

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

CIVIL APPEAL ABU 0075 of 2014  
(High Court HBC 204 of 2004)

BETWEEN : GARY STEPHENS  
HELEN STEPHENS  
HORSESHOE BAY INVESTMENTS PTY LTD  
*Appellants*

AND : AREN JOSEPH NUNNINK  
KI MAREN (FIJI) LIMITED  
REGISTRAR OF TITLES  
*Respondents*

Coram : Calanchini P

Counsel : Mr A Naco with Mr K Chambers for the Appellants  
Ms N Choo for First and Second for the Respondents  
Mr A Prakash for the Third Respondent

Date of Hearing : 24 January 2018

Date of Ruling : 2 February 2018

RULING

[1] This is an application filed by the Appellants seeking the following orders:

*“A Clarifying the order for stay of the High Court action known as consolidated proceedings Civil Action No. HBC 204 of 2004 that order to stay any interlocutory matter brought to the High Court in the said High Court Action.*

*B Directing that the High Court shall dismiss any interlocutory matter(s) and rescind any orders on any interlocutory matter(s) in the High Court Action until determination of Civil Appeal ABU 75 of 2014.”*

[2] The application was made by summons dated 23 June 2017 and supported by an affidavit sworn on 23 June 2017 by Gary Stephens. The application was opposed. An answering affidavit sworn on 20 October 2017 by Lemeki Sevutia was filed on behalf of the First and Second Respondents. The Appellants and the first two Respondents filed written submissions prior to the hearing of the application. The third Respondent did not file any material in relation to this application.

[3] The summons stated that the *“the application is made under the inherent jurisdiction of the Court to correct uncertainty in its Orders, and upon the grounds and circumstances set out in the affidavit of Gary Stephens filed herein.”*

[4] The application does raise an initial issue of jurisdiction. However it is appropriate to set out briefly the immediate background to the application. The High Court pronounced a judgment on 26 September 2014 pursuant to a summons for trial on 4 preliminary issues. The High Court made 5 orders concerning access and easements in relation to specified pieces of land. The Appellants subsequently filed a notice of appeal challenging the fifth order made by the High Court which stated:

*“Lot 7 of DP 6618 has no legal right to an easement over Lot 29 of DP 6804 comprised in certificate of title No 29050.”*

[5] The judgment of the High Court was subsequently held by a judge of this Court to be a final judgment and as a result the notice of appeal had been filed and served within the time prescribed by Rule 16 of the Court of Appeal Rules.

[6] It should be noted that although the Appellants did not seek to challenge the remaining 4 orders made by the High Court, it would appear that there remain a number of outstanding issues in dispute between the parties that are yet to be determined in civil action HBC 204 of 2004.

[7] Pursuant to an application filed by the Appellants, on 9 March 2016 this Court made the following orders:

- “1 The hearing date fixed for the trial of civil action HBC No. 204 of 2004 in the High Court be vacated.*
- 2. The said High Court action be further stayed until the determination of civil appeal No. ABU 75 of 2014.”*

[8] Although the orders were not made by consent, Counsel for the Respondents did not oppose the orders being made. It is those orders that are the subject of the present application. More particularly it is the second order that the Appellants seek to have clarified. Before considering the events that occurred after those orders were made, it is important to recall that the Appellants do not seek to challenge those orders that were in similar terms to the orders sought in the summons. The Appellants do not seek to have a clerical mistake or an accidental slip or omission rectified. It is not suggested that the orders made do not reflect what was intended by the Court. What the Appellants are seeking is an explanation from the Court as to what was meant by a stay of proceedings until the appeal has been determined.

[9] The issue has arisen on account of an application, originally made on 7 December 2016 ex parte but subsequently renewed on an inter partes basis, by the Respondents to

continue in effect a caveat over specified property. However prior to the filing of that application by the Respondents it would appear that in October 2016 the Appellants had sought to have the caveat removed by writing to the Registrar of Titles. The caveat was in existence at the time this Court made the orders on 9 March 2016.

- [10] In my judgment the application for clarification of the orders made on 9 March 2016 is misconceived. The Court does not ordinarily provide clarification of its orders. The need to do so is even less in the case of orders made unopposed or by consent. The orders speak for themselves in this case. In the event that the appellants consider that the Respondents have acted in a way that is contrary to the orders made on 9 March 2016 then it is open to them to commence contempt proceedings. Alternatively the Appellants are at liberty to appeal the orders made by the High Court granting the extensions of the caveat.
- [11] Although it is not necessary to rule on the matter it is my view that the effect of a stay of proceedings order is to preserve the status quo as it existed at the time of the making of the order. It follows that if there was a caveat over a property the subject matter of the High Court proceedings at the time the stay order was made then it should continue in existence and appropriate measures may be taken to preserve the status quo. It would have been open to the Appellants to apply to this Court for leave to pursue the removal of the caveat rather than writing to the Registrar seeking its removal.
- [12] In relation to the second set of orders sought by the Appellants it is my considered opinion that there is no jurisdiction vested in this Court to interfere with orders made by the High Court other than by way of an appeal commenced in accordance with the Court of Appeal Act and Rules.
- [13] For the reasons stated above I refuse the application for the orders sought. The Appellants are ordered to pay costs to Respondents fixed in the sum of \$2,000.00 within 28 days from the date of this Ruling.

Orders:

1. *Applications refused.*
2. *Appellants to pay costs to the Respondents in the sum of \$2,000.00 within 28 days from the date of this Ruling.*



*W. Calanchini*  
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Hon Mr Justice W. D. Calanchini  
**PRESIDENT, COURT OF APPEAL**