

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

Civil Action HBC: 154 of 2015

BETWEEN : **PETER ALLAN LOWING** of Unit 6.2, Fairfax Apartments,
Hunter Street, Port Moresby, Papua New Guinea, Legal
Practitioner.

PLAINTIFF/APPLICANT

A N D : **PETER HOWELL** of 30A Lynwood Avenue, Killara, New
South Wales, Australia.

DEFENDANT/RESPONDENT

Appearances:

Ms Salote Tabuadua Seru with Mr N Vakacakau for Plaintiff

Ms Barbra Doton for Defendant

Date of Hearing: 27 June 2016

Date of Ruling : 27 June 2016

EX TEMPORE RULING

1. This is an application to stay of proceedings. The application has been supported by an affidavit sworn by the plaintiff, Peter Allan Lowing. The application seeks that:

1. *The within proceedings be stayed fortieth pending determination of the entire appeal proceedings number ABU0025 of 2016 before the Court of Appeal of Fiji.*

- 2. Costs of this application be borne by the defendant or alternatively costs in the cause.*
 - 3. Time of service of this application be abridge to 1 day due to the urgency of this application.*
 - 4. Any other or further that the court deems just and appropriate.*
2. The application is made under Rule 26 (3) and Rule 34 (1) of the Court of Appeal Rules ('CAR') and Order 3 Rule 4 of the High Court Rules 1988 (as amended) and the inherent jurisdiction of the Court.
 3. The Defendant opposing the application made legal submissions. The Defendant opted not to file an affidavit in opposition.
 4. Ms Solate counsel appearing for the plaintiff submits that the plaintiff will be prejudice if a stay of the proceedings is not granted. She further submits that this stay application has been necessitated by the progress of the defendant's application for setting aside filed on 22 December 2015 and heard on 10 May 2016 and in light of the progress of the CA Injunction Application.
 5. On the other hand, Ms Doton counsel for the defendant submits that there will be much prejudice to the defendant if a stay of the proceedings is granted. There has been delay in execution of the consent judgment (payment of money) obtained in the foreign proceedings. The plaintiff is virtually trying to stay the execution of the consent judgment obtained in NSW.
 6. By ruling dated 21 March 2016 this court refused to issue injunction against the defendant restraining from enforcing the consent judgment obtained on 11 February 2016 in the foreign proceedings.
 7. The plaintiff has filed a fresh injunction application in the Fiji Court of Appeal ('FCA'). FCA has granted an interim injunction on that application against the defendant restraining from taking any further

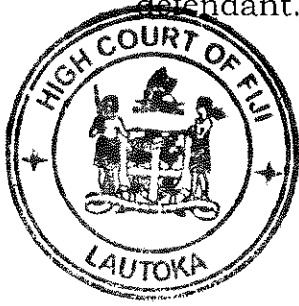
action on the Bankruptcy Notice addressed to the plaintiff and issued on 12 May 2016.

8. The defendant's application for setting aside the writ of summons was heard on 10 May 2016 and set down for ruling tomorrow (28 Jun. 16).
9. CAR 26 (3) states that where under these Rules an application may be made either to the Court below or to the Court of Appeal it shall be made in the first instance to the Court below.
10. An appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below unless the court below or the Court of Appeal may otherwise direct (see CAR 34 (1) (a)).
11. The Court has discretion to stay of the proceedings pending appeal. The plaintiff has appealed to the Court of Appeal the order delivered by this court refusing to grant an injunction against the defendant. The pending appeal is against that order.
12. The ruling on the defendant's application to set aside the writ of summons is set down tomorrow (28 Jun. 16). That application must be determined without delay.
13. A stay of proceedings must be distinguished from a stay of execution. The current applications before this court is an application for stay of proceedings and not stay of execution.
14. At any rate in the exercise of the court's inherent jurisdiction, an order for the stay of proceedings is made very sparingly and only in exceptional circumstances.
15. I am unable to find any exceptional circumstance to order for the stay of proceedings. I therefore refuse to make order for the stay of proceedings

as sought by the plaintiff. The Plaintiff will pay \$500.00 as costs, which is summarily assessed, to the Defendant.

Final orders

1. Applicant for the stay of proceedings refused.
2. The plaintiff will pay summarily assessed costs of \$500.00 to the defendant.



M H Mohamed Ajmeer
27/6/16
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M H Mohamed Ajmeer
JUDGE

27 June 2016
At Lautoka