

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

CIVIL ACTION No. HBC 251 of 2012

**BETWEEN** : **MOHAMMED ABU BAKER SADDIQUE** of 5987 Lemon Park Way, Sacramento, CA 95824, United States of America, a Driver.

**PLAINTIFF/RESPONDENT**

**AND** : **MAIMUN NISHA** of Suva in her capacity as the Executrix and Trustee of the ESTATE OF MOHAMMED UMAR FARUQUE.

**DEFENDANT/APPLICANT**

**Appearances** : Mr R. Charan on instructions of Messrs MA Khan Esq  
Mr A.J. Singh for the defendant

**Date of Hearing** : 5 April 2018

**Date of Ruling** : 5 April 2018

**R U L I N G**

[01] This is an application filed in person by the defendant/applicant (*hereinafter 'the defendant'*). By her notice of motion filed in conjunction with an affidavit sworn by the defendant (Maimun Nisha) in support (*'the application'*), seeks an order:

*"THAT the Decision delivered by His Lordship, Mr Justice Ajmeer in High Court on the 12<sup>th</sup> February 2018 granting conditional stay to the Defendant and all proceedings there under and execution be stayed until the hearing and determination of the stay application by the Fiji Court of Appeal and the costs of the application be costs in the cause upon the grounds contained in the Affidavit of MAIMUN NISHA filed herein."*

[02] The application is made pursuant to Order 45 Rule 10 of the High Court Rules 1988 (*'the HCR'*) and under the inherent jurisdiction of this court. O.45, r.10

empowers the court to grant a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of judgment or order. Rule 10 cannot be invoked to apply for a stay of execution pending appeal.

- [03] The defendant filed her application on 26 March 2018. On the same day, the court ordered the application to be issued for service on the plaintiff/respondent (*hereinafter 'the plaintiff'*) assigning and listing the matter for hearing at 9.30am on 5 April 2018.
- [04] On 5 April 2018, the matter came up before me for hearing. Counsel, Mr R. Charan appeared on instructions of Messrs MA Khan Esquire of Suva for the applicant.
- [05] The court pointed out that on 22 February 2018, Messrs Iqbal Khan & Associates have been appointed to act as solicitors for Maimun Nisha the defendant in this case in place of Messrs MA Khan Esquire. Mr Charan conceded that MA Khan Esquire cannot give instructions on behalf of the defendant as he is not the solicitor for the defendant and withdrew his appearance for the defendant. This has left the defendant unrepresented. The defendant was not present in court either.
- [06] Consequently, Mr Singh counsel appearing for the plaintiff made an application that the application be dismissed for want of prosecution.
- [07] There was no appearance by or for the defendant on the hearing date and the application was not supported by the defendant. I would, therefore, dismiss and strike out the application of the defendant for want of prosecution with the costs of \$500.00 payable by the defendant to the plaintiff.

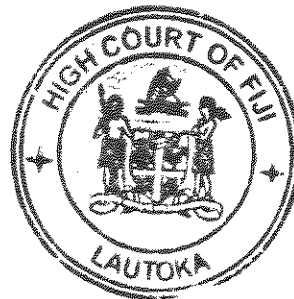
## The Result

1. The defendant's application for a stay of execution filed on 26 March 2018 be dismissed and struck out.
2. The defendant will pay costs of \$500.00 to the plaintiff.

*M.H. Mohamed Ajmeer*  
5/4/18

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M.H. Mohamed Ajmeer

JUDGE



At Lautoka  
5 April 2018

Solicitors:

For the defendant/applicant: in person

For the plaintiff/respondent: Messrs Anil J Singh Lawyers, Barristers & Solicitors