

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

**Civil Action No. HBC 191 of 2015**

**BETWEEN** : **MASIMINO RAGA** of 17 Skylark, Apartment 3, Larkspur, CA 94939 in the United States of America, Care Giver.

**PLAINTIFF**

**AND** : **KASANITA LATIKAU** of California in the United States of America, Occupation unknown.

**DEFENDANT**

**BEFORE:** **Master Vishwa Datt Sharma**

**COUNSELS:** **Mr. Bale** for the Plaintiff.  
No appearance of the Defendant.

**Date of Hearing:** **08<sup>th</sup> March, 2016**

**Date of Ruling:** **06<sup>h</sup> May, 2016**

**DECISION**

**INTRODUCTION**

1. The **Plaintiff** filed a **Summons For Summary Judgment** coupled with an **Affidavit in Support** and sought for the following **Orders-**
  - (a) That the Defendant execute the necessary documentations and instruments to transfer her one undivided half share in Lot 39 on DP 7421 and contained in Housing Authority Sub-Lease No. 379290 to the Plaintiff;
  - (b) That the Defendant execute the necessary documentations and instruments to transfer her one undivided half share in Lot 444, Mala Circle, Pacific Harbour, Deuba contained in CT No. 15605 being Lot 42 on DP No. 3962 to the Plaintiff;
  - (c) That if the Defendant fails to comply with the orders sought in paragraphs (a) and (b) above within fourteen (14) days, that the Chief Registrar execute the necessary documentation and instruments to effect the transfer of the Defendant's one undivided half share in Lot 39 on DP 4721 and contained in Housing Authority Sub-Lease No. 379290 ant CT No. 15605 being Lot 42 on DP No. 3962 to the Plaintiff;

- (d) Costs of this application be awarded against the Defendant; and
- (e) Any further or other or other relief this Honourable Court deems just, fit and expedient.

2. The application was made pursuant to **Order 86 Rule 1 (1) and (2) and Rule 2 (1)** of the **High Court Rules 1988** and **the Inherent Jurisdiction of this Honourable Court**.

### **The PLAINTIFFS' CASE and APPLICATION**

- 3. The Plaintiff currently resides at 17 Skylark Apartment 3, Larkspur, CA 94939 in the United States of America.
- 4. The Defendant is the former wife of the Plaintiff and their marriage was dissolved on 09<sup>th</sup> January 2010 by the Superior Court of the State of California in and for the County of Sacramento.
- 5. During their marriage, the parties to the proceedings acquired two (2) properties in Fiji-
  - (i) Lot 39 on DP 7421 contained in Housing Authority Sub-Lease No. 379290; and
  - (ii) Lot 444, Mala Circle, Pacific Harbour, Deuba contained in CT No. 15605 being Lot 42 on DP No. 3962.
- 6. The properties formed part of the matrimonial property in the Superior Court of California, Country of Sacramento Case No. 11FL02158.
- 7. The parties entered into a **Marital Settlement Agreement** outlining the final and complete settlement rights and obligations arising out of their marriage, including the respective property and support rights.
- 8. The Superior Court of California in and for the County of Sacramento made the agreement reached between parties as the orders of this court together with other directions as pleaded by the Plaintiff in his Affidavit in Support filed on 13<sup>th</sup> October, 2015.
- 9. The Superior Court of California in and for the County of Sacramento ordered that the Plaintiff be awarded the sole ownership of the properties in Fiji.
- 10. The Defendant has failed to comply with the court order made in terms of Marital Settlement Agreement of 01<sup>st</sup> June, 2012.



11. This has prompted the Plaintiff to file the present proceedings in this court to enforce the orders of the Superior Court of California.

### **ISSUES**

12. The issues that this court needs to determine are as follows-
- (i) **Whether summary judgment is available to the Plaintiff as to the nature of his claim in terms of Order 86 Rule 1 of the High Court Rules 1988?**
  - (ii) **Whether orders sought for in the Summary Judgment application against the Defendant at paragraph 1 (a) to (d) inclusive hereinabove can be granted to the Plaintiff? And**
  - (iii) **Whether this court has the Jurisdiction to hear and determine the Summary Judgment application of the Plaintiff filed herein?**

### **LAWS and PRINCIPLES relating to summary judgment**

13. The Plaintiff may, under **ORDER 86 RULE 1** of the **HIGH COURT RULES 1988**, apply for **summary judgment** against the Defendant on the ground that the Defendant has **no defence** to a claim. **HCR 0.86** deals with summary judgment. **O.86 r. 1** provides that:

#### **Application by plaintiff for summary judgment (O.86, r.1)**

1.-(1) *In any action begun by writ indorsed with a claim –*

- (a) ***for specific performance of an agreement*** (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
- (b) *for rescission of such an agreement, or*
- (c) *for the forfeiture or return of any deposit made under such an agreement, the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.*

(2) *An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ.*

#### **Manner in which application under rule 1 must be made (O.86, r.2)**

2.-(1) *An application under rule 1 shall be made by summons supported by an*



*affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.*

*Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.*

14. The Plaintiff may, under **ORDER 14 RULE 1** of the **HIGH COURT RULES 1988**, apply for summary judgment against the Defendant on the ground that the Defendant has no defence to a claim. **HCR O.14** deals with summary judgment. **O.14 r. 1** provides that:

*"1. (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the court for judgment against that defendant.*

*(2)...*

*(3)... (Emphasis added).*

15. Pursuant to **HCR O. 14 r.3** the Plaintiff may obtain judgment against the Defendant on the claim or part as may be just. **O.14 r.3** states that:

*"3. (1) Unless on the hearing of an application under rule 1, either the Court dismisses the application or the defendant satisfies the Court with respect to the claim or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or there ought for some other reasons to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed"*

*(Emphasis added)*

### **ANALYSIS and DETERMINATION**

16. The power to give summary judgment in terms of Order 86 is intended to apply only in clear cases, where there is no reasonable doubt that the plaintiff is entitled to summary judgment, and where it is entitled to judgment and it is inexpedient to allow a defendant to defend for mere purposes to delay the proceedings unnecessarily. Further, it is also important to reiterate at this stage



that the ground upon which the Plaintiff may seek summary judgment is when the Plaintiff is able to show that the Defendant has no defence to the action.

Unless, the Defendant satisfies the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the court may give judgment for the Plaintiff in the action. This is the law.

17. In this case, both parties reside in California, in the United States of America.
18. They commenced matrimonial proceedings in terms of their **dissolution of marriage** and **property settlement** at the Superior Court of California in and for the County of Sacramento.
19. The court granted the dissolution of their marriage on 09<sup>th</sup> January, 2010 and made orders as to the Matrimonial property in terms of the parties Marital Settlement Agreement executed on 01<sup>st</sup> June, 2012.

The Superior Court of California, County of Sacramento ordered that the Plaintiff in this case was awarded sole ownership of the following properties existing in Fiji Jurisdiction-

- (iii) Lot 39 on DP 7421 contained in Housing Authority Sub-Lease No. 379290; and
  - (iv) Lot 444, Mala Circle, Pacific Harbour, Deuba contained in CT No. 15605 being Lot 42 on DP No. 3962.
20. The court further ordered "**that each party shall execute promptly all documents and instruments necessary to vest titles as provided in the Agreement executed by both parties. If either party fails to execute any document or instrument to effectuate any of the terms and provisions of the Agreement within five (5) days after presentation of the document, upon ex-parte application to the Family Department of the Sacramento County Superior Court, after twenty-four (24) hours prior notice to the opposing party, the Clerk of the Court is appointed to execute the document.**"

*(Clause 7 0(i) of the Marital Settlement Agreement refers).*

21. The Plaintiff confirms in his application before this Court, **that the Defendant to date has failed to comply with the terms of the Marital Settlement Agreement and despite the option available to the Plaintiff to have the relevant documents and instruments signed by a Clerk of the court in California, the Registrar of Titles will not accept the necessary documents and instruments to effect the transfer of the Defendant's half share in the Properties into the Plaintiff's name unless the Defendant herself or the Chief Registrar executes the same.**



(Underline is mine for deliberation)

22. Taking into consideration paragraphs 20 and 21 hereinabove, it can be clearly ascertained from the Plaintiff's present application before this court, that if the **Defendant failed to execute all documents and instruments** as required of her in terms of the **orders of the Superior Court of California**, then at least the Plaintiff had a duty to comply with that order first wherein he should have **filed an ex-parte application to the Family Department of the Sacramento County Superior Court**, and in turn the Defendant would have been notified.

Then the **clerk of the Court** would have been **appointed to execute the document**. Once the Clerk upon appointment had executed the document, then the Plaintiff should have lodged the documents with other transfer documents with the Registrar of Titles office for transfer to be carried out.

Since the Plaintiff has informed this court through his affidavit, that the Registrar of Titles in Fiji would not have accepted the signed document by the Clerk from the Family Department in Sacramento. If this was the case, then the Plaintiff was required to **register the order** from the **Superior Court of California** together with the signed document of the Clerk from Family Department at the **Family Magistrates Court in Suva and not the High Court Civil Registry in Suva**.

The reason being that the initial proceedings filed were in fact a **matrimonial case** or a **Family Case** of the parties to the proceedings at the **Superior Court of California** and respective orders were made. Therefore, if the Plaintiff had any intention to enforce the **Reciprocal order of the Superior Court of California** in the **Fiji Jurisdiction**, since the two properties of the parties to the proceedings existed in this Jurisdiction, then he should have registered the order and filed his appropriate application at the Family Magistrates Court in Suva and not the High Court Civil needless to say. Therefore the **question of Jurisdiction** sets in.

It is common knowledge that the Master of the High Court presides over civil cases in the Civil Jurisdiction and not the Family matters. For Family or Matrimonial matters, Fiji Jurisdiction have inception of the services of the Family Courts which makes in itself a special Jurisdiction to deal with all matters relating to Family disputes and applications.

In fact this case should have been filed at the Family Magistrates Court in Suva after the Plaintiff had fully complied with or exhausted all avenues to enforce the court orders of the Superior Court of California in terms of **Clause 7 O(i) of the Marital Settlement Agreement**, as discussed at paragraph 20 hereinabove.



23. I wish to bring to the attention of the Plaintiff/Counsel **to Section 168 of the Family Law Act 18 of 2003 provides for the “Execution of Instruments by order of Court.**
24. In **conclusion**, for the aforesaid rational, the Plaintiff’s application is fatal and therefore is declined accordingly.

**FINAL ORDERS**

1. **The Plaintiffs application seeking orders in terms of the Summary Judgment is hereby dismissed accordingly.**

Dated at **Suva** this **06<sup>th</sup> Day of May, 2015**



.....  
**MR VISHWA DATT SHARMA**  
**Master of High Court, Suva**

**cc. Mr. Bale** of Saumatua Bale & Faktafon Lawyers, Suva.