

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: 271 of 2014

BETWEEN : MALTI DEVI

PLAINTIFF

AND : AMBIKA PRASAD

1st DEFENDANT

AND : SHARON SYLVIA PRATAP

2nd DEFENDANT

AND : REGISTRAR OF TITLES

3rd DEFENDANT

AND : SUNIL KUMAR

4TH DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Ms A. Singh for the Plaintiff
: 2nd Defendant appears in person
: Ms. P. Singh for the 3rd Defendant
: 4th Defendant appears in person

Date of Ruling : 28 February 2020

RULING

HIGH COURT RULES 1988: Extension of time – Delay to serve writ of summons by a day – Legal vacation – Failure to specify the applicable section in the summons – Failure to seek extension of time in the affidavit in support – Raising of issue on matter ruled previously – Order 3 Rule 4 of the High Court Rules 1988

1. The plaintiff filed an amended summons on 9 January 2020, seeking an extension of time to serve the amended writ of summons and statement of claim on the 1st, 2nd and 4th defendants. This was supported by the affidavit of the plaintiff filed on the same day as the summons.
2. The summons was mentioned before me today, and Mr. Sunil Kumar, the added 4th defendant, who appeared in person, objected to the extension of time as pleaded in the plaintiff's summons, and submitted that the plaintiff's summons was defective. Mr. Kumar submitted that the amended writ of summons was served late on him, on 7 January 2020, instead of serving it on 6 January 2020.
3. This summons relates to my judgment, delivered on 23 December 2019, whereby, I allowed the plaintiff's application for substitution of the 1st defendant and to add the 4th defendant in terms of the summons dated 11 November 2018. The plaintiff's application by the same summons to amend the writ of summons and statement of claim was also allowed.
4. In my ruling, I directed the amended writ and amended statement of claim to be served on all defendants within 14 days of the ruling and for the amended statements of defence to be served by the defendants within 14 days of service.
5. The affidavit in support averred that the plaintiff's firm of solicitors closed for the legal vacation on 20 December 2019, but that Mr. Nand had appeared before me on 23 December 2019 and the ruling was delivered orally. The plaintiff stated that the ruling was not in the registry's folder on 27 December 2019 and

that due to the cyclone on 28 December 2019, Mr. Nand was unable to check on the ruling. Thereafter, the ruling was collected on 6 January 2020, when the office of the solicitors had opened for business.

6. The 4th defendant submitted that the delay in serving him the amended writ and the amended statement of claim on 7 January 2020 was of an unreasonable duration. He submitted that his law office was open throughout the legal vacation and, therefore, the documents could have been served on him within time.
7. Ms. Singh, who appeared for the plaintiff, submitted that the amended writ of summons and the amended statement of claim were filed immediately after the opening of the law office on 6 January 2020. However, she submitted, the 4th defendant had refused to accept service of the documents stating that the time frame to serve had expired on the previous day, when the amended writ of summons and the amended statement of claim were served on him on 7 January 2020, necessitating a summons to be filed seeking an extension of time.
8. The 4th defendant himself submitted that the time for filing the amended statement of claim expired on 6 January 2020, while the plaintiff served the documents on him on 7 January 2020. The delay of a day in the service of pleadings will not normally be considered as unreasonable. This will of course depend on the context of a case. Considering the circumstances in which the delay occurred, and the delay itself was not more than a day, the plaintiff's delay cannot be considered unreasonable. Taking into context that this occurred during the legal vacation when business is not as usual in the affairs of the law, this is not an omission for which a litigant could be punished in the way suggested by the 4th defendant. The spirit of this can be gauged by the notice of the legal vacation published in the Government Gazette of Fiji under the hand of the Acting Chief Justice, which provides that the time of the vacation will not be reckoned in the computation of the times appointed or allowed by the High Court Rules for amending, delivery or filing of any pleadings. Moreover, I cannot see what prejudice could be caused to the 4th defendant as a result of a

day's delay. Mr. Kumar, to his credit, did not claim that he was prejudiced by the delay in service.

9. It is unfortunate that the Court has to expend time to make a ruling on technical objections such as these. That neither helps the parties nor the administration of justice. Order 3 Rule 4¹ allows the Court to extend the period within which a person is required by the rules or by any judgment, order or direction to do any act in any proceeding. Therefore, I am allowing the extension of time sought by the plaintiff's summons dated 9 January 2020, and reject the objection verbally raised today by the 4th defendant in relation to the grant of such extension.
10. The 4th defendant also submitted that the summons dated 9 January 2020 is defective as it does not indicate the relevant rules of the High Court by which the Court is to exercise its powers. He further submitted that there is no averment asking for an extension of time in the affidavit of the plaintiff in the affidavit dated 9 January 2020 of the plaintiff. Mr. Kumar also objected to the appearance of Mr. Singh and his law firm in this action as Mr. Singh has rendered legal services to the 1st defendant and, therefore, there is a conflict of interest in his appearance in this action.
11. It is surprising that objections of this nature are raised orally and not in a formally documented manner; to me, this raises the possibility that such objections were not raised with any serious intent. I will, in any event, very briefly deal with those objections.
12. Mr. Kumar did not bring to the attention of Court the relevant rules which state that the precise statutory provisions by which this Court could exercise its powers are required to be mentioned in summons. I am unaware of any such requirement. Although it is desirable, and convenient to Court, if the applicable provisions are set out, the omission to do so can never be fatal to an application. The next objection is that there is no averment in the affidavit relating to the extension of time. The affidavit is a statement of facts which supports the application in the summons, which seeks an extension of time. The affidavit of

¹ High Court Rules 1988

the plaintiff sets out the circumstances justifying the extension of time. I do not think that these objections require the further attention of Court.

13. As regards the conflict of interest, if the 4th defendant has a serious objection in this regard, I do not think it should be raised in connection with the summons filed on behalf of the plaintiff. As I did not propose to make a ruling on the matter of conflict, it should have rested there.
14. However, after the hearing today, unusually, I received a letter dated 28 February 2020 from Kohli & Singh Suva, who are the solicitors on record for the plaintiff, addressed to the Officer in Charge of the Civil Registry of the High Court. The letter states that His Lordship Justice Kumar (as he then was) had dealt with this matter by his order which was sealed on 8 January 2018. Upon perusing the record, I find that Justice Kumar (as he then was) made an order on 9 October 2018 that *"Messrs Kohli & Singh Suva can continue acting for the plaintiff as there is no conflict of interest"*. It is a matter of regret that this order was not brought to my attention by Mr. Kumar this morning. A matter that was previously ruled upon by Court should never have been raised as a fresh controversy without bringing the previous ruling to the notice of Court.
15. Counsel for the Plaintiff and Mr. Sunil Kumar submitted that they will not be filing any further documents in respect of the plaintiff's summons and the other matters raised by Mr. Kumar in Court today, and that I could make my ruling on the basis of the submissions made in Court today. No objections were raised or submissions made on behalf of the other parties.
16. The plaintiff's affidavit in support states that only the 3rd defendant was served on time. However, the record indicates that the 2nd and the 4th defendants have already filed statements of defence. I see no reason, therefore, to direct the service of the amended writ of summons and the amended statement of claim to be served on the 2nd and 4th defendants. The service of the amended writ and the amended statement of claim to those defendants will be considered to have been properly made. At the time of pronouncing the order I made a direction

for service of the amended documents on the 4th defendant. That error stands corrected.

ORDERS

- A. The plaintiff is granted an extension of time to serve the amended writ of summons and the amended statement of claim to the 1st defendant.
- B. The parties will bear their own costs.

Delivered at Suva this 28th day of **February, 2020**



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

Justice M. Javed Mansoor
Judge of the High Court