

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA, FIJI
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 76 OF 2014

BETWEEN : **ASHWEN GIBSON BLAKE** of Bekana Island off Lautoka
Applicant/Defendant

AND : **BEKANA GARDEN ISLAND RESORT LIMITED**, a duly
registered company under the laws of Fiji
Respondent/Plaintiff

Before : Hon. Justice Mr Sapuvida

Counsel : Mr E. Maopa for the Applicant/Defendant
Mr W. Pillay for the Respondent/Plaintiff

**Date of Hearing
& Submissions** : 22nd September 2015, 7th October 2015, 2nd November 2015

Date of Ruling : 12th February 2016

RULING ON APPLICATION FOR STAY OF THE EXECUTION

1. The application of the Applicant/Appellant [Original Defendant- hereinafter referred to as "the applicant"] before me is to stay or set aside the execution of writ of possession dated 27th August 2015, and the leave to appeal & to extend time to file notice of appeal if need, to appeal the judgment of the Learned Master of the High Court delivered on 26th August 2015 allowing leave to issue writ of possession in favor of the Respondent [Original Plaintiff].

2. The applicant supplicates the following grounds of appeal in the notice of appeal filed on the 28th August 2015:

- (1) The learned Master of the High Court erred in fact and in law when he failed to consider order 45 rule 2 of High Court Rules when such order does not contain provisions for leave to issue Writ of possession after 3 months had lapsed from the date of judgment.
- (2) That the learned Master erred in fact and in law when he failed to consider that the application for leave to issue the Writ was filed more than 3 months from the pronouncement of the judgment (hence the application is void).
- (3) That the learned Master erred in law and in fact when he failed to consider that leave is required to extend the time to file leave to issue Writ of Possession as time period of 3 months had lapsed.
- (4) That the learned master erred in law and in fact when he failed to consider Order 113 rule 7 when the application for leave to issue Writ of Possession has expired after 3 months from the date of the order to give vacant possession.
- (5) That the learned Master erred in law and in fact when he failed to consider that leave is required to extend the period of issuance of Writ of Possession from the date of Order for vacant possession as provided for by order 113 rule 7.
- (6) That the learned Master erred in law and in fact when he said "to be more precise, the Defendant does not have a right to be heard on the plaintiff's application seeking leave issue Writ of Possession. There is clearly an implied intention by the legislature that the Defendant should not have the right to be heard before granting leave to issue Writ of Possession". (paragraph 9) without any reference to any judicial authority to support such view.

- (7) That the learned Master failed to consider the Affidavit evidence of the application and the submission wherein it raised serious issue that the Respondent Company was wound up and not the registered lessee.
3. When the matter was taken up to fix the applicant's application for hearing on 22nd September 2015, both the Counsel wanted firstly to fix for hearing of the stay and seek an order from the court only with regard to the application of the applicant to stay of the execution of writ of possession issued on 26th August 2015 by the Master of the High Court.
 4. Furthermore, both the counsel insisted court to allow them to file written submissions only with regard to the application for stay of execution. The court having allowed the former directed the time frame for the parties to file their written submissions and then fixed for ruling to be delivered on 4th November 2015 on the limited matter, i.e. the application for stay of execution.
 5. The respondent filed its written submissions dated 7th October 2015 confining only on summons for stay execution as agreed upon by both counsel.
 6. However, the written submissions of the appellant had not been reached the Registry of the High Court until the 2nd November 2015, and finally it was before me on 3rd November 2015, yet it was at the eleventh hour I may say, since the ruling was scheduled to be made on 4th November 2015.
 7. Interestingly, the appellant has filed her written submissions as it indicates on the face of the first page of it as " SUBMISSIONS FOR THE APPELLANT/DEFENDANT ON SUMMONS FOR LEAVE FILED ON 27TH NOVEMBER 2014 & SUMMONS FOR STAY OF EXECUTION OF WRIT OF POSSESSION FILED ON 28TH AUGUST 2014".
 8. Moreover, the applicant by these submissions urges at paragraph 50 as follows;
 - (i) Leave to appeal to appeal the judgment of the then Master Ajmeer delivered on the 26th November 2014.
 - (ii) Leave to extend time to file notice of appeal.
 - (iii) **Stay of execution of writ of possession issued on 27th August 2007.**

- (iv) Timetable for written submission on the grounds of appeals file by the applicant/respondent.
- (v) Cost be in cause ". [Bold is added]
9. Having found that the written submissions of the applicant so filed was escorted with a series of references of case law authorities, and the belatedness, and had no time to skim through, I vacated the date for ruling fixed on 4th November 2015, informing the parties and fixed for today, the 12th February 2016.
10. Nevertheless, there was no interim order for stay of the execution nor the applicant had canvassed such an order by making an application to the court.
11. In the meantime, the state of affairs of the matter have been changed and the execution has been taken place and the report of the Deputy Sheriff of the High Court Lautoka dated 9th November, 2015 has been submitted and filed of record.
12. In view of the above, I see that this court is presently not having a case to answer by this ruling, since the hearing was limited to the application of stay of the execution of the Master's order which has now been carried out.
13. Hence, I see no status quo for this court now to interfere with the execution process and therefore decide to proceed with the other pleadings urged by the applicant seeking orders in terms of the summons dated 28th August 2015.



R.S.S. Sapuvida

Judge

High Court of Fiji

On the 12th day of February 2016
At Lautoka.