

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 241 of 2016

**AND IN THE MATTER** of an  
application under *Section 169 of the*  
*Land Transfer Act.*

**BETWEEN** : **HANDYMAN'S LIMITED** a limited liability company having its registered office  
situated at 151 Ratu Mara Road, Samabula, Suva.

**PLAINTIFF**

**AND** : **NAZMEEN NISHA** trading as **POTLUCK SIGATOKA** of 6 Padam Lala Road,  
Tamavua, Businesswoman

**DEFENDANT**

**BEFORE:** Master Vishwa Datt Sharma

**COUNSELS:** Mr. Nilesh Prasad - for the Plaintiff  
Mr. Anand Singh - for the Defendant

**DATE OF RULING:** 10<sup>th</sup> August, 2017

**RULING**

*[Defendant's Summons seeking an order for stay of the proceedings  
pursuant to the Inherent Jurisdiction of the High Court]*

## APPLICATION

1. This is the **Defendant's Summons seeking the following orders-**
  - (a) **That the proceedings herein be stayed** pending the hearing and determination of an action instituted against the Plaintiff being **HBC No. 286 of 2016**.
2. The **Defendant** relies on the **Affidavit in support** deposed by the **Defendant** Nazmeen Nisha.
3. The Plaintiff opposed the Defendant's application for stay of proceedings in Civil Action HBC 241 of 2016.

## THE LAW

4. This application has been made pursuant to the Inherent Jurisdiction of the Court.

## ANALYSIS and DETERMINATION

5. The issue pending before this Court now is "**Whether the substantive proceedings seeking an order for Vacant Possession in the within this action (HBC 241 of 2016) be stayed pending the hearing and determination of the Defendant's action against this Plaintiff (Handyman's Limited) in HBC 286 of 2016?**"
6. Both Counsels agreed that both pending applications [**S.169 seeking an order for vacant possession and Stay of Proceedings**] on this file be heard and determined altogether.
7. The **Defendant** in this action filed a separate Writ Action in **HBC 286 of 2016** against the **Plaintiff** on 21<sup>st</sup> November, 2016. The nature of the claim or relief sought by the Defendant in that action are numerous and parties are completing

the pleadings therein in order to allow the Court to finally hear and determine the issues therein.

8. Based on the **Defendant's Writ Action**, the **Defendant** is seeking an **order for stay** of the proceedings in **Civil Action No. HBC 241 of 2016** until the final determination of HBC 286 of 2016.
9. Upon the perusal of both actions, I find that **HBC 241 of 2016** was commenced on 22<sup>nd</sup> September, 2016 whilst Action No. **HBC 286 of 2016** was commenced on 21<sup>st</sup> November, 2016, some 2 months later.
10. The Courts have ruled on many occasions that the existence of a separate action is not in itself sufficient to resist an application made pursuant to Section 169 of the Act.
11. Reference is made to the Fiji Court of Appeal Case of Jamnadas v. Honson (Civil Appeal No. 22 of 1985) wherein it was held:  
  
*"That existence of such proceedings was, by itself, not a cause sufficient to resist an application under Section 169 of the Land Transfer Act Cap 131."*
12. Further, the proceedings filed in Civil Action No. **HBC 241 of 2016** is a **summary proceedings** which does not disclose any complicated issues of fact or law that precludes the matter being dealt with summarily.
13. This application has to be considered bearing in mind the essential facts of the case. For the purposes of the present application the following are relevant considerations: This was an action seeking an order for **vacant possession** which can be dealt with summarily since it does not disclose any complicated issues of fact or law that needs to be dealt with. The Deed of Lease was executed between the parties in respect of the **Expired State Lease No. 813** and therefore was null and void ab initio. This was done without the consent of the Director of Lands, and the law in such cases being as clear as crystal.
14. Accordingly, I have heard the Substantive issue wherein the Plaintiff is seeking an order for vacant possession and a Ruling will be delivered simultaneously.

15. The pending **Civil Action No. HBC 286 of 2016** which has been commenced by the Defendant [Nazmeen Nisha t/a Potluck Sigatoka] in the current action will take its normal course and the Court will eventually deliberate on the Substantive pending issues therein in time to come.
16. I do not find any merit in the Defendant's stay application and for the aforesaid rational, hereby dismiss the application accordingly. The Plaintiff is entitled to costs which will now be summarily assessed at \$1,000.

**ORDERS**

- (i) **The Defendant's Summons for Stay of Proceedings is hereby Dismissed.**
- (ii) **The Defendant to pay the Plaintiff summarily assessed costs of \$1,000 within the next 14 days.**
- (iii) **Orders accordingly.**

DATED AT SUVA THIS 10<sup>TH</sup> DAY OF AUGUST, 2017

  
.....  
**MR VISHWA DATT SHARMA**  
Master of High Court, Suva.

cc. *Mitchell Keil, Suva*  
*Singh & Singh Lawyers, Suva*