

IN THE HIGH COURT OF FIJI
AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBJ 39 of 2023

BETWEEN: **MANJULA DEVI**

APPLICANT

AND: **NAUSORI TOWN COUNCIL**

RESPONDENT

Date of Hearing : 15th December 2023

For the Applicant : Ms. Kant S.

Date of Decision : 20 December 2023

Before : Levaci, SLTTW Acting Puisne Judge

RULING

(Ex tempore Ruling)

**(EX- PARTE APPLICATION FOR STAY PENDING APPLICATION FOR LEAVE
FOR JUDICIAL REVIEW)**

PART A - BACKGROUND

1. This application stems from a decision of the Nausori Town Council to issue a notice of vacancy of premises to the Applicants and terminate the tenancy. This decision has

given rise to the application pending before this Court for Leave to seek Judicial Review.

2. The current application seeks for stay pending the Courts discretion pertaining to the Leave application.

PART B: AFFIDAVITS

3. In their Affidavit, The Applicant deposes as follows –

“5. That on 08 December 2023 the Nausori Town Council has issued me with another notice notifying that should I not vacate the premises on 14 December 2023 then action against me will be taken for trespassing and conducting illegal services on the council premises. Annexed hereto and marked as MD-1 is a copy of the notice dated 07th December 2023.

6. I am advised and verily believe that the Respondent has acted in breach of natural justice by terminating my existing tenancy without a proper reason.

7. The Respondents Decision to terminate my Tenancy has been designed to completely close down my Business as the Nausori Market in my primary place of business operations. I have been running my Bakery Shop from this premises since April 2019; and as a result, I have established a customer base, it will be difficult for me to find another location to operate my business.

8. That I will suffer irreparable damage if the Decision of the Respondent is not quashed.”

PART C: SUBMISSIONS

4. In their oral submissions, Counsel sort for a stay pending the leave application on the basis that the Respondent would exercise their rights to enter the premises on the basis that their tenancy was terminated and vacate the Applicant who had been operating from the said premises since 2019.

PART D: LAW ON STAY

5. The Applicant has relied upon Order 32 (1) and Order 2 of the High Court Rules.

6. Order 32 (1) of the High Court Rules requires that any applications in chambers not made ex parte must be made by summons.
7. Order 2 of the High Court Rules stipulates that any non-compliance with the rules must not render the application a nullity.
8. None of these Orders relied upon refer to an application for stay pending their leave application in judicial review.

PART E: ANALYSIS

9. The Court finds that the orders relied upon does not of itself empower this Court to determine an application for Stay pending leave for judicial review.
10. Furthermore, the application for leave of judicial review of itself, has the ability for the applicant to seek for interim orders for stay or injunctive reliefs on the decision pending the judicial review.
11. In the case of Reddy Enterprises Ltd -v- Governor General of the Reserve Bank of Fiji [1991] FijiLawRp 9; [1991] 37 FLR 73 (9 August 1991) Tikaram RJA held that-

“Scott also concedes that an application under the English equivalent to Order 53 rule 3(8) is capable of being used to obtain "a stay of the process by which the decision is challenged has been reached, including the decision itself" - see *R. v. Secretary Of State for Education* [1991] 1 All ER 282.

Order 53 r.3 (10) of the Rules of the English Supreme Court provides that a Court granting prohibition or certiorari may order that the grant shall operate as a "stay of the proceedings to which the application relates". In the case of R v. Secretary of State for Education initially cited by Mr. B.C. Patel, Counsel for the Applicant, it was also held that the word "proceedings" is not limited to the proceedings of a Court but is to be construed widely in order to include any decision-making process which is susceptible to judicial review. Since we have similar legislation in Fiji (Order 53 r.3(8)) it is my view that the application before me relates to a "proceedings" and that by virtue of Section 20(f) of the Court of Appeal Act read in conjunction with Rule 25(1) of the Court of Appeal Rules it is within the competence of a single Judge of Appeal to deal with a stay application.”

12. Hence the Court finds that this application is misconstrued. There is no proper authority shown by the Counsel to this Court that the Court has powers to grant a stay pending an application for leave for judicial review.
13. Order 29 of the High Court rules refers to injunctions granted for preservation of property etc pending trial and can only be made on an application initiated by Originating Summons or by Writ and not by Notice of Motion.
14. The Court is not satisfied with the facts pertaining to the Affidavit as it has not addressed any grounds for which the Court may in fact be in a position to grant the Stay application.
15. The court will therefore dismiss this action.

Costs

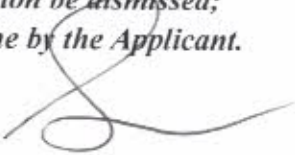
16. The Applicant will bear its own costs.

Orders of the Court:

17. The Court orders as follows:

- (a) *That the Application be dismissed;*
- (b) *That costs be borne by the Applicant.*




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Mrs Senileba LWTT Levaci
Acting Puisne Judge