

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

CIVIL APPEAL NO. ABU 0043 OF 2019
(High Court of Lautoka Civil Action No. HBC 122 of 2019)

BETWEEN : **SAHEED AHMED** *Appellant*

AND : **MANOJ KUMAR** *1st Respondent*

AND : **THE DIRECTOR OF LANDS** *2nd Respondent*

AND : **THE ATTORNEY-GENERAL'S OFFICE** *3rd Respondent*

Coram : Almeida Guneratne, JA

Counsel : Mr N Vakacakau for the Appellant
: Ms L Koroitamudu for the 1st Respondent
: No appearance for 2nd and 3rd Respondents

Date of Hearing : 5 June, 2020

Date of Ruling : 17 June, 2020

RULING

[1] This is an application for stay of execution of the Judgment dated 24 May 2019 of the High Court of Fiji at Suva pending appeal.

- [2] The appellant has filed on 4 June 2020 “*amended grounds of appeal*” well after the 1st Respondent on 18 May 2020 had filed his written submissions. Although the appellant was required to file his written submissions first (as per Court order made on 28/02/2020 by Chandra JA) he has done so only on 4 June 2020 (the same day he filed “*amended grounds of appeal*.”
- [3] Apart from that, the Appellant has not sought leave to appeal for that purpose as contemplated by Section 20(1)(c) of the Court of Appeal Act (Cap.12) (The Act).
- [4] For the aforesaid reasons I refuse to accept the “*Amended Grounds of Appeal*” and shall proceed on the basis of the initial grounds of appeal dated 1 June 2019 (filed on 4 June 2019).
- [5] Consequently, what remains for me to decide is whether, while the appeal is still pending, the present application for (i) “*stay of execution*” of the impugned Judgment of the High Court and for (ii) “*any interim order*” (iii) “*to prevent prejudice to the claims of any party pending an appeal*” ought to be granted. These are matters a single judge of the Court of Appeal is vested with jurisdiction under **Section 20(1)(f)** of “*the Act*.”
- [6] In that regard, I took into consideration the principles and propositions laid down in the seminal decisions in Fiji such as the (C/A decision in **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd** [2005] FJCA 13; ABU0011.2004S (18 March 2005), and **Native Land Trust Board v Lal** [2012] FJSC 1; CBV0009.11 (20 January 2012) (among other authorities) cited on behalf of the respective parties in their submissions.

Determination

- [7] I gave my mind to the “*grounds of appeal*” urged and the written submissions tendered and oral submissions made by the respective Counsel at the hearing before me, in consequence of which I was able to extract the following features:-

- (a) While the Appellant's position is that, given the background history of the Sale and Purchase Agreement he had entered into with the 1st Respondent's mother and while it was on hold, she having died intestate, the Respondent being the Administrator of her estate had a fiduciary duty to proceed with the said "Agreement" which he had procrastinated on until "*the mother's lease*" had expired and thereafter the Respondent purporting to have acquired the status of the new proprietor of the said lease had acted contrary to the equitable interest he had acquired in respect of the said land (ii) Accordingly, the Respondent conduct constituted "*fraud*".
- (b) As against that, the 1st Respondent's Counsel's principal argument was that in the absence of any allegation of fraud by the Appellant such a contention on the part of the Appellant could not have been entertained (which I found to be incorrect for the material on record revealed that such an allegation had been made by the Appellant in his pleadings). Whether, the learned High Court Judge in his Judgment had given his mind or not along with what I have referred to above are matters to be looked into in the appeal. Was an equitable interest created on the land in favour of the Appellant? There is also the credibility of the Appellant's evidence which the learned High Court Judge had taken into consideration in his assessment of the Appellant's evidence.
- (c) Then, there are also some other factors that warrant consideration. They are:-
- (i) the impact of "*the Torrens System*" on the Registration of Title aspect as against the Appellant's claim on the allegation of "*fraud*".
 - (ii) the contention advanced by Counsel for the Respondent that the Appellant had been carrying on a "*warehouse*" on the property which she contended was against the "*Agricultural Policy*" of the State on which, however, this Court did not have the benefit of hearing the 2nd and 3rd Respondents. They were not represented.

- (iii) the photographs annexed to these proceedings in that regard I found to be unauthenticated with no affidavit forthcoming from the photographer as to the time of taking the said photographs.

[9] Those are matters which are arguable which do not appear to have been addressed by the High Court.

The Balancing factors

[10] In the final result, in so far as the present application is concerned, while it is true that the impugned judgment of the High Court having been in May 2019 which still remains unexecuted and therefore the 1st Respondent being “*denied the fruits of his victory,*” nevertheless, parties finding themselves where they are in June 2020 as of now, the Appellant is facing the threat of eviction from the land in question.

[11] Accordingly being somewhat guided by the approach of the former President of this Court (Calanchini P) in **Newworld Ltd v Vanualevu Hardware (Fiji) Ltd** [2015] FJCA 172; ABU76.2015 (17 December 2015), I am inclined to grant a stay as sought by the Appellant subject to the condition that the Appellant deposits to the credit of this case a sum of \$8,000.00 (Eight thousand dollars) within 42 days of notice of this Ruling.

[12] Accordingly I proceed to make the following Orders in this application.

Orders of the Court:

- 1) *The proposed amended grounds of appeal filed by the Appellant are rejected.*
- 2) *However, the application to stay the execution of the judgment of the High Court dated 24 May, 2019 is stayed subject to the condition imposed in paragraph [11] above of this Ruling.*

- 3) *Until the lapse of the period specified in paragraph [11] above of this Ruling, execution of the judgment of the High Court shall be stayed in the interim.*
- 4) *Should the Appellant fail to fulfil the condition imposed in paragraph [11] above of this Ruling, after the lapse of the period specified therein, the Order 2 above shall stand vacated.*
- 5) *There shall be no costs of this application.*



Jelet Guneratne

Almeida Guneratne
JUSTICE OF APPEAL