

IN THE HIGH COURT AT LAUTOKA
WESTERN DIVISION
CIVIL JURISDICTION

ACTION NO: 92 OF 2013

BETWEEN : **RAHMANT ALI & NAZUL NISHA** both of lot 4,
Martintar, Nadi

PLAINTIFF

A N D : **ABDUL SAHEED RAHMAN** of Lot 4, Martintar as the
Administrator of the Estate of Karadania of Navo,
Nadi, Farmer

DEFENDANT

Appearance : Mr M Young for plaintiff
Mr V Sharma for Defendant

Date of Hearing : 05 May 2016

Date of Ruling : 05 May 2016

R U L I N G

1. This matter is coming on for continuation of hearing today (5 May) and tomorrow. Initially the trial was set down for hearing on 6 July 2015. That day the plaintiff sought to have the matter stood down for a half hour to negotiate settlement. Unfortunately, the matter was not settled. Mr Nandan counsel for the plaintiff then sought an adjournment. He stated that both parties had agreed to file affidavit evidence in chief. The court accordingly granted 28 days for the plaintiff to file and serve his affidavit evidence and 21 days thereafter to the Defendant to file and serve his affidavit evidence. The matter was adjourned on application for mention to check out compliance on 6 October 2015.
2. Though ample time was given to the plaintiffs to file and serve his affidavit evidence he did not file any.

3. On 6 October 2015 the plaintiff made an application seeking further time to file the affidavit evidence. The court refused to allow that application and proceeded to assign a fresh trial date. The matter was again set down for trial on 26 November 2016.
4. On 26 November 2015 when the trial was taken only the first name plaintiff (Rahmant Ali) gave evidence. His evidence was recorded till 4.00pm. The plaintiff then sought the matter to be adjourned to the following day (27 November 2015) for setting down another hearing date for continuation.
5. On 27 November 2015 the matter was re-fixed for further trial on 24 and 25 February 2016. The trial did proceed on 24 and 25 February 2016. The matter was again set down for continued hearing on 5 and 6 May 2016, the dates agreed by both counsel.
6. The matter came up for continuation of trial today when Mr Young sought adjournment. He stated that Mr Nandan appearing for the plaintiff is sick and his principal has written a letter to the Senior Court Officer explaining the circumstances that led to this application.
7. The letter faxed by the plaintiff's solicitors was received by the Registry at 3.45pm yesterday (4 May 2016) is on the record.
8. According to the letter, Mr Nandan who was in the carriage of this case is very sick and at present is totally unfit to conduct the case. The Medical Certificate attached to the letter certifies that Mr S. Nandan is unfit for duty from 5.5.16 to 5.5.16, meaning he is unfit for duty for today (5 May 2016).
9. The medical report does not confirm that Mr Nandan is seriously ill and he will be unfit for duty for the next three months. However, the letter requests the court to vacate the hearing and adjourn this case for mention to fix hearing. It also requests for three months

adjournment to see if Mr Nandan is able to get well and conduct the hearing.

10. Mr Sharma counsel appearing for the defendant while confirming receiving a copy of the letter that was sent to the Registry, indicates that he can proceed with the trial as it was a part heard case.
11. The medical report does not indicate that Mr Nandan is seriously ill. It only states that Mr. Nandan is unfit for duty from 5/5/16 to 5/5/16, i.e he is unfit for duty for one day. The trial will continue till tomorrow. There is no indication that Mr Nandan will be appearing tomorrow to conduct the trial or he will assign another counsel if he feels unfit to attend to court.
12. The medical report sent to court does not support the submission that Mr Nandan is seriously ill. He has not been hospitalized. This is a part-heard matter. Mr Nandan could have easily retained another counsel to conduct the hearing if he is unfit to conduct the trial. In the circumstances I refuse the application to adjourn the continuation of the trial.
13. I asked counsel who appeared for the plaintiff whether he is ready to proceed with the trial. He then stated that he cannot do so as he had no instruction. Accordingly I will now proceed with the trial on the basis that the plaintiff has closed his case with evidence led early.



At Lautoka
5th May 2016

M H Mohamed Ajmeer 5/5/16
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M H Mohamed Ajmeer
JUDGE