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IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 87 OF 2004  
(High Court Judicial Review HBJ 33/97S)

BETWEEN:

NIVIS MOTOR AND MACHINERY COMPANY

*Appellant*

AND: MINISTER FOR LAND AND MINERAL RESOURCES

*Respondent*

Coram: Scott, JA

Date of Hearing: 19 October 2005

Counsel: Mr. H.K. Nagin for the Appellant  
Mr. K. Keteca for the Respondent

Date of Decision: 28 October 2005

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DECISION

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- [1] In August 1997 the Minister for Lands decided to exercise the powers conferred upon him by section 3 of the State Acquisition of Lands Act (Cap. 135) (the Act) compulsorily to acquire a portion of land owned by the Appellant.
- [2] On 3 November 2004 the High Court (Jitoko J) dismissed an application by the Appellant for Judicial Review of the Minister's decision.

- [3] On 7 December 2004 the Appellant filed an appeal in this Court. On 9 September 2005 the High Court dismissed an application by the Appellant for a stay of the compulsory purchase process pending the hearing of the appeal.
- [4] At the hearing of the present application I was advised by Mr. Nagin that the only document being awaited before the appeal could be heard is a copy of the judge's notes of the hearings before him. It is not thought that this will be lengthy since written submissions were filed. With the concurrence of counsel I have also established that the Court of Appeal registry sees no difficulty at all in having the appeal listed for hearing in the February 2006 sessions.
- [5] This is an application by the Appellant for three orders:
- (i) an order staying the compulsory acquisition process pending the hearing of the appeal;
  - (ii) an order staying the decision of Mr. Justice Jitoko dated 3 November 2004; and
  - (iii) an order staying proceedings pending before Singh J in the High Court referenced number 512/04.
- [6] Under the compulsory acquisition procedure established by the Act, the power to acquire land is subject to a number of important safeguards. These safeguards are designed to protect the individual against unconstitutional deprivation of property (see Constitution 1970 - Section 8; Constitution 1997 - Section 40).
- [7] Section 5 of the Act provides that, save in an emergency, the Minister must give not less than 30 days notice of the intention compulsorily to take possession of


the land in question. Section 6, which is central to the present application provides that:

“[the Minister] shall not compulsorily acquire any land unless he has applied to the Court and has obtained therefrom an order authorising such acquisition.”

- [8] As I understand the position, it was following receipt of the Section 5 Notice that the Appellant commenced the judicial review proceedings. The proceedings pending before Singh J (512/04) and due to commence on 3 November next are the section 6 proceedings.
- [9] Mr. Justice Jitoko's decision to dismiss the Appellant's application for a stay of his decision to refuse leave judicially to review the Minister's decision was based on two main grounds. The first was that his refusal to grant judicial review was non coercive and therefore was not amenable to a stay (see State v. Minister of Labour and Industrial Relations ex parte Shore Buses Ltd [1996] FJHC 104). The second was that since the actual acquisition of the land could not take place without a further order of the High Court in the Section 6 proceedings, the application for a stay was without foundation.
- [10] In my view both these grounds for refusing a stay are unimpeachable. The application for a stay of the judgment of 3 November 2004 fails.
- [11] The existence of the as yet undisposed of section 6 procedure affording protection to the Appellant is sufficient reason not to interfere with the Minister's further exercise of his powers. The first application also fails.

[12] The final application, to stay action 512/04, faces the difficulty that as I see it this Court has no jurisdiction to stay proceedings of the High Court which are not yet subject to appeal. While the High Court may think it prudent and sensible to stay proceedings which are related to a pending appeal, there is as yet no application to the High Court to do so and no appeal against a refusal by the High Court to grant the application.

[13] All three applications are dismissed with costs which are summarily assessed \$300.



M.D. Scott

Resident Justice of Appeal