

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 287 of 2007

Taveuni Estates Limited

Plaintiff

v

Kawakawadawa (Fiji) Limited

Defendant

Counsel: Mr P. Knight for the plaintiff

Ms P. Low for the defendant

Date of hearing: 14<sup>th</sup> May, 2020

Date of Ruling: 11<sup>th</sup> June, 2020

### **Ruling**

1. By summons filed on 8<sup>th</sup> May, 2020, the defendant seeks that these proceedings be stayed until the hearing and determination of Civil Appeal No. ABU 0045 of 2018 and Civil Appeal No. ABU 056 of 2018.

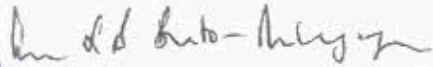
2. Rhea Raina Chand, solicitor at Howards Layers in her supporting affidavit states that these proceedings are directly relevant to the Judgment delivered by Kumar J (as he then was) in HBC 543 of 2004, on appeal in Civil Appeal No. ABU 0045 of 2018: *Taveuni Management Services Limited v NBF Asset Management Bank*,(NBFAMB) and Civil Appeal No. ABU 056 of 2018; *NBFAMB v Taveuni Management Services Limited*. She states that if this case proceeds to trial, the decision will be an embarrassment, should it be contrary to the decision of the Court of Appeal.
3. Ms Low, counsel for the defendant submitted that the appeal cuts through the gist of the claim and counter claim in this case, which centers on a Deed of Conveyance. The plaintiff seeks an order that the defendant execute a deed in favour of the plaintiff in respect of its liability to pay annual service charges,(acs), in respect of which an order was made in HBC 543 of 2004. It was also held that there was no requirement to obtain a deed.
4. Mr Knight, counsel for the plaintiff submitted that there has been no decision made in HBC 543 of 2004 for asc to be paid by the defendant to the plaintiff for services provided to the defendant's properties in Taveuni. The appeal will affect the counterclaim, but it is possible to proceed with the counterclaim on the assumption that the defendant owns the two properties in respect of which a claim is made.
5. The amended statement of claim states that the defendant had entered into a sale and purchase agreement with NBFAMB to purchase the properties, which provided that NBFAMB must obtain a deed from the defendant to pay asc.

6. The defendant denies it is under a legally enforceable obligation to pay rates to the plaintiff. In its counterclaim, the defendant seeks restitution of monies collected by the plaintiff for the supply of water from the water lot and the collection and disposal of refuse on the rubbish dump on the basis that the plaintiff was fraudulently registered as the proprietor of the water lot and rubbish dump on Soqulo Estate, Taveuni.
7. In HBC 543 of 2004: *NBFAMB v Taveuni Management Services Limited*, the Court concluded that the plaintiff in this case obtained the water lot and rubbish dump fraudulently and held that NBFAMB passed to the defendant in the present case the obligation to pay rates.
8. In my view, the judgment in HBC 543 of 2004 does not bind the defendant and cannot be enforced against the defendant, as it was not a party in that case nor in the appeal
9. This application on the ground that a stay of proceedings will prevent “*any embarrassment*” if a conflicting decision is reached by the Court of Appeal to a decision of this Court is not a legally acceptable reason to stay an action.

10. **Orders**

The application to stay is declined. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 1000 within 15 days of this Ruling.



  
**A.L.B. Brito-Mutunayagam**  
**JUDGE**  
**11<sup>th</sup> June, 2020**