

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 193 of 2015

BETWEEN : TAINA ULUINAYAU of Valili Street, Nakasi Park Estate, Nakasi.

PLAINTIFF

AND : JIMI KOROI of Valili Street, Nakasi Park Estate, Nakasi.

DEFENDANT

BEFORE : Master Vishwa Datt Sharma

COUNSEL : Mr. Isireli Fa for the Plaintiff  
Mr. Prakash for the Defendant

Date of Hearing: 03<sup>rd</sup> December, 2015

Date of Ruling : 14<sup>th</sup> July, 2016

RULING

[Motion seeking Stay of Masters Orders made on 27<sup>th</sup> July, 2015]

A. INTRODUCTION

1. The **Defendant** filed a Motion together with An Affidavit in Support on 20<sup>th</sup> August, 2015 and sought for the following orders-
  - (i) An Order that the Orders made by the Acting Master on Monday 27<sup>th</sup> July, 2015 be stayed.
2. The Application was made pursuant to *Order 45 Rule 10 of the High Court Rules, 1988*.

**B. BACKGROUND FACTS****The Defendant's case**

3. The Defendant's contention are as follows-

- (i) That he has not been served with any summons or documents in this matter or any documents issued out of this Honourable Court.
- (ii) That he had instructed his solicitors, Messrs Lateef & Lateef Lawyers about this matter when he received a notice from the Plaintiff's solicitors and they had written to the Plaintiff's solicitors on several occasions. Annexed hereto and marked "A" and "B" respectively are the letters.
- (iii) That he has advised that Messrs Lateef & Lateef Lawyers did not receive any response from the Plaintiff or her solicitors. Lateef & Lateef Lawyers had also made phone calls to the Plaintiff's solicitors following for their response.
- (iv) That he was somewhat surprised when he was informed of the Eviction Order.
- (v) That he was not present at the Hearing of this matter as is reflected in the Order issued or of this Honourable Court dated 27/07/2015. This clearly indicates that I was not present because I was not served with any documents and was unaware of the matter being before this Court.
- (vi) That the Plaintiff to the best of my knowledge resides in the United States of America. She is referred to in the heading of the Order as residing in Nakasi Park Estate with me in the same residence. This is not true.
- (vii) That he has explained as is evident from the annexures referred to in paragraph 3 above as to his right to occupations.
- (viii) That he wishes to defend this application as he is entitled to do so and as is his right in law and reiterate that no Summons or Affidavit for Eviction was served on him. The Affidavit of Service by Mr Manzoor Ali is not true. Annexed hereto and marked "C" is a copy of the Mr Manzoor Ali's Affidavit of Service.
- (ix) That he therefore prays for an Order that this matter be stayed pending determination of the eviction proceedings against him on merit.
- (x) That he will be lodging a complaint with the authorities about the Affidavit that states he was served. Further, he intends to lodge a complaint against the

Plaintiff's solicitors as they were well aware of his representation with Messrs Lateef & Lateef Lawyers as is clearly evident from the letters written to them with no reply.

### The Plaintiffs' Case

4. The Plaintiff **Taina Uluinayau** makes oath and says as follows-
- (i) That she is the registered proprietor of the property at Lot 3 on DP 4923 Valili Street, Nakasi Park Estate, Nakasi. Now shown to her and marked as annexure 'A' is the true copy of the certificate of title to the property.
  - (ii) That the Defendant herein is the tenant at the said property at Valili Street, Nakasi Park Estate, Nakasi.
  - (iii) That the Defendant is a tenant from month to month with a monthly rental in the sum of \$300.00. That the rent charged herein is approved in accordance with P.I.B.
  - (iv) That on or about the 17<sup>th</sup> March 2014 she gave the Defendant a notice to vacate the said property. Now shown to her and marked as annexure 'B' is a true copy of the Eviction Notice.
  - (v) That since her notice for the defendant to vacate the property, he has not done so.
  - (vi) That she here by seek an order in terms of the Summons filed herein.

### The Law

5. **Order 45 Rule 10 of the High Court Rules, 1988 deals with matters occurring after judgment: stay of execution, etc.**

*10. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.*

### Analysis and Determination

6. It is not in dispute that the Bailiff went to the Defendant's residence at Valili Street in Nakasi to serve documents.
7. The Defendant refused to accept service of the documents and in turn advised the Bailiff to serve all documents on his Solicitor, Lateef & Lateef. At this point in time, the Defendant had knowledge why the Bailiff was there at his Residence and was very much aware about the documents being legal in nature.
8. This was the very reason why the Defendant asked the Bailiff to serve the documents to his Solicitors, Lateef & Lateef.
9. The Defendant should have consulted his Lawyer immediately when the Bailiff was on his premises to effect service rather thought fit not to do so for the reasons best known to him.
10. The Plaintiff or the Bailiff was not required to serve those documents on the Defendant's Solicitors since the document addressed the Defendant's name.
11. The Bailiff filed an affidavit of service 02<sup>nd</sup> June, 2015, deposing that he did on 27<sup>th</sup> May, 2015 personally served a copy of the Originating Summons, Affidavit of Taina Uluinayau and Acknowledgment of service to the Defendant at Lot 3, Valili Street Nakasi.
12. I have also made reference to the correspondence written by Lateef & Lateef to Ms. Fa & Company dated 25<sup>th</sup> April, 2014. Particular reference is made to paragraphs 5, 6 and 7 respectively as hereunder-

*Paragraph 5- 'Lastly, it was agreed that your client would reimburse our client for all repairs done to her property. Our client is now shocked that your client has taken action to have him evicted.'*

*Paragraph 6- 'We advise that our client is prepared to relocate, however will only do so after he receives \$13, 262.71 from your client for repairs done to her property and until then the monthly rental of \$300 is to be deducted from the money owed for repairs.'*

*Paragraph 7- 'Therefore, due to the above reasons we request that the eviction letter be withdrawn. We advise that any legal action taken will be vigorously defended on the above basis.'*

13. What could be understood or ascertained from the above 3 paragraphs of the correspondence is that the Defendant had carried out certain repair and maintenance work on the Plaintiff's property and incurred an expenditure of \$13,262.71. The Defendant is prepared to relocate provided this amount is settled by the Plaintiff otherwise will defend any legal action against him.
14. There is no reason to doubt that the Defendant was not served with the initial Originating Summons and the Affidavit in Support of the Plaintiff seeking an order for Vacant Possession. To confirm the service herein, the Plaintiff has filed an affidavit of service to this effect which has been filed in terms of the requirement of the law accordingly.
15. Further, this court on 27<sup>th</sup> July, 2015 upon being satisfied that the Plaintiff was the registered proprietor of the said property in Question, and the Defendant failing to file and serve any Answering affidavit to the Plaintiff's application in defence, the court proceeded to grant an order for vacant possession.
16. If the Defendant was of the contention that he had any defence whatsoever, he should have appealed the Masters Decision and sought for a stay accordingly, which he failed to do so instead tried to come with a defence that he was never served with the Plaintiff's application.
17. In Conclusion, I make the following orders-
- (i) The Motion seeking an order to stay the Master's decision of 27<sup>th</sup> July, 2015 is hereby refused.
  - (ii) Defendant to pay the Plaintiff costs summarily assessed at \$500 within 14 days.

DATED AT SUVA THIS 14<sup>th</sup> July 2016



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VISHWA DATT SHARMA  
MASTER OF THE HIGH COURT  
SUVA