

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. 156 of 2012
Between
Shiu Kamal Singh
First plaintiff
And
Suva City Council
First defendant
And
Land Transport Authority
Second defendant

COUNSEL: Mr K. Maisamoa for the plaintiff
Mr K. Goundar for the first defendant
Ms M. Pillai for the second defendant
Date of hearing: 20th October, 2017
Date of Ruling : 25th October, 2017

Ruling

1. This is an application by the second defendant to reinstate a summons for leave to appeal a decision of the Master and stay of proceedings. On 1 August, 2017, I struck out the summons, as the second defendant was absent and unrepresented.
2. Mr S. Nandan, Legal Practitioner and Partner, Reddy & Nandan, Lawyers, in his application in support of the summons states that on 1st August, 2017, he had two other matters to attend to in the Suva High Court. One before the Master at 9.00am, and the other in High Court No. 6 at 9.30am. He was unable to stand down both cases. When he came to my Court thereafter, he found that the door was locked. He was later informed by the Civil High Court Registry that the summons had been struck out, as he was not in attendance.
3. The plaintiff, in his affidavit in reply states that Mr Nandan has not provided a “good excuse” for his non attendance on 1 August, 2017. The summons for leave to appeal was filed on 7th July, 2017, and Mr Nandan had sufficient time-“25 days”, to give instructions to his 5 other in-house lawyers to attend to the two other cases.

4. The first defendant in the affidavit in opposition filed on its behalf states that it would not be prudent to hear this summons for reinstatement, as pretrial steps have been completed and the matter is ready to be fixed for trial.

The determination

5. Ms Pillai, counsel for the second defendant supported the application for reinstatement of the summons. She said that this summons has been filed without delay and no prejudice to the defendant would be caused if the matter is reinstated.
6. Mr Goundar, counsel for the first defendant opposed the application for reinstatement. He submitted that this application would unnecessarily delay the hearing of the substantive action and appeals from interlocutory rulings should not be allowed.
7. Mr Masimoa, counsel for the plaintiff submitted that the summons has been filed under Or 32,r6 and incorrectly under Or 2, r 1, which deals with “*Non- Compliance with rules*”.
8. I find that the plaintiff’s averment in his affidavit in reply that Mr Nandan had approximately 5 other in-house lawyers to attend to the two other cases was not refuted.
9. In my judgment, no valid grounds have been given to reinstate the summons for leave to appeal.

10. Order

- (a) The summons for reinstatement is declined.
- (b) I make no order as to costs.



A.L.B. Brito Mutunayagam

A.L.B.Brito-Mutunayagam

Judge

25th October,2017