

In the High Court of Fiji at Suva
Civil Jurisdiction

Civil Action No. 333 of 2014
Pushpa Mudaliar Aka Puspa Wati Devi
Plaintiff
And
Kamleshan Sami Mudaliar
Defendant

COUNSEL: Mr E. Narayan for the plaintiff
Mr Sunil Kumar for the defendant
Date of Judgment : 16th June, 2017

Ruling

1. By inter partes summons the defendant seeks :(a) leave to appeal to the High Court against the decision of the Master of 25th October,2016, granting the plaintiff vacant possession and cost of \$1,000.00 to be paid within 14days;(b) a stay of execution and all other proceedings until the hearing and determination of this application for leave to appeal to the High Court; and, (c) time for seeking leave to appeal and giving notice of appeal be extended, if required. The summons sets out the defendant's proposed grounds of appeal.
2. In his affidavit in support, the defendant states that on 24th November, 2014 the plaintiff filed a section 169 application to evict him from the land described in CL no. 1777. He filed writ of summons on 15th February, 2015, seeking a declaration that the land is held in trust for him. The defendant states that the Master has determined the matter of vacant possession of the land in a summary manner. The issue is subject of a separate action filed by him.
3. The plaintiff has filed affidavit in opposition. The defendant has filed his reply.

The determination

4. The Master, in his Ruling of 25th October, 2016 held as follows:
 - A. *The Defendant to give vacant possession of the land comprised in Crown Lease No. 1777 situated at Lot 5, Wainibuku Subdivision, Nasinu, in the Republic of Fiji to the Plaintiff.*
 - B. *The Defendant to deliver vacant possession to the Plaintiff in one month's time on or before the 25th November, 2016.*
 - C. *Execution is hereby suspended till the 25th November, 2016.*
5. In my view, the Master's Ruling is a final order, as quite correctly submitted by Mr Narayan, counsel for the plaintiff. Mr Kumar, counsel for the defendant agreed that the Ruling was a final order.
6. Order 59,r 1 provides that an appeal shall lie from a final order or judgment of the Master to a single Judge.
7. In ***Goundar v Minster of Health***, (Civil Appeal No. ABU0075 of 2006) the judgment of the Court stated:

Where proceedings are commenced in the High Court's original jurisdiction and the matter proceeds to hearing and judgment and the judge proceeds to make final orders or declarations, the judgment and orders are not interlocutory.
8. The defendant's summons seeks that the time for giving notice of appeal be extended, "if required".(underlining mine)
9. There is no application before Court for extension of time to file notice of appeal. Further, the defendant's affidavit in support does not contain any evidence of the reason for his delay to appeal within time.

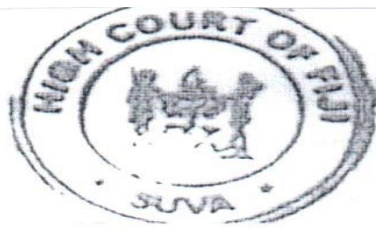
10. On that point, Chandra JA in *Nair v Prakash*, (Misc Action No.10 of 2011) cited the following passage from the judgment of the Supreme Court in *Rasaku v State*, [2013]FJSC 4 as follows:

[18]The enlargement of time for filing a belated application for leave to appeal is not automatic but involves the exercise of the discretion of Court for the specific purpose of excusing a litigant or his non-compliance with a rule of court that has fixed a specific period for lodging his application.

11. The defendant's summons fails

12. **Orders**

- a. The summons is declined.
- b. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$750 within 15 days of this Ruling.



A.L.B. Brito Mutunayagam

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JUDGE**

16th June, 2017