

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0001 of 2024
[In the Suva High Court Action No. 01 of 2014]

BETWEEN : **EXTREME BUSINESS SOLUTIONS FIJI LIMITED** a limited liability company having its registered office at 34 Knolly Street, Suva, Fiji.

1st Appellant

CLARITI SOUTH PACIFIC LIMITED a limited liability company having its registered office at 7th Floor, Ra Marama House, 91 Gordon Street, Suva.

2nd Appellant

YOGENDRA RAVINESH SHARMA a Company Director at 47 Howell.

3rd Appellant

GYAN MATI a Company Director of Auckland, New Zealand.

4th Appellant

AND : **MERCHANT FINANCE AND INVESTMENT COMPANY LIMITED** a limited liability company having its registered office at Level 1, Ra Marama House, 91 Gordon Street, Suva, Fiji.

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. P. Sharma for the Appellants**
Mr. A. Reddy for the Respondent

Date of Hearing : **28 August 2025**

Date of Ruling : **12 September 2025**

RULING IN CHAMBERS

[1] The respondent (original plaintiff) filed a writ of summons and a statement of claim in the High Court seeking the following orders:

- (i) *Judgment jointly and severally against the First Defendant and the Second Defendant in the sum of \$2,007,800.72 (Two million and seven thousand and eight hundred and seventy two cents).*
- (ii) *Judgment jointly and severally against the Third Defendant and the Fourth Defendant in the sum of \$1,025,747.33 (one million and twenty five thousand and seven hundred and forty seven dollars and thirty three cents).*
- (iii) *Interests on any judgment from the date of judgment till the date of payment.*
- (iv) *Costs on a solicitor/client indemnity basis.*

[2] The 01st, 02nd, 03rd and 04th appellants (original defendants) opposed the summons and filed their statement of defense.

[3] The High Court by its judgment on 12 December 2023¹ made the following orders:

- i. *Judgment is entered against the First and Second Defendants jointly and severally in the total sum of \$2,007,800.72 (Two million seven thousand and eight hundred dollars and seventy-two cents).*
- ii. *Judgment is entered against the Third and the Fourth Defendant jointly and severally for the total sum of \$1,025,747.33 (One million and twenty five thousand seven hundred and forty-seven dollars and thirty three cents).*
- iii. *Interest (as applicable) on the Judgment sum is granted from the date of judgment till the date of full payment of the debt.*
- iv. *The First, Second, Third and Fourth Defendants to pay a sum of \$1,000 as summarily assessed costs each (Total of \$4,000) to the Plaintiff within 14 days.*

¹ **Merchant Finance & Investment Co Ltd v Extreme Business Solutions (Fiji) Ltd** [2023] FJHC 923; HBC01.2014 (12 December 2023)

- [4] The appellants lodged a timely notice of appeal on 08 January 2024 against the High Court judgment in the Court of Appeal urging several grounds of appeal and duly paid the security for costs ordered by the Chief Registrar.
- [5] On 17 February 2025, the appellants have also filed a summons for stay of proceedings of the execution of the impugned judgment supported by an affidavit in the Court of Appeal. The respondent has opposed the summons.
- [6] At the hearing, both counsel agreed that this court may first make an order in Chambers into the preliminary issue as to whether the appellants have a right to pursue an application for stay pending appeal in the Court of Appeal without seeking the same relief in the High Court in the first instance, in view of Rule 34(1) read with Rule 26(3) of the Court of Appeal Rules. It is common ground that the appellants did not seek a stay of execution of the judgment in the High Court pending appeal in the Court of Appeal.

The effect of Rule 34(1) of the Court of Appeal Rules read with 26(3)

- [7] The long-established legal position is that an appellant cannot seek stay of proceedings in this court in the first instance without first having sought the same relief in the High Court pending appeal. I extensively dealt with issue previously² and I quote from that Ruling:

[8] Referring to Rule 34(1) read with 26(3), it has been held³ (approved later⁴ by the President, CA) that:

[6] An application for a stay of execution must be made to the Court below first. If the application is refused by the Court below then a further application may be made to the Court of Appeal. Under s 20 of the Court of Appeal Act Cap 12 a single judge of the Court of Appeal has jurisdiction to hear and determine such an application.'

² **Lal v Jamnadas** [2025] FJCA 67; ABU072.2024 (11 April 2025); See also **Devi v Nausori Town Council** [2025] FJCA 92; ABU008.2024 (20 June 2025)

³ **Chaudhry v Chief Registrar** [2012] FJLawRp 118; (2012) 2 FLR 398 (5 November 2012); See also **Samshood v Vunimoli Sawmill Ltd** [2013] FJCA 35; ABU7.2012 (3 May 2013); **Registrar of Titles v Sharda Prasad f/n Ram Asre** ABU 0009/2001S (08 June 2001) (unreported)

⁴ **Veitala v Home Finance Co (trading as HFC Bank)** [2023] FJCA 272; ABU012.2023 (7 December 2023)

[7] *As the Appellant has not yet made an application for stay of execution to the Court below, this Court has no jurisdiction to hear the application at this stage. As a result the Appellant's application for stay of execution is dismissed.'*


[9] *Therefore, the appellant's current application is not a renewed application for stay as it attempts to invoke the original jurisdiction of the Court of Appeal in the first instance without having it heard and refused by the High Court.*

[8] The appellants argue that this legal bar does not apply to a final appeal pending in the Court of Appeal but only to a leave to appeal application. I disagree. There is no legal basis or justification to draw a distinction between an application following an appeal and a similar application following an application for leave to appeal or enlargement of time to appeal application.

Orders of the Court:

1. *Summons for stay of proceedings filed on 17 February 2025 is struck out.*
2. *Appellants are ordered to pay \$2500 to the respondent within 21 days hereof.*




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Hon. Mr Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Crown Law for the Appellants
Reddy & Nandan Lawyers for the Respondent