

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 540 of 2007

BETWEEN : ROWEENA GRACE CROSS and DOUGLAS BAMLETT

APPLICANTS/DEFENDANTS

AND : DIANA GIESBRECHT

RESPONDENT/PLAINTIFF

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr I Fa for the Applicants/Defendants.
Mr A Rayawa for the Respondent/Plaintiff.

Date of Hearing : 31 January 2018

Date of Judgment : 1 May 2018

DECISION

1. This is the Applicants' Summons seeking the following orders:
 - (1) That the Respondent show cause why 2 Caveats lodged by her on the certificates of title of 2 properties owned by the Applicants, should not be removed forthwith.
 - (2) That the Respondent show cause why a caveat lodged on a certificate of title of a property owned by the First named Applicant should not be removed forthwith.
 - (3) That the said 3 caveats be removed forthwith.

2. The Application is supported by the affidavit of Finau Seru Nagera (Finau) who deposed she is the litigation clerk in the firm of the Applicant's solicitors. She says she is "authorized by the principal of the Firm, Mr Isireli Fa to depose this Affidavit on behalf of the Defendants".

3. The Respondent in her affidavit in opposition deposes that as she has filed an appeal to the Court of Appeal this application should be made to that Court as this (High) Court is now functus officio.

4. After hearing the arguments I said I would take time for consideration. Having done so I now deliver my Decision.

5. At the outset I shall have to say that I find that the Affidavit in support cannot be admitted as evidence in these proceedings. The reasons for my decision are as follows:
 - (1) This application is contested proceedings.
 - (2) It is quite unacceptable and I may say improper for a legal clerk to swear an affidavit, where she states quite unequivocally that it was the lawyer who authorized her to depose the affidavit.
 - (3) It is as clear as daylight that the Applicants did not authorize Finau to depose this affidavit on their behalf.

6. It is trite law that affidavits sworn by solicitors' clerks are disregarded by the Courts and no decided case needs to be cited to fortify my decision.

7. Consequently, absent an affidavit in support, absent any evidence to support this application.
8. In the result, the Amended Summons filed on 24 November 2017 is dismissed with costs summarily assessed at \$250 to be paid by the Applicants to the Plaintiff by 15 May 2018.

Delivered at Suva this 1st day of May 2018.



David Alfred
JUDGE of the
High Court of Fiji