

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action No. 114 of 2022

BETWEEN: JITENDRA NARAYAN SINGH of 27 Celestial Drive, Morisset Park, 2264, New South Wales, Australia, formerly of 18 Namuka St, Samabula, Suva.

Plaintiff

AND: JAGDISH NARAYAN SINGH aka JUGDEESH NARAYAN SINGH, INDRA WATI and MADHUKAR NARAYAN SINGH all of 18 Namuka Street, Samabula, Suva as Executrix/Executor and Trustees of the Estate of Rajendra Narayan Singh.

Defendants

AND: REGISTRAR OF TITLES

Nominal 2nd Defendant

Representation

Plaintiff: Mr. M. Taleimavesi (Babu Singh & Associates)

Defendant: Mr. V. Prasad (Cromptons)

ROT: Ms. A. Harkishan (AG's Office)

Date of Hearing: 4th March 2025.

Ruling

A. Introduction

[1] On 24th June 2024 the Plaintiff's lawyers filed summons seeking the following orders:

- “1. *That stay be granted on the payment of Security for costs in the sum of \$15,000.00 ordered by the Master of the High Court on 10 June 2024 pending the determination of the Appeal.*
2. *That leave be granted to appeal the Ruling of the Master in respect of the security for costs ordered by the Master of the High Court on 10 June 2024.*
3. *Alternatively, leave be granted to extend time to file leave to appeal to High Court as the case may be.*
4. *That cost be in the cause.”*

[2] The summons was filed with a scanned copy of the Plaintiff's affidavit. Later on 1st July 2024 the Plaintiff's affidavit was filed. An affidavit in opposition was filed by Jagdish Narayan Singh on 29th August 2024.

B Submissions

[3] The lawyers filed written submissions. I have considered them.

C. The Law

[4] The principles governing the application for stay pending appeal have been summarized in **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd [2005] FJCA 13; ABU0011.2004S (18 March 2005)** as follows:

- “(a) Whether, if no stay is granted, the applicant’s right of appeal will be rendered nugatory. (This is not determinative). See -Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd [1977] 2 NZLR 41 (CA).*
- (b) Whether the successful party will be injuriously affected by the stay.*
- (c) The bona fides of the applicants as to the prosecution of the appeal.*
- (d) The effect on third parties.*
- (e) The novelty and importance of questions involved.*
- (f) The public interest in the proceeding.*
- (g) The overall balance of convenience and the status quo.”*

[5] I note from **Hammond Suddard Solicitors v Agrichem International Holdings Ltd [2001] EWCA Civ 2065; [2001] All ER (D) 258 (Dec)** that an appeal does not operate as a stay of execution of the orders, and *“...it follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellants being able to recover any monies paid from the respondent?” (My emphasis)*

[6] Sir Moti Tikaram (Then President of FCA) in **Kelton Investments Ltd v. Civil Aviation Authority of Fiji [1995] FJCA 15; Abu00345d.95s (18 July 1995)** in dealing with leave to appeal against an interlocutory order and stay of interlocutory order pending determination of appeal clearly set out the principles. Sir Moti Tikaram said:

“I am mindful that Courts have repeatedly emphasised that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals (see Hubball v Everitt and Sons (Limited) [1900] UKLawRpKOB 17; [1900] 16 TLR 168.”

[7] I further note what Sir Moti Tikaram stated as pertinent in **Kelton** (supra) as follows:

- (a) The requirement for leave is designed to reduce appeals from interlocutory orders as much as possible (per Murphy J in Niemann v. Electronic Industries Ltd [1978] VicRp 44; (1978) VR 431 at 441-2). The legislature has evinced a policy against*

bringing of interlocutory appeals except where the Court, acting judicially, finds reason to grant leave (Decor Corp v. Dart Industries 104 ALR 621 at 623 lines 29-31).

- (b) Leave should not be granted as of course without consideration of the nature and circumstances of the particular case (per High Court in Exparte Bucknell [1936] HCA 67; (1936) 56 CLR 221 at 224).
- (c) There is a material difference between an exercise of discretion on a point of practice or procedure and an exercise of discretion which determines substantive rights.
- (d) It must be shown, in addition, to effect a substantial injustice by its operation" (per Murphy J in the Niemann case at page 441).
- (e) In Darrel Lea v. Union Assurance (169) VR 401 at 409 the Full Court of the Supreme Court of Victoria said:

"... that error of law in the order does not in itself constitute substantial injustice, but that it is the result flowing from the erroneous order that is the important matter in determining whether substantial injustice will result.

D. Determination

- [8] Having considered all the material before me I find that there is no risk of injustice if stay is refused. Security for costs is on the discretion of the court. I noted that the Learned Master had regard to all the circumstances of the matter and determined the security for costs having extensively considered the rules of the court and the authorities to date.
- [9] I am of the view that the preliminary issues dealt with does not directly or indirectly determine any substantive right of either party. The Parties upon a final order or judgment if aggrieved would have the right to appeal against such order or Judgment. No injustice would result from refusing leave to appeal. Leave to appeal is therefore refused. Costs in favour of the Defendants in sum of \$2000.00 to be paid by the Plaintiff within 21days

E. Court Orders

- (a) Stay on the payment of security for costs in the sum of \$15,000.00 ordered by the Master on 10th June 2024 pending determination of appeal is refused.
- (b) Leave to appeal the Ruling of the Master of 10th June 2024 is refused.


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Chaitanya S.C.A Lakshma
Puisne Judge

17th March 2025

