

IN THE HIGH COURT OF FIJI

AT LABASA

CIVIL JURISDICTION

Civil Action No. HBC 10 of 2023

BETWEEN: **SAHID ALI** of Flat 3 and Flat 4 Main Street, Nasekula Road, Labasa, in
Fiji

APPELLANT (original Defendant)

AND: **NIRANJANS AUTOPORT PTE LIMITED** a limited liability company
having its registered office at Royal Palm Road, Navutu, Lautoka, in Fiji

RESPONDENT (original Plaintiff)

Counsels: **Mr. Robinson for the Appellant**

Mr. Lomaloma for the Respondent

Date of Hearing: **25th May 2023**

Date of Ruling: **15th June 2023**

RULING ON DISPUTED SERVICE

1. On the 1st of May 2023, the Acting Master Wickramasekara made the following orders: -
 1. I find that the Plaintiff is the rightful owner of the property in question.
 2. I further found that the Defendant had failed to pay the rent from 2021.
 3. I further find that the Defendant has no justifiable right to be in the said property upon being served with notices to vacate the property.
 4. I find that there are no arguable issues to be tried in this matter.

2. Accordingly, the court allows the application by the Plaintiff as per the Originating Summons.

Orders:

1. **Orders as prayed for in the Plaintiff's Originating Summons filed on 1st of March 2023 is hereby granted:**
 2. **That the Defendant do vacate Flat 3 and Flat 4 of the property described on Crown Lease No. 2953 L.D. 2181/29 located on Lot 5 Section 12 Labasa Township in the District of Labasa in the Province of Macuata.**
 3. **Defendant be given thirty (30) days to handover the vacant possession of the premises as described on the Originating Summons of the Plaintiff dated 1st March 2023.**
 4. **Defendant ordered to pay the Plaintiff a cost of \$1, 000 as costs of the action summarily assessed by the Court.**
3. The Plaintiff sealed the Order on the 11th of May 2023 and served the Defendant (now the Appellant) on the same day.
 4. The appellant, being aggrieved at the decision, filed the Notice of Appeal on the 22nd of May 2023 and also filed a Summons for Stay of Execution pending the final determination of the appeal.
 5. The appellant filed the Affidavit of Service and Vandana Narayan deposed that on the 20th of May 2023 at Labasa, she served a true copy of the Notice of Appeal, Summons for Stay of Execution and an affidavit in support of the Summons to Stay to Lal, Patel, Bale Lawyers of Labasa by leaving a copy of the above documents at their office in Labasa after they refused to be served.
 6. The Summons for Stay was first called on the 25th of May counsel for the Respondent advised the Court that they were there under protest, and they stated that the appellant should have served Niranjans Autoport personally therefore they were disputing service.
 7. The parties were then directed to file submissions on the point whether the Respondent has already been served or not.

The submission for the Appellant

8. In the written submission, the appellant submits that there was proper service as they served the relevant documents at the chambers of Lal Patel Bale Lawyers who were the counsel on record for the Respondent. Once a firm of solicitors appears for a client and if they have not formally withdrawn as counsel then they are deemed to represent a client in that matter. They then should not come to the High Court and argue that service should be affected on their client at their registered office and not at their lawyer's office. Lal Patel & Bale Lawyers are, as far as the High Court is concerned, the legal representatives of Niranjan's Autoport therefore they should accept service until such time as they withdraw from acting for them.
9. The appellant submits therefore that the Respondent has been properly served.

The submission for the Respondent

10. The High Court Rules provides for the service of documents on a body corporate at Order 65 Rule 3 (1). The Companies Act is now silent on service, unlike the repealed Companies Act.
11. The appellant was aware, from the pleadings filed, of the Respondent's registered address for service – 7 Royal Palm Road, Navutu, Lautoka in Fiji. The appellant has not made any attempts to serve the appellant at their registered office. (Walt Smith International (Fiji) Ltd vs Barrick [2021] FJHC 88; HBC 216 of 2020 (15th February 2021))
12. The appellant had also attempted to serve their Notice of Appeal, and this was in breach of Order 59 Rule 17 (1), which mandates that any Notice of Appeal must be served, and the affidavit of service must be filed within 7 days of such service.
13. Counsel submits that their instructions were limited to the original application filed in this case.
14. The appellant should have served the respondent at the registered address and if they fail to do so then Rule 59 Rule 17 (3) provides that “if the Rule is not complied with, the appeal is deemed to have been abandoned.”

15. The Respondent therefore seeks an order that the appellant properly serve the respondent in accordance with the High Court Rules.

Analysis

16. Appeals are dealt with at Order 55 of the High Court Rules.
17. Service of the Notice is provided for at Order 55 Rule 4 (1), which provides as follows: -

“Notice of motion and entry of appeal (O.55, r.4)

4.-(1) The persons to be served with notice of the motion by which an appeal to which this Order applies is brought are the following: -

(a) if the appeal is against a judgment, order or other decision of a court, the Registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;” (Emphasis added.)

18. The matter before this Court is now concluded after the Master’s Ruling and after the orders were sealed and served.
19. The Notice of Appeal that has been filed now constitutes the new substantive matter to which the Summons for Stay is appended. For that reason, the appellant must serve the appellant at their registered address or at least demonstrate that he has attempted to do so as per Walt International (Fiji) Ltd vs Barrick cited above.

Accordingly, the Court rules as follows: -

- 1. The appellant shall serve the respondent in accordance with Order 65, with the Notice of Appeal; the Summons for Stay and Affidavit in Support within 21 days.**
- 2. The appeal will take its own course thereafter.**



A handwritten signature in black ink, consisting of a large, stylized 'U' followed by a series of loops and a horizontal line at the end.

U. Ratuveli
Acting Judge

Labasa High Court