

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 21 of 2022**

**BETWEEN** : **THE ATTORNEY-GENERAL OF FIJI** for and on behalf  
of the **MINISTRY OF ECONOMY** and **THE**  
**DIRECTOR OF LANDS**  
having its office at Levels 4-9, Suvavou House, Victoria  
Parade, Suva.

**PLAINTIFF**

**AND** : **ADRIENNE ALI** of Government Quarters, 85 Allardyce  
Road, Domain, Suva, Legal Practitioner.

**DEFENDANT**

**BEFORE** : **Banuve, J**

**Counsel** : Attorney-General's Chambers for the Plaintiff  
Defendant in Person

**Date of Hearing** : 9<sup>th</sup> May 2024

**Date of Judgment** : 20<sup>th</sup> May 2024

# JUDGMENT

## A. Introduction

1. On 16<sup>th</sup> February 2024 the Defendant filed a Summons pursuant to Order 59, Rule 11 of the *High Court Rules 1988* seeking that;
  1. *That leave be granted for the Defendant to appeal the interlocutory decision of Master Lal delivered on 1<sup>st</sup> February 2024 in the High Court of Fiji, at Suva on the grounds inter alia that the Learned Master erred in law and fact by:*
    - (i) *Finding that the Defendant does not have a meritorious defence,*
    - (ii) *Finding that the Defendant was required to produce evidence in a statement of defence to a writ of summons in order to substantiate a defence; and*
    - (iii) *Finding that the Defendant requires the consent of her landlord to undertake repairs and maintenance to a rented property.*
  2. *In the event that this application for leave or any leave to appeal granted by the Honorable Court is not granted within 21 days from 15<sup>th</sup> February 2024, then a further order that the Defendant/Proposed Appellant be granted an enlargement of time and serve a Notice of Appeal within 7 days from the date on which the said leave to appeal is granted;*
  3. *That the orders made by Master Lal in her Interlocutory Ruling [Setting Aside Default Judgment] on 1<sup>st</sup> February 2024 in the matter and the substantive matter be stayed pending the outcome of the appeal of the Ruling;*
  4. *That the costs of this application be borne by the Plaintiffs; and*
  5. *Such further or other orders this Honorable Court in the circumstances considers appropriate.*

## B. The Default Judgment and the Application to Set Aside

2. A Writ of Summons with an indorsed Statement of Claim was filed on 13<sup>th</sup> January 2022 and served on the Defendant on 14<sup>th</sup> January 2022.<sup>1</sup>

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<sup>1</sup> Affidavit of Service filed on 2<sup>nd</sup> February 2022.

3. An Acknowledgment of Service of Writ of Summons was filed by the Defendant on 28<sup>th</sup> January 2022. No Defence has been filed by the Defendant.
4. On 15<sup>th</sup> March 2022 the Plaintiff filed a Praecipe and Search and on 17<sup>th</sup> March 2022 a Judgment in Default was sealed by the Chief Registrar for the sum of \$52,800, together with interest and costs.
5. The Defendant on 2<sup>nd</sup> August 2022 filed a Summons seeking an order that the Judgment by Default entered on 17<sup>th</sup> March 2022, be set aside unconditionally, for reasons of irregularity and that the Defendant be granted leave to file a Statement of Defence and that the execution of the Judgment be stayed until determination of the application with ancillary relief. A Draft Defence was annexed to the Affidavit in Support of Notice of Motion to Set Aside Judgment by Default.
6. In ruling delivered on 1<sup>st</sup> February 2024 the Master ruled that;
  - (i) There was no satisfactory explanation provided by the Defendant for not filing a Defence, nor has an explanation been provided as to the reason it took 5 months for the Defendant to file an Application to Set Aside the Default Judgment sealed on 17<sup>th</sup> March 2022.
  - (ii) No meritorious defence was disclosed by the Defendant to warrant the “matter be tried.”
  - (iii) No prejudice caused to the Defendant to offset the claim for maintenance work. The claim for offset being not meritorious.

### **C. Interlocutory or Final Ruling?**

7. The Court of Appeal affirmed in *White v Brunton* [1984] 2 All ER 606; [1984] 1 Q.B 570,<sup>2</sup> that it was committed to the application approach as a general rule to determine what is or is not an interlocutory order or judgment. It is the *nature of the order or proceedings giving rise to the order*, and not the order itself, which is the determinative factor.

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<sup>2</sup> Per Sir John Donaldson MR.

8. In applying the application approach, the decision of the Master in refusing to set aside a judgment in default of defence, was an interlocutory judgment,<sup>3</sup> for which a Summons for Leave to Appeal and Stay has been properly filed pursuant to Order 59, Rules 8 and 11, on 16<sup>th</sup> February 2024.

#### **D. Should Leave to Appeal be Granted?**

9. Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will seldom be amenable to appeal. It is for this reason that leave to appeal against such orders is usually required.<sup>4</sup> *Totis Incorporated Sports (Fiji) Ltd & Anor v Clark & Sellers* – Civil Appeal No 35 of 1996; *Kelton Investment Ltd & Anor v CAAF & Anor* – Civil Appeal No 34 of 1995; *Reddy Enterprises Ltd v Governor of the Reserve Bank of Fiji* [1991] 37 FLR 73.<sup>5</sup>
10. The grant of stay is dependent on whether leave to appeal the Master’s ruling is first granted.<sup>6</sup>
11. Among the factors the Court is entitled to take into account include<sup>7</sup>;
  - (i) The nature of the intended appeal; and
  - (ii) The prospects of its success
12. The following facts are relevant;
  - (i) The Defendant, a legal practitioner, is a tenant of Government quarters situated at 85 Allardyce Road, Domain pursuant to a Tenancy Agreement dated 15<sup>th</sup> June 2014, between the Tenant and the Public Service Commission, on behalf of Government, for a period of 2 years with a monthly rental of \$1,200.00, payable on the first day of each month.

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<sup>3</sup> *White v Brunton* [1984] 2 All ER 606 at 608

<sup>4</sup> See Order 59, Rule 11-*High Court Rules* 1988. The requirement for leave is designed to reduce appeals from interlocutory orders, as much as possible (per Murphy J – *Niemann v Electronic Industries Ltd* (1978) VR 341) cited in *Totis*

<sup>5</sup> All decisions of Tikaram JA.

<sup>6</sup> Per Tikaram JA in *Totis*, p 2

<sup>7</sup> *Totis*, p12

- (ii) On expiry of the Tenancy Agreement on 15<sup>th</sup> June 2016, the Plaintiff let the Defendant occupy the Government quarters under a monthly tenancy arrangement based on the same terms and conditions in the expired Tenancy Agreement, including the payment of monthly rent.
  - (iii) Since 1<sup>st</sup> April 2016, the Defendant, aside from making a few payments, has failed to make payment of the agreed rental for the Government quarters which she continues to occupy, to date.
  - (iv) The Defendant has breached the tenancy arrangement by defaulting on her obligation to pay the monthly rental.
  - (v) Notices were issued to the Defendant to address her rental obligations. A Notice of Termination of the tenancy arrangement was issued to the Defendant on 9 March 2021 (effective after 30 days), to address the rental arrears of \$40,800.00 and to vacate the Government quarters within 1 month thereafter.
  - (vi) The Defendant continues to occupy the Government quarters to date despite the termination of a Tenancy Agreement or arrangement without payment of rent.
  - (vii) A Writ of Summons was filed on 13 January 2022 for which the Defendant acknowledged service on 28<sup>th</sup> January 2022, seeking payment of rental arrears due then of \$52, 800.00.
  - (viii) No Defence was filed and the Plaintiff entered Judgment in Default on 17<sup>th</sup> March 2022.
  - (ix) In a ruling delivered on 1<sup>st</sup> February 2024 the Master refused to set aside the default judgment.
13. The application before this Court is for leave to appeal the interlocutory ruling of the Master of 1<sup>st</sup> February 2024. The Court is mindful that it is not sitting in an appellate capacity to adjudicate on the actual merits of the proposed appeal, but

to consider whether leave ought be granted and a stay order be granted thereafter<sup>8</sup>.

14. Given the Court's objective for limiting interlocutory appeals, the burden is placed on the Defendant to establish that the decision to be appealed was not only wrong, but that an injustice would flow, if it was allowed to stand.<sup>9</sup>
15. The expressed intention to appeal, alone is never sufficient to ground an application for leave. The Court, sitting in an appellate capacity, needs to review the proposed grounds of appeal to determine whether leave to appeal be granted.
16. The Defendant, in this instance, has not provided a Draft Notice of Appeal , rather she indicated during the hearing, that she would rely on the same grounds that the Application for Leave to Appeal were premised on, that the Master had erred in law and in fact in;
  - (i) *Finding that the Defendant does not have a meritorious defence;*
  - (ii) *Finding that the Defendant was required to produce evidence in a statement of defence to a writ of summons in order to substantiate a defence ; and*
  - (iii) *Finding that the Defendant requires the consent of her landlord to undertake repairs and maintenance to a rented property.*
17. It is necessary that proposed appeal grounds, be specific or precise to narrow the issues in the appeal stating the findings of fact and points of law which are in issue in the appeal.<sup>10</sup>
18. The Court will regardless, examine the proposed grounds raised in the Summons (for Leave to Appeal and Stay of Proceedings).

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<sup>8</sup> Per Tikaram JA in *Totis*, p 11

<sup>9</sup> *Nieman v Electronic Industries Ltd* [1978] V.R 131

<sup>10</sup> *Newworld Ltd v Vanualevu Hardware (Fiji) Ltd & Khan* –Civil Appeal 76 of 2015 (Calanchini P) Comments are relevant even though they related to an appeal as of right and stay before the Court of Appeal; rather than on draft appeal grounds before the High Court.

19. Grounds of appeal 1 and 2 are not sufficiently particularized to establish why the Master's ruling of 1<sup>st</sup> March 2024 was wrong.
20. The Defendant, deposes in her Affidavit in Support of Summons for Leave to Appeal and Stay of Execution<sup>11</sup> that the Master's error in not properly accounting for the *common law entitlement of a tenant to attend to repairs where a landlord is derelict in its duties*, raises an important issue of law, which ought to be addressed on appeal. This issue is captured in ground 3.
21. The Master in her ruling of 1<sup>st</sup> February 2021, addressed this issue and found that it had no merit.<sup>12</sup> The Master pointed out that the common law entitlement relied on by the Defendant, had been displaced by specific covenants in the Tenancy Agreement relating to maintenance and repairs of Government quarters, which the Defendant had not complied with.
22. There is an additional issue that the Court finds pertinent in assessing whether ground 3 has any merit, as it appears to be the primary justification for the Defendant not vacating Government quarters despite formal tenancy arrangements having ceased, some time ago. It arises from a response provided by the Defendant at the hearing that she would not cede occupation of the Government quarters, unless and until, the Plaintiff, as landlord *honors her common law rights to be treated with equity*.<sup>13</sup> This issue has been addressed by the Master and the Court does not find anything wrong with her finding that there is no merit in this argument.
23. The Court, also finds however, that such an argument would be displaced by statute governing proceedings involving the Crown. Section 24 of the *Crown Proceedings Act* [Cap 24] states-

*(1) Nothing in this Act shall authorize proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of her Majesty's ships or*

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<sup>11</sup> Paragraph 9

<sup>12</sup> **Paragraphs 39-59** of the **Interlocutory Ruling [Setting Aside Default Judgment]** of 1<sup>st</sup> February 2024.

<sup>13</sup> Paragraph 12 -Affidavit of Adrienne Ali in Support of Summons for Leave to Appeal and for Stay of Execution filed on 15<sup>th</sup> February 2024.

*aircraft, or any cargo or other property belonging to the Crown, or give any person any lien on any such ship, aircraft, cargo or other property.*<sup>14</sup>

24. The Defendant's justification for continuing to occupy Government quarters, until the Government, acknowledges her common law entitlement for recompense, is not only displaced by contract, but is disallowed by statute where the Crown is the landlord. Section 24(1) of the *Crown Proceedings Act* [Cap 24] establishes that the Defendant does not have a legal right (*lien*) to continue occupation of Government quarters until her claim for recompense is met.<sup>15</sup>
25. The Court finds there is no merit in appeal ground 3 also, on this basis.
26. Leave to appeal is refused and it follows that the application for stay pending an appeal must be refused, also.

**ORDERS:**

1. The Summons (for Leave to Appeal and Stay of Proceedings) filed on 15<sup>th</sup> February 2024 is refused.
2. The Defendant is ordered to pay costs within to the Plaintiff in the amount of \$1500.00 within 21 days from the date of this Ruling.



*A Banuve*  
Savenaca Banuve  
Judge

**At Suva,  
20<sup>th</sup> May, 2024.**

<sup>14</sup> "Property" in the *Interpretation Act* [Cap 7] includes money, goods, choses in action, land and every description of property and every description of estate, interest of or incident to property. "Lien" a right to keep possession of property belonging to another person until a debt owed by that person is discharged-*Concise Oxford English Dictionary (12<sup>th</sup> Ed)*

<sup>15</sup> *AG v Ramo* [2008] SBHC 66; HSCI-CC 289 of 2008