

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
APPELLATE JURISDICTION

CIVIL ACTION NO. HBC 46 OF 2017

BETWEEN : **DEO SAGAYAM** of Vuda Point, Lautoka, Unemployed.

APPELLANT/ORIGINAL DEFENDANT

AND : **RAJENDRA PRASAD** of Vuda Point, Lautoka, Farmer, as the sole Executor and Trustee of the **ESTATE OF NOKAIYA**, late of Vuda Point, Lautoka, Farmer, Deceased, Testate.

RESPONDENT/ORIGINAL PLAINTIFF

Appearances : Ms S. Ravai for the plaintiff/respondent/applicant
No appearance for the defendant/appellant/respondent

Date of Hearing : 17 September 2018

Date of Ruling : 17 September 2018

R U L I N G

[On stay of execution]

[01] This is an *ex parte* application for an interim stay of execution pending determination of the *inter partes* application, which is set down for hearing on 24 September 2018. The application is supported by an affidavit of Rajendra Prasad, the plaintiff/respondent/applicant (*'the applicant'*) sworn on 14 September 2018.

[02] The applicant states that he has executed a sale and purchase agreement with a third party, Krishna Sami Goundar to sell the property. The sale and purchase agreement has been entered into on 4 April 2018, while the appeal was pending before the court against the Master's order granting possession of the land to the

applicant. The sale and purchase agreement has been witnessed by the same solicitor (Ms Ravai) who appeared for the applicant in the appeal proceedings.

- [03] The applicant further states that: on 13 September 2018, the respondent together with his solicitor (Mr Maisamoa) had attempted to enter into the land on the pretext of service of the order and in that process Mr Maisamoa assaulted him (applicant) and a police complaint has been made in this regard.
- [04] The *ex parte* interim stay is sought on the ground that the applicant will be prejudiced and the appeal will be rendered nugatory if a stay of execution of the judgment of this court is not granted.
- [05] It will be noted that in this application the applicant has taken up a position that the defendant/appellant/respondent (*the respondent*) was never staying on the property with his wife and that he was staying in Rakiraki. However, he obtained an eviction order on the basis that the respondent was staying on the property without consent or licence of the applicant or his predecessor in title. This demonstrates that the applicant changes his position as the case goes on.
- [06] On appeal, the respondent has been granted possession only. He will have no disposition right over the property in dispute. Even if the respondent was placed back in possession, this appeal will not be rendered nugatory. The applicant could recover possession of the property from the respondent. The applicant had already caused prejudice to the respondent by entering into a sale and purchase agreement with a third party in respect of the property in dispute.
- [07] For these reasons, I do not see any compelling reasons why I should grant an *ex parte* interim stay of execution pending determination of the inter partes

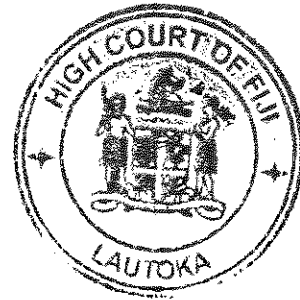
application for stay pending appeal. I would, therefore, refuse to grant an *ex parte* interim stay.

The outcome

Ex parte stay refused.

M.H. Mohamed Ajmeer
17/9/18

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
17 September 2018

Solicitors:

For plaintiff/respondent/applicant: M/s Fazilat Shah Legal, Barristers & Solicitors