

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 8 OF 1991

BETWEEN:

BRYAN CHARLES FERRIER-WATSON,  
DENNIS ALLAN McELRATH and  
DAVID WILLIAM ZUNDEL the  
Executors and Trustees of  
the Estate of Norma Athol  
Ferrier Watson.

Original Appellants  
(present Respondents)

and

SULTAN MOHAMMED  
(son of Din Mohammed)

Original Respondent  
(present Applicant/Appellant)

*Mr D.S. Naidu* for the Applicant/Appellant  
*Dr M.S. Sahu Khan* for the Respondents

Ruling on Chamber Application for a Stay Order  
Pending Appeal

This is an application to stay execution of the judgment of the Fiji Court of Appeal delivered on 9th November 1992, pending appeal to the Supreme Court of Fiji.

In view of the fact that the value of the land involved exceeds \$20,000 Sultan Mohammed the Applicant/Appellant (Original Respondent) is entitled to appeal as of right. Indeed he has done so by filing Notice of Appeal to the Supreme Court on 9/11/92 (Civil Appeal No. 3/92). By consent of both counsel this application and a similar application in the Court of Appeal file No. 22 of 91 were heard together although I intend to give separate rulings in each case.

The effect of the Court of Appeal's judgment is that the Respondents (Original Appellants) are entitled to take possession of the agricultural land at present occupied and used by Sultan Mohammed as a "tenant". He has effected improvements on the land. The Appellant is a farmer whereas the Respondents are landowners and developers.

I have considered the submissions made by the opposing learned counsel in the light of the affidavits filed by both sides and also in the light of the grounds of appeal lodged. I have come to the clear conclusion that the Applicant/Appellant is likely to suffer the greater prejudice if his application were to be refused. Although the Respondents are, in general, entitled to enjoy the fruits of their victory without any delay it does appear to me that if the stay is not granted the Applicant/Appellant's appeal, if successful, is likely to be rendered nugatory or substantially nugatory. Since the Applicant/Appellant has an undoubted right of appeal and since his grounds of appeal are at least arguable raising as they do some important issues of law I grant the stay application on condition that the Applicant/Appellant deposits in Court the sum of \$1000.00 within 21 days; such sum to be held in interest bearing account and to be applied towards any rent, damages or mesne profits that might be ordered against the Appellants. Liberty is reserved to each party to apply generally and in particular if the appeal is not listed by 30th September, 1993 for hearing by the Supreme Court.

The cost of this application shall be costs in the cause.

*Moti Tikaram*  
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 Sir Moti Tikaram  
Resident Justice of Appeal

Suva,  
 //<sup>h</sup> March, 1993.