons filed on 31st January 2022 and thereby denied the applicants procedural fairness and natural justice.
31. On careful perusal of the record, I find that there had been a hearing on 3rd October 2022 with the participation of the Senior Counsel for the applicants, who in addition to his oral submissions, had filed his written submissions as well. The applicants’ Counsel in paragraphs 29 and 30 of the applicants’ written submission has alleged to the effect that since the Master got elevated as an acting judge, he wanted to hastily deliver all his pending rulings and thus he did not properly consider the applicants’ summons.
32. This Court cannot agree with the above position taken by the applicants’ Counsel to fortify the proposed 3rd ground of appeal. The contents of the impugned ruling clearly demonstrate that it is a well-considered one, with sufficient time being taken in preparation of it and there has not been any semblance of haste or rush on the part of the Master to dispose the matter as alleged by the applicants’ counsel. This allegation/ observation, in my view, is unwarranted.
33. The proposed grounds under No.4 mainly revolve around the applicability and working of Orders 24, 25 and 34 of the High Court Rules 1988.
34. When the pleadings in this matter had become closed, the respondent’s Solicitors on 20th September 2020 filed the summons for directions moving for orders, *inter alia*, to have the matter fixed for trial, leaving each party at liberty to apply generally.
35. The respondent’s Solicitors in this summons had not sought any orders in relation to filing of AVLD by both parties, apparently due to reason that the action hereof was arising out of a road accident, where directions are automatic and the discovery is limited to disclosure by the respondent of any documents relating to special damages.
36. However, the learned Master, after hearing the Summons inter-parte on 02nd December 2021, despite observing that the action in hand is (a personal injury matter) arising out of a road accident, had directed both the parties to file their respective AVLD before 16th December 2021, which was a direction not mandated by the relevant Orders & Rules of the HCR or sought by the Summons for direction filed by the respondent’s Solicitors.
37. Though, the sealed orders giving above directions were amended by the amended orders filed on 09th December 2021, the initial direction given to file AVLD by both the parties, particularly the direction given to the applicants’ Solicitors remained the same.

38. Accordingly, the respondent's Solicitors on 14th December 2021 filed their AVLD disclosing number of documents, including documents relating to special damage, which the plaintiff / respondent is permitted and shall disclose in terms of Order 25 Rule 8 (1) (a) of the HCR.
39. However, despite the applicants were not obliged to file such an AVLD or to disclose any documents, the Solicitors for the applicants on 20th January 2022, having moved for further 7 days' time to file the same, instead of filing the same, on 31st January 2022 filed the Summons seeking various orders as per paragraph 8 above.
40. Had the Solicitors for the applicants, instead of filing the aforesaid Summons before the Master on 31st January 2022, simply informed the Master that the applicants do not intend to file any AVLD or to disclose any documents, as they are not obliged to do so in terms of the rules, this matter would not have come this far, requiring both the parties to spend time and money unnecessarily, and the court also would have saved it valuable time and resources.
41. However, I find that the orders made by the Master on 2nd December 2021 and 20th January 2022, which they had sought to set aside by their Summons dated 31st January 2022, have now become ineffective / rescinded and / or set aside by the by Master's very Ruling dated 18th July 2023 (impugned Ruling) wherein Order (b) thereof states to the effect "The **ACCF is at liberty either to file or not to file an AVLD**".
42. In my view, the above Order (b) effectively remove and/ or rescinds the obligation or duty , if any , on the part of the applicants to file an AVLD or to discover/ disclose any documents on their part.
43. The respondent has already disclosed the documents including those needed for the proof of special damages as required by the Order 25 Rule 8 (1) (a) of the HCR. The applicants' Solicitors are at liberty to object to any documents at the trial, admission of which will be decided by the Court at that stage.

F. **CONCLUSION:**


44. The Master has not decided on any substantive issues. No prejudice has been caused to the applicants by the impugned decision. The direction given by the Master on 2nd December 2021 and 20th January 2022 for the applicants to file AVLD has now been withdrawn and / or set aside by Master's Order (b) in the impugned ruling dated 18th July 2024. No prejudice has been caused to the applicants on account of those orders / directions. The respondent's summons for directions filed on 20th September 2022 is in sufficient compliance with the Order 25 Rule 8(1) (a) of the High Court Rules 1988 and it does not warrant to be struck out and dismissed.
45. The respondent's list of documents and/or Affidavit verifying his List of Documents can remain as it is, however, subject to the applicants' right to object to any document at the trial stage. The Order for costs made by the Master in a sum of \$1,500.00 payable by the ACCF to the respondent appears to be reasonable in the circumstances surrounding this Application. However, I do not order any cost in relation to this Application. None of the grounds adduced by the applicants warrant the consideration of leave. Since the leave is being refused, no necessity arises for the consideration of the Application for Stay.

G. FINAL ORDERS:

- a. The Summons for leave to appeal and stay fails.
- b. The Summons filed on behalf of the defendant/ applicants on 30th July 2024 seeking leave to appeal and stay is hereby dismissed.
- c. No costs ordered and the parties shall bear their own costs.
- d. The matter be mentioned before the present Master on 24th April 2025 for further directions.

On this 07th Day of March 2025 at the High Court of Lautoka.




A.M. Mohamed Mackie.
Judge
High Court
Lautoka.

SOLICITORS:

**For the Plaintiff- Messrs. CHAUDHARY & ASSOCIATES – Barristers & Solicitors.
For the Defendants: Messrs. GORDON & Co. – Barristers & Solicitors.**