

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Companies Action No. HBC 28 of 2018

BETWEEN: RADHA GOVINDA VEDIC CHARITABLE FOUNDATION of Talau Estate, Wailevu West,
Vanua Levu.

PLAINTIFF

AND: SOPHIA ANNA KUYT of Nukubalavu Road, Savusvu.

FIRST DEFENDANT

AND: REGISTRAR OF TITLES

SECOND DEFENDANT

BEFORE: Justice Vishwa Datt Sharma

COUNSEL: Mr. A. Sen - for the Plaintiff
No Appearance - for First Defendant
Mr. J. Pickering - for 2nd Defendant

DATE OF DECISION: 25th February, 2020

DECISION

[For striking out of Writ and/or Stay pursuant to Order 18 Rule 18 and Order 20 Rule 4
of the High Court Rules 1988 and the inherent jurisdiction of the High Court]

APPLICATION

- [1] This is the First Defendant's Summons seeking the following orders:
- a. The Amended Writ of Summons filed by the Plaintiff on 14th June 2019 be dismissed as having being filed without leave of the Court;
 - b. Alternatively that there be a stay of these proceedings until the hearing and determination of Savusavu Family Case No. 17/SAV/0122.
 - c. The costs of this application be paid by the Plaintiff and/or Nico Kuyt.
- [2] The application is made in Support of Affidavit deposed by Sophia Anna Kuyt the First Defendant and will further rely on other affidavits in this application.
- [3] The first order sought hereinabove asking for dismissal of the Amended Writ of Summons was dealt with by the Master of the High Court on 14th November 2019 accordingly.
- [4] This court is now left to determine orders regarding stay of this proceedings and cost.
- [5] The First Defendant in person furnished Court with written submissions. Counsel representing the First Defendant was not present at the hearing of the current stay application.
- [6] Frist Defendant's written submission:
- That the present proceedings be stayed pending the hearing and determination of Savusavu Family Court Case No. 17/SAV/0122.
 - The First Defendant has proceedings against her (Former) husband Nico Kuyt in the Savusavu Magistrate's Court where she is seeking matrimonial property settlement.
 - Part of the application seeks declarations that the properties comprised in CT 4517 and CT 4518 are matrimonial property and that the First Defendant should have a share in both properties.
 - He further submitted that the Plaintiff is holding the properties interest for Nico Kuyt and Sphia Kuyt and the two residential properties are both matrimonial properties in which the said Sophia Kuyt Sophia should have half share.
 - These are matters that were before the Savusavu Magistrates Court even before the High Court Action was filed.
 - The Savusavu Family Magistrates Court's Action No. 17/SAV/0122 and this Civil Action No. HBC 28 of 2018 currently before this court, both concerns the same properties CT 4517 and CT 4518 respectively.
 - The present matter is in a sense sub judice. Any outcome of result in Savusavu Magistrate's Court Action will have important consequences in the present matter.

[7] Plaintiff's Oral Submission

- Civil Action No. 28 of 2018 is to protect assets of the Plaintiff unlawfully taken by the First Defendant.
- The Plaintiff is seeking return of those chattels.
- Reference was made to the Affidavit in Support of Sophia Kuyt (First Defendant) at annexure "B" - it is a misrepresentation; and
- No adjudication on property has been done yet.
- The First Defendant is seeking matrimonial property distribution by Form 9 Application and states that the half share in these titles CT 4517 and CT 4518 belongs to the First Defendant.
- That the High Court takes precedence over the Magistrate's Court cases in terms of the rules of hierarchy.
- The entire application by the First Defendant is misleading, misconceived frivolous and vexatious.
- What locus does First Defendant have? Both Titles CT 4517 and 4518 are registered under the Plaintiff's name.
- Sought for the application to be struck out with costs.

ANALYSIS AND DETERMINATION

[8] The issues for this court to determine are -

- (a) Whether the current Labasa High Court Civil Action No. HBC 28 of 2018 be stayed until the hearing and determination of the Savusavu Family Court Case No. 17/SAV/0122; AND
- (b) Costs of this application

[9] Labasa High Court Civil Action No. 28 of 2018

In summary, the Plaintiff is alleging the First Defendant removed the Plaintiff's church property and relics without authority.

That the items removed are invaluable to the religious arm and to the charitable foundation.

The Plaintiff claims for -

- (i) Return of all the religious items and relics removed from the property of the Plaintiff;

- (ii) Damages to the Plaintiff's in the sum of \$505,000; and
- (iii) General damages under different heads and costs respectively.

[10] Savusavu Family Magistrate's Court Case No. 17/SAV/0122

The First Defendant has filed a Form 9 Application for Final orders seeking matrimonial property distribution.

In particular, the First Defendant is seeking for a declaration that the properties comprised in Certificate of Title Nos. CT 4517 and CT 4518 are matrimonial properties and be sold and Applicant (First Defendant) be paid her half share in the said properties.

Apart from above, the Applicant (First Defendant) is also seeking for her share in the funds kept with the banks etc. as enumerated in her Form 9 Application in part D.

- [11] After a careful perusal of the substantive issues in both matters as hereinabove mentioned referred at paragraph 22 and 23. I find that the substantive issue in the *Labasa High Court Civil Action No. HBC 28 of 2018* is seeking orders for return of all religious items and relics removed by the First Defendant from the Plaintiff's church property together with the damages under various heads with costs.

Whereas, *Savusavu Family Court Action No. 17/SAV/0122* is seeking for a declaration that the properties comprise in CT nos. 4517 and 4518 are the matrimonial properties and to be sold and the First Defendant (Applicant) to be paid her share accordingly.

- [12] Both these matters *Labasa High Court Civil Action No. HBC 28 of 2018* and the *Savusavu Family Court Magistrate's Court Action No. 17/SAV/0122* have been instituted and proceeded with in its respective jurisdictions in terms of the Laws of Fiji.

- [13] The substantive orders sought in each of these cases; *Labasa High Court Civil Action No. HBC 28 of 2018* and *Savusavu Family Magistrate's Court Action No. 17/SAV/0122* are somewhat different in its nature in terms of the orders sought therein.

- [14] That is, *Labasa High Court Civil Action No. HBC 28 of 2018* is seeking for return of all religious items and relics removed by the First Defendant from the Plaintiff's church property together with damages and costs.

Whereas the *Savusavu Family Magistrate's Court Action No. 17/SAV/0122* is seeking for the CT 4517 and CT 4518 to be declared matrimonial properties and the First Defendant (Applicant) to be paid her half share in the properties.

- [15] However, both matters before this courts are akin to and related and further has nexus to the properties in Certificate of Titles CT 4517 and CT 4518 respectively.

- [16] Therefore, it is only appropriate that each of these cases mentioned hereinabove: *Labasa High Court Civil Action No. HBC 28 of 2018* and the *Savusavu Family Magistrate's Court Action No. 17/SAV/0122* remain in their respective jurisdictional courts and the respective matters to be dealt with by these respective courts accordingly.


- [17] For the aforesaid rational, the First Defendant's application by way of summons **seeking for stay** of the *Labasa High Court Civil Action No. HBC 28 of 2018* until the hearing and determination of the *Savusavu Family Magistrate's Court Action No. 17/SAV/0122* is hereby accordingly **dismissed**.
- [18] This application proceeded to hearing and therefore it is only appropriate that I grant **summarily assessed costs** against the First Defendant in the sum of **\$500** to be paid within 14 days.

IN THE RESULT:

1. First Defendant's Summons seeking for Stay of proceedings of the Labasa High Court Civil Action No. HBC 28 of 2018 until the hearing and determination of Savusavu Family Magistrate's Court Action No. 17/SAV/0122 is hereby accordingly dismissed.
2. Labasa High Court Civil Action No. HBC 28 of 2018 to remain and to be heard in Labasa High Court and whereas the Savusavu Family Magistrate's Court Action No. 17/SAV/0122 to be proceeded with at the Savusavu Family Magistrate's Court accordingly.
3. Order summarily assessed costs of \$500 against the First Defendant to be paid within 14 days' time frame.
4. Orders accordingly.

Dated at Suva this 25th Day of February, 2020




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Vishwa Datt Sharma
Judge