

IN THE SUPREME COURT
AT SUVA
APPELLATE JURISDICTION
CIVIL PETITION NO. CBV 019 OF 2023
[Court of Appeal, Civil Appeal No. ABU 0043 of 2021]
[Suva High Court No. HBC 126 of 2017]

BETWEEN : GANGA RAM

APPELLANT

AND : PUSHPA WATI

RESPONDENT

Coram : The Hon. Mr. Justice Salesi Temo, Acting President of the Supreme Court, Acting Chief Justice

Counsel: Mr. V. Bukayaro for the Appellant
Respondent - absent and unrepresented

Date of Hearing: 8 April and 30 May, 2024

Date of Judgment: 13 December, 2024

JUDGMENT

1. This case came from the Suva High Court, as explained by His Lordship Mr. Justice V. D. Sharma, in Civil Action No. HBC 126 of 2017, in his judgment dated 19 April 2021.
2. In describing the background of the case, His Lordship said:

“...4.The Plaintiff’s commenced proceedings by Originating Summons pursuant to Order 113 of the High Court Rules 1988 on 4th of May 2017 and sought for an Order for the possession of the property comprised under Methodist Church Sub Lease No. 822326 being Lot 2 Farm Road, 10 Miles, Nasinu.

5. *The application was heard by the Master of the High Court and a Ruling was delivered on 29th May 2019converting the current Originating Summons into a Writ Action.*

6. *Notably, no Statement of Defence was filed by the Defendant within the prescribed timetable given by the Master. However, the Defendant filed in a Summons seeking for Enlargement of Time to file and serve his Statement of Defence which was accordingly issued and assigned with a returnable date of 22nd August 2019.*

7. *On 01st July 2019, the Plaintiff filed the Interlocutory Judgment seeking an Order for the Defendant to give the Plaintiff vacant possession of the land comprised under Methodist Church Sublease 822326 being Lot 2 Farm Road, 10 Mile, Nasinu and the Defendant to pay the Plaintiff legal costs as sought therein. The Registry realized that the Plaintiff's application for Interlocutory Judgment needed some rectification before the same could be processed any further, the same was refiled on 19th September 2019 and was signed and sealed on 23rd September, 2019.*
8. *Subsequently to the filing, signing and sealing of the Interlocutory Judgment, the matter assigned before the Master was called on 17th October, 2019. Both counsels were present in Court, and the Master noted that the Judgment was entered against the Defendant on 23rd September, 2019 and therefore made a decision that no further action was required at this stage and the file was closed.*
9. *The Plaintiff proceeded with Writ of Possession and the Master granted Leave to the Plaintiff to issue Writ of Possession against the Defendant on 22nd of October 2019. Reference is made to **Order 45 Rule 2 (O45, R2)** of the High Court Rules 1988 which deals with **Enforcement of judgment for possession of land** and quite categorically provides for the Enforcement Proceedings.*
10. *Both counsels in their submissions upon inquiry by the court confirmed that the Defendant has vacated the premises pursuant to the sealed Interlocutory Judgment and the Writ of Possession accordingly.*
11. *It was not until 12th November 2019 after the execution of the Writ of Possession that the Defendant filed its application to set aside the Default Judgment entered against him.*
12. *Hence, the Defendant is only to blame himself for the non-compliance of the Rules and effecting service of Summons Seeking for Enlargement of Time to file and serve his Statement of Defence. If the directions of the Court were adhered to and complied with, then the Defendant would not have found himself in the current status.*
13. *In the result, the Defendant's Summons Seeking Setting Aside of the Interlocutory Judgment entered against him herein and for Stay of the Writ of Possession and the Defendant be permitted to re-enter the premises with costs is accordingly declined.*

14. *The Defendant being dissatisfied with the Court's decision delivered on 3rd June 2020, that the Defendant filed a Summons seeking Leave to Appeal and Stay the decision accordingly.*

15. *Due to the non-appearance of the Defendant/Applicant, Ganga Ram and his Counsel on the Hearing returnable dated of 20th July 2020 that the application was struck out for his non-appearance at the Hearing.*

16. *Hence, the current application before Court seeking Re-Instatement of the Summons for Leave to Appeal and Stay filed on 29th of June 2020...*

3. On 19 April 2021, His Lordship Mr. Justice V. D. Sharma issued the following orders:

"...1. Applicant/Defendant's Notice of Motion filed on 5th of August 2020 seeking Re-Instatement of the Summons for Appeal and Stay filed on 29th June 2020 is hereby dismissed accordingly.

2. There will be no Order as to Costs against the Applicant/Defendant at the discretion of this Court..."

4. The petitioner was not happy with the above order, and he appealed to the Court of Appeal. On 9 June 2023, the then President of the Court of Appeal, Dr. Almeida Guneratne, heard the matter. The application before the Court of Appeal was a summon seeking leave to appeal out of time the decision of the High Court of Suva on 19 April 2021.

5. After carefully considering the Appellant's submission, the then President of the Court of Appeal refused the Appellant's application for leave to appeal out of time against the High Court order of 19 April 2021. He made no order as to cost.

6. The Petitioner is not happy with the above Court of Appeal orders and is now coming to the Supreme Court to overturn the above orders.

7. Section 98 (4) of the 2013 Constitution reads as follows:

"... (4) An appeal may not be brought to the Supreme Court from a final judgment of the Court of Appeal unless the Supreme Court grants leave to appeal..."

8. Section 7 (3) of the Supreme Court Act 1998 reads as follows:

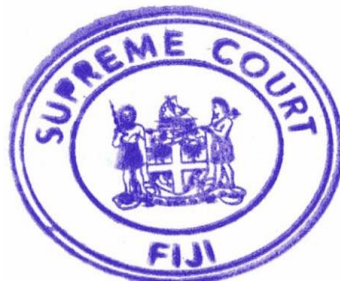
"...In relation to a civil matter (including a matter involving a constitutional question), the Supreme Court must not grant leave to appeal unless the case raises-

(a) a far-reaching question of law;

(b) a matter of great general or public importance;

(c) a matter that is otherwise of substantial general interest to the administration of civil justice...”

9. In coming to the Supreme Court for the exercise of its jurisdiction, counsels and/or litigants are expected to know and abide by the terms of the Supreme Court Rules 2016. Rule 4 covers the requirements of a Petition for Leave to appeal and the form of the Petition. The form of the Petition is that stipulated in Form 1 in Schedule 1. The petitioner in this case, filed a “Notice of Appeal” and “Grounds of Appeal” on 9 August 2023, to seek the court’s jurisdiction in this matter. He did not comply with the requirements of Rule 4 of the Supreme Court Rules 2016, especially not complying with the requirements of Form 1 in Schedule 1. Consequently, his application for leave to appeal to the Supreme Court is denied.
10. Assuming that leave is granted to the petitioner to appeal to the Supreme Court, the matter that he is bringing to the Supreme Court does not satisfy the threshold established by section 7 (3) of the Supreme Court Act 1998. It does not involve a “far-reaching question of law”, nor “it is matter of great public importance”, nor “is it a matter of substantial general interest in the administration of civil justice”. The Petitioner is no longer in the leasehold property that was the subject of the vacant possession application in the High Court. The High Court had decided against him on 19 April 2021. The Court of Appeal had decided against him on 30 June 2023. Both the High Court and the Court of Appeal had explained their reasons to the Petitioner. In my respectful view, this purported application is an abuse of process to the Supreme Court.
11. Given the above, leave to appeal to this Court is denied, and the Petitioner’s application is dismissed accordingly. There is no order as to cost.



(Handwritten signature)
Hon Mr. Justice Salesi Temo
Acting Chief Justice

Solicitors:

Bukayaro Esquire for the Petitioner
No appearance for the Respondent