

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 22 OF 1991

BETWEEN:

VENKATAMMA father's name
Ram Rattan and SATH NARAYAN
father's name Shiu Narayan as
Executors and Trustees of the
Estate of Shiu Narayan Nadi,
Fiji, Cultivator.

Applicants/Appellants

and

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

Respondents

Mr D. Naidu for the Appellants/Applicants
Dr M.S. Sahu Khan for the Respondents

Ruling on chamber application for a stay order
pending appeal

This is an application for a stay order pending appeal. By consent this application and the application in Appeal No. 8 of 1991 were heard together. The applicants as trustees are in possession and occupation of about 16 acres of agricultural land. Improvements have been effected on the land. The Respondents are landowners and land developers.

On 9/11/92 the Fiji Court of Appeal delivered its judgment whereby it upheld Lautoka High Court's decision giving possession

of the land to the Respondents. The Applicants/Appellants have lodged an appeal to the Supreme Court (Civil Appeal No. 2 of 1992) and are now seeking a stay order pending the outcome of their appeal. If the stay is not granted the Respondents will undoubtedly enforce their right to oust the Applicants/Appellants.

The Applicants/Appellants have a right of appeal which they are exercising. In my view they have an arguable case. The grounds of appeal also raise some important issues of law. If a stay is not granted and the appeal is successful I have no doubt the appeal will be rendered nugatory or substantially so. No doubt the present Respondents are, in general, entitled to the benefit of their success in the High Court as well as the Court of Appeal without delay. But the Respondents will suffer the greater prejudice if a stay is not granted and the appeal is successful. In my view the balance of convenience demands that stay be granted subject to terms. I, therefore, grant this application and make the order sought subject to the Applicants depositing in the Court the sum of \$1000 within 21 days, such sum to be held in interest bearing account and to be applied towards any rent, mesne profits or damages that might be ordered against the Applicants/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 will be costs in the cause.

Moti Tikaram

 Sir Moti Tikaram
Resident Justice of Appeal

Suva,
 //¹¹ March, 1993.