

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

**CIVIL APPEAL NO. ABU 086 OF 2019**

**BETWEEN** : **KEOLAPATI LAGAN**  
**PRAKASH LAGAN**

*Appellants*

**AND** : **LATCHAN HOLDINGS LIMITED**

*Respondent*

**Coram** : Almeida Guneratne, JA

**Counsel** : Mr N Sharma for the Appellants  
Mr N Lajendra for the Respondent

**Date of Hearing** : 16 March 2020

**Date of Ruling** : 27 March 2020

## **RULING**

- [1] This is an application for leave to appeal against the Ruling of the High Court of Suva dated 9<sup>th</sup> April, 2019 and a stay of further proceedings in the said matter. By that Ruling the High Court dismissed the Appellants application to strike out the Respondent's application for an interim injunction, vacant possession and ordering a second caveat to be lodged in relation to certain native leases along with security for costs to be paid by the Appellants. (vide: Notice of Motion for leave to appeal and a stay of proceedings filed by the Appellants dated 14 October, 2019).

### **The Basis of the High Court Ruling**

- [2] The learned Judge captured the background history of the dispute in question as revealed from the pleadings filed by the parties. (Paragraphs 1 to 3 of the Ruling). The distilled essence of those pleadings is what the plaintiff Respondent sought in its Statement of Claim as the main relief, namely, specific performance of the Sale-Purchase Agreement (SPA) the parties had entered into.
- [3] The defendants (Appellants) in their statement of defence had pleaded that the entering into the said agreement (to begin with) had been procured by inducing the original party (R L) and therefore the said agreement be declared null and void. The Appellants had also submitted that the SPA was un-enforceable for the reason that the consideration was illegal (in which regard Mr Sharma for the Appellants submitted before this Court that, the subject matter of the 'SPA' was undivided land and the part of the land being owned by the Native Community leaders, there had been "no consent by them in that regard."
- [4] Mr Sharma for the Appellants did not rest his case there as he referred to the learned Judge's reliance on O18, R18 (1)(a) when he held the view that, the said order "cannot be invoked to truncate the procedure laid down in the High Court Rules for a trial followed by the learned Judge's reference to O18 R18(2) which states that "*No evidence shall be admissible on an application under paragraph 1(a).*" In that regard the learned Judge in his Ruling referred to Judicial precedents as well (at paragraphs 13 to 14 of his Ruling)

finally holding that, *“in my view, the defendants have not made out that there is no reasonable cause of action and the Statement of Claim is an abuse of process.”* Accordingly the learned Judge concluded that *“the summons for striking out is declined.”* (Paragraphs 14 to 16 of the Ruling).

- [5] Nevertheless, I did see merit in Mr Sharma’s contention that Clause 19 read with Clause 5 stand in consonance with the learned Judge’s own observations on the said provisions of the High Court Act.
- [6] However, as against that, my attention was drawn by Mr Lajendra for the Respondent to what the learned Judge observed in the course of his Ruling.

*“17. The defendants, in this summons seeks that the plaintiff company:*

- i) releases the original duplicate titles of Native Lease no. 29608 and CT Register, Vol. 36, Folio 3580,*
- ii) give vacant possession of the properties,*
- iii) be restrained from interfering with the defendant's right to peaceful enjoyment of the properties,*
- iv) provide an inventory of account of the farm assets and animals on the properties.”*

*18. The second defendant has filed a joint affidavit in support of this summons and the summons to strike out. The plaintiff has likewise filed a joint affidavit in reply.*

*19. The second defendant, in his affidavit alleges that both titles were stolen, as the late RL was critically ill when the alleged transfer and mortgage were executed. A report from the Suva Private Hospital is attached. The statement of claim states that the late RL transferred the properties to the plaintiff. In my view, these disputed issues have to be decided at a trial.*

20. *The defendants, in i) to iii) of this summons seeks the relief sought in their counterclaim, in yet another attempt to truncate the procedure laid down in the High Court Rules.*
21. *I decline to restrain the plaintiff and order an inventory at this stage.*
22. *In my view, the interim relief sought would 'virtually (bring) about the final relief that the Petitioner wanted,' as stated in Wakaya Ltd -v- Chambers (Civil Appeal No. CBV 0008/11).*
23. *The summons for vacant possession of the estate properties, to release title, injunctive relief and provide an inventory is declined."*

**What then is the resulting position?**

- [7] I proceed to sum-up my reasons that would eventually feed my orders.
- (a) I agree with the learned High Court Judge's view that, this matter is not one that could be determined otherwise by way of a trial.
  - (b) But, it was the Plaintiff-Respondent itself which invoked the jurisdiction of the High Court by originating summons instead of – by way of writ.
  - (c) It is not that, the Plaintiff-Respondent's claim did not disclose a cause of action and/or that it amounted to an abuse of process of Court. In my view, the procedure adapted was misconceived.
  - (d) Accordingly, it follows that the defendants-appellants opposition to the plaintiff-respondent's said summons was justified on the learned Judge's own view as recounted in (a) above.
  - (e) For the aforesaid reasons I have no hesitation in allowing the Defendants-Appellants application for leave to appeal against the impugned judgment of the High Court so that the full Court may go into the matter.

**In re : the matter of the Stay Order sought by the Defendants-Appellants**

- (f) In the intervening period between when this matter was listed before me and the date of this Ruling I was made aware that the matter had come up before the High Court in consequence of which I am inclined to grant a stay of further proceedings from that date in the High Court until a final determination by the Full Court on the matter in which leave to appeal is being granted by me.

[8] Accordingly, I proceed to make my Orders as follows.

**Orders of Court:**

1. *The Defendants-Appellants application for leave to appeal is allowed.*
2. *Consequently, the Appellants application for a stay of further proceedings in the High Court is also allowed until a final determination by the final Court of the matter on which leave to appeal is being allowed as per Order 1 above.*
3. *In the circumstances of this case, I make no order as to costs.*



*Ida A. Guneratne*

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**Hon. Justice Almeida Guneratne**  
**JUSTICE OF APPEAL**