

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 157 of 2012

**BETWEEN** : **SURESH CHANDRA** of Rarawai, Ba, Fiji, Cultivator. **Plaintiff**  
**AND** : **ARVIND CHAND** and **MOHINI ASHMEEN REKHA** **First Defendants**  
**AND** : **DAUDS TRANSPORT LIMITED** **Second Defendants**

**R U L I N G**

*(Recalling Judgement)*

- [1]. On 31 July 2013, I granted Order in Terms of a *Terms of Settlement* between the plaintiff (represented by Mishra Prakash & Associates) and the first defendant (represented by Samuel K. Ram). This morning, the Court Clerk placed before me in chambers a draft Order to be perfected.
- [2]. I have decided to withhold my endorsement yet. And I will now recall my verbal consent judgement. The reason I do this is because the proposed settlement involves *inter alia* a transfer of a piece of Crown Lease to which the Director of Lands' consent has not been sought, let alone obtained. Without that consent, this court is ill-disposed to sanction the settlement given that section 13 of the Crown/State Lands Act forbids any dealing in land without the consent of the Director of Lands first had and obtained.
- [3]. True, once a judgement is perfected, the court is *functus officio* and cannot revisit it, let alone, set it aside. But this court is not yet *functus* because the Order is yet to be perfected. At common law, a court may recall and rehear or review a case until the judgment is drawn up, passed and entered. This principle rests on the notion that a court is not *functus officio* while there remains any judicial function yet to be performed in relation to the proceeding (see **FAI General Insurance Co Limited v Southern Cross Exploration NL (1988) 165 CLR 268** per Gaudron J at p289). The sealing or the perfecting of an Order is considered to be included amongst such a judicial function. Hence, if an Order remains to be sealed or perfected, it may be recalled and set aside (for an example of the Court recalling an order before it is perfected (see **In re Harrison's Share [1955] 1 Ch 260 CA**)).

- [4]. To “perfect” an Order means “to draw it up as a formal order and then enter it in the records of the court” (see **Bailey v Marinoff (1971) 125 CLR 529 at pp530-531**). In **Millensted v. Grosvenor House (Park Lane) Ltd [1937] 1 KB 717**, judgment was given for £50.00 plus costs. The following day the judge said he thought £50.00 was excessive, reducing it to £35.00. The English Court of Appeal accepted that a judgment can be recalled at any time until it is drawn up, upholding the decision of the trial judge to reduce damages to £35.00 (see also **DJL v The Central Authority (2000) 201 CLR 226** per Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ at para [33]).
- [5]. Further to the above, courts nowadays tend to refrain from merely rubberstamping any agreement placed before them for endorsement. While parties should be encouraged to settle their cases, the court retains the discretion on whether or not to endorse a settlement. That discretion should be exercised judicially.
- [6]. In 2012, Mr. Justice Nawana delivered a paper at the Civil Judges & Magistrates Workshop held at the Intercontinental at Natadola and observed as follows:

*In dealing with a pre-judgement settlement, the judicial role resides at a very high echelon, which cannot be abdicated in favour of parties or counsel.*

*In Williams v Powell [1894] WN 141, it was held that:*

*[A] declaration by court is a judicial act, and ought not to be made on admissions of the parties or on consent, but only if the court is satisfied by evidence....Where relief is to be granted without trial, whether on admission or by agreement or in default of pleading, and it is necessary to make clear upon what footing the relief is to be granted the right course, in my opinion, is not to make a declaration but to state that the relief shall be upon such and such a footing without any declaration to the effect that that footing in fact reflects the legal situation.*

- [7]. Accordingly, the Order that I granted verbally in court on 31 July 2013 is now recalled. I adjourn this case to **29 August 2013** for mention to see if the Director of Lands has consented to the Terms of Settlement between the plaintiff and the 1<sup>st</sup> defendant.

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**Master Tuilevuka.**

**05 August 2013**