

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 260 of 2016

BETWEEN : **ORGANIC EARTH (FIJI) LIMITED** a company having its registered office
at 1 Taramati Street, Vatuwaqa, Suva

PLAINTIFF

AND : **ROSALIA CHUTE** currently living at 2, Isa Lei Road, Lami.

DEFENDANT

BEFORE: **Master Vishwa Datt Sharma**

COUNSELS: **Ms. Malimali** for the Plaintiff
Mr. Devenesh Sharma for the Defendant

Date of Hearing: **8th March, 2017**

Date of Ruling: **19th April, 2017**

RULING

*[Plaintiff's Recusal Application made in support of an
Affidavit deposed by Sangeeta Devi Reddy]*

INTRODUCTION

1. The Plaintiff filed a Notice of Motion on 01st February, 2017 and sought for the following order-
 - (a) That the Honourable Master recuse himself from presiding in Civil Action No. HBC 260 of 2016;
 - (b) That Civil Action No. HBC 260 of 2016 be transferred to a Judge of the High Court.
2. This application is made in support of an affidavit deposited by Sangeeta Devi Reddy-Bridgeman, sworn and filed on 01st February, 2017.
3. The Defendant strongly objected to this application and filed her Affidavit in Reply.
4. The Application was heard on 08th March 2017 on the Affidavit evidence coupled with Oral submissions of both parties to this proceeding.

AFFIDAVITS FILED

5. Plaintiff's Affidavit deposited by Sangeeta Devi Reddy filed 01st February, 2017.
6. Defendant's Affidavit deposited by Rosalia Chute filed on 13th February, 2017.

GROUND FOR RECUSAL

7. The Plaintiff' grounds for seeking recusal are as follows-
 - (i) That the Plaintiff had two (2) cases before the Master as he is now and as a Family Court Magistrate and in both those cases , there have been strikes against the Plaintiff;
 - (ii) That the Master had made an interim Domestic Violence Restraining Order (DVRO) against the Plaintiff; AND
 - (iii) That The Master Dismissed the Plaintiff's S. 169 eviction proceedings.

THE LAW

8. The Law that is applicable in a Recusal application of this nature had been discussed in the case of *Muir v. Commissioner of Inland Revenue and others (2007) NZ CA 334* and it had been followed by the High Court of Fiji in the Case of *State v. Mahendra Pal Chaudhary Criminal [Misc. Case No. HAM160 of 2010.]*

ANALYSIS and DETERMINATION

9. The issue for this Court to determine is whether the present Master (Judicial Officer) presiding over this case should recuse himself from the hearing and determination of this case on the grounds that there may be a possibility of **apprehended bias** or that there is a **real danger of bias**.

10. In the aforementioned case of *Muir v. Commissioner of Inland Revenue and others (2007) NZ CA 334* and it had been followed by the High Court of Fiji in the Case of *State v. Mahendra Pal Chaudhary Criminal [Misc. Case No. AM160 of 2010.]*, it states:

"In our view, the correct enquiry is a two stage one.

First Limb Test

First, it is necessary to establish the actual circumstances which have a direct bearing on a suggestion that the Judge was or may be seen to be biased. This factual inquiry should be rigorous, in the sense that complainants cannot lightly throw the 'bias' ball in the air.

Second Limb Test

The second inquiry is to then ask whether those circumstances as established might lead a fair-minded lay-observer to reasonably apprehend that the judge might not bring an impartial mind to the resolution of the instant case. This standard emphasizes to the challenged Judge that a belief in her own purity will not do, she must consider how others would view her conduct."

11. Above may be further summarised as follows- *"the test is whether there is a real danger or real likelihood in the sense of possibility of bias" and whether a fair-minded observer might reasonably apprehend or suspect that the judge had prejudged (the English test).*

12. Bearing in mind the aforesaid legal principles set out by the above authorities, I will now apply both tests to the Affidavit evidence of the Deponent, Sangeeta Devi Reddy and deliberate on the Plaintiff's application for recusal.

13. The case authority hereinabove reveals that-

- (i) A rigorous examination should be conducted if the actual circumstances or the facts of the issue have a direct bearing to show that the Judge **or the Master presently presiding over this case** was or may have seen, to be biased; and
- (ii) Whether those circumstances as established might lead a fair -minded lay-observer to reasonably apprehend that the Judge **or the Master** might not bring an impartial mind to the resolution of the instant case. (*Emphasis mine*)

14. In the present case before me, the alleged circumstances upon which the application has been made by the Plaintiff could be summarised as follows:
- (i) That the Plaintiff had two (2) cases before the Master as he is now and as a Family Court Magistrate and in both those cases , there have been strikes against the Plaintiff;
 - (ii) That the Master had made an interim Domestic Violence Restraining Order (DVRO) against the Plaintiff; AND
 - (iii) That The Master Dismissed the Plaintiff's S. 169 eviction proceedings.
15. Above three (3) alleged circumstances including the Affidavit deposed by Sangeeta Devi Reddy were strongly opposed and defended by the Defendant. The Defendant filed and served a comprehensive Affidavit opposing the Plaintiff's contentions expressed in her Affidavit.
16. With regards to the alleged first, second and third grounds hereinabove:
- (a) In the first case of DVRO- An interim Domestic Violence Restraining Order was made on the prima facie evidence before the Court in terms of **Section 27 of the Domestic Violence Decree 2009** which deals with the 'Standard non-molestation conditions' in order to protect the victim in the respective case. If the Plaintiff was not happy with the Court's decision, she could have appealed the decision. Why did she fail to appeal the decision and yet complains unnecessarily without any merits?

This Court finds no merit in her argument and therefore, this ground fails.

- (b) With regards to the **Second case** before the Master of the High Court which was a Section 169 eviction Application. This case was argued before me and a written ruling was delivered setting out the rational for the Dismissal. One of the reasons for the dismissal was that the application was not filed in conformity with the requirement of the Rules/Law as per Section 169 of the Land Transfer Act, Cap 131. Again, and I reiterate that if the Plaintiff was dissatisfied with the Court's decision, then nothing stopped her from appealing the Master's Decision.

This Court again finds no merit in her argument as to the reasons for recusal and again, this ground fails.

17. Further, I find in terms of her Affidavit that-

- *There is no explanation furnished as to why she was aggrieved with the Court's decision in the DVRO matter; and at paragraph 14, that 'the interests of justice would prevail rather than some pedantic and hawkish eye over a few words.'*

- *That the Master of the Court has at no stage dealt with any previous application by the Plaintiff Company as deposed at paragraph 16, and if she had in mind to seek recusal, then she should have made an application at the very beginning and not this late when the Master had brought to the parties attention in all fairness 'that he has dealt with a case of the parties and whether any party was of the view that this case be heard and determined by another Judicial Officer. I was duty bound to reveal to the parties that I have dealt with a case involving parties. (Emphasis mine).*
 - *At paragraph 22, any decision made by the presiding judicial officer is subject to Appeal, and if the Plaintiff was not happy with the decision then she should have appealed rather than come up with a Recusal application.*
 - *At paragraph, the Master was not at all biased or prejudiced in anyway against the Plaintiff and the S. 169 application for eviction was dismissed on a proper ground and the written ruling furnished speaks for itself.*
18. Therefore, bearing in mind the above, the true test is whether a Judge and or a Master of the Court can be seen to act impartially or not and such impartiality would arise in circumstances where for example the Judge and or Master of the Court had any prior knowledge of disputed facts in the current S. 169 eviction case before the Master, and or whether the Judge and or Master had any sort of interest in the outcome of the pending eviction proceedings before him? Needless to say that the current case is yet to get off the ground so that it can be heard and determined in terms of the Affidavit evidence filed by the parties to the proceedings. **The Master of the High Court does not have any background facts and evidence before him as of yet and will only be made aware when the application proceeds onto a hearing. The case before this Court is a Summary Application which can be concluded at its earliest.**
19. The Plaintiff does not suggest anywhere in her Affidavit before the Court that I would not be able to act judiciously on the pending Section 169 eviction proceedings before me. In fact what the Plaintiff deposes in her Affidavit is that "Lastly, the fact the Honourable Master properly and correctly brought up in open that because of the Master's knowledge of previous cases, we may want to have this case dealt with by another tribunal is a strong indication that the Master wishes to protect the integrity of the Court."
20. The Question now arises, whether those circumstances as established might lead a fair - minded lay- observer to reasonably apprehend that the Judge or the Master might not bring an impartial mind to the resolution of the instant case.'
21. There is no reason to doubt the Master's integrity as already confirmed by the Plaintiff and or the Deponent Sangeeta Devi Reddy in her Affidavit at paragraph 31 deposed on 01st February, 2017. I will add that the mere reason for her to seek recusal of the Judicial Officer in this case is her fear that she is anticipating that she may lose the case seeking eviction orders against the Defendant.
22. **In Conclusion**, an application to disqualify a trial judge or a Master of the High Courte is a serious matter and must be made on substantial grounds and accompanied with supporting evidence. The test of recusal is objective and the onus is on the applicant (Plaintiff) to establish that the disqualifying interest or matter would cause the

possibility of a departure from impartial decision-making and the oath of office taken by the Judge to administer justice without fear or favour. A **subjective apprehension** is not, of itself, enough to warrant or require disqualification. The latter of the dual constitutional requirements of **independence and impartiality** is more narrowly focused on individual characteristics than the prior, which is status oriented, and extends to cover **constitutional and administrative independent of the Court**. There is a **constitutional presumption** that a Court is independent and impartial unless rebutted by the Applicants.

23. Nothing has been rebutted by the Applicant/Plaintiff to show any **apprehension of Bias** on the part of the Master of the High Court and no circumstances have been established that might lead a **fair -minded lay- observer to reasonably apprehend that the Master** of the High Court might not bring an impartial mind to the resolution of the instant case.
24. The recusal application is frivolous in nature and I find there is no fundamental basis or ground on which the Master should recuse himself from hearing and determination of the pending Section 169 application.
25. Therefore, the Plaintiff's application in terms of the Motion seeking for **Recusal** from the current case is hereby **Dismissed** accordingly.
26. It is important that I bring to the attention of the parties to the proceedings the following passages taken from the judgment of Kirby P. (as he then was) in **Rajski v. Wood** (1989) 18 N.S.W.L.R. 512 at p.519:

'It is one of the fundamental principles of judicial independence that the constitution of a court should be outside the control or influence of litigants in the court. This self-evident truth is reflected not only in local law and practice. It is clearly laid down in principles concerning the independence of the judiciary contained in international statements on the subject. One such collection of principles is found in a resolution of the United Nations Organisation General Assembly, Basic Principles on the Independence of the Judiciary ... Clause 14 of the United Nations Basic Principles of the Independence of the Judiciary, for example, provides:

"14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration."

27. His lordship continues:

'If parties could pick and choose judges according to their perception of the way in which their choice could advantage them, or disadvantage their opponents and then render judges answerable for sitting arrangements, great damage would be done to the integrity of the judicial process and to community confidence in the neutrality and impartiality of the judiciary. This is a reason why, ... the assignment of judges to hear cases has been by express law, inherent jurisdiction and daily convention and practice, reserved to the judiciary itself. It is not something over which litigants may exercise influence, except as the law provides, for example, by suggestion that a judge should disqualify himself or herself on the ground of actual bias or the reasonable apprehension of bias or (in the case of judicial officers of inferior courts) by action taken in proceedings prerogative in nature.'

28. Then, in words that might describe the existing system of allocating cases in the High Court civil registry, Kirby P. says:

'Courts are vigilant to adopt procedures to guard against forum shopping and judge selection by parties to litigation. Sometimes practices are adopted to provide a random assignment of judges, precisely to reduce the risk that parties to litigation might, by their own actions, influence the choice of the judge to hear their case.'

29. However, the Master of the High Court is mindful of the fact that in the interest of all, it would be prudent for me to direct that this case be now remitted to the Senior Court Officer to allocate a Judge in the matter accordingly.

FINAL ORDERS

- (a) Motion seeking recusal is Dismissed.
- (b) File to be allocated to a Judge of the High Court; AND
- (c) Any costs to be costs in the cause.
- (d) Orders accordingly.

Dated at Suva this 19TH day of APRIL, 2017



VISHWA DATT SHARMA
Master of High Court, Suva

cc. Pacific Chambers, Suva
R. Patel Lawyers, Suva