

IN THE HIGH COURT AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

HPP No. 56 of 2022

IN THE ESTATE OF MASLA MANI late
of Raviravi, Ba, Fiji, Farmer, Deceased,
Testate.

BETWEEN: **SRI SANJAY MANI** of Raviravi, Ba, Fiji, Farmer.

AND: **LAJENDRA MANI** of Mangere, Auckland, New Zealand, Bus Driver, **VIJENDRA MANI** of Sydney, Australia, Truck Driver, and **LATCHMI** of Raviravi, Ba, Fiji, Domestic Duties in their personal capacity and as the Executors and Trustees of the **ESTATE OF MASLA MANI** late of Raviravi, Ba, Fiji, Farmer, Deceased, Testate.

RULING

(APPLICATION FOR LEAVE TO FILE STATEMENT OF DEFENCE)

Date of Hearing : **30 October 2023**
For the Applicant : **In Person**
For the Respondent: **Mr Gosai S. P.**
Date of Decision : **23 January 2024**
Before : **Levaci, SLTTW Acting Puisne Judge**

PART A - BACKGROUND

1. The application pertaining to this matter seeks orders for restraint against the Defendants from interfering or selling the Estate properties of Masla Mani.
2. The current application before this court seeks for Leave to file a Statement of Defence.
3. The Defendants inability to comply with the requisite High Court Rules for filing of Statement of Defence as well as Orders of the Court are explained in their Affidavit.

PART B - AFFIDAVIT

4. In their Affidavit the Defendant/Applicant states:

“2. That we were served with a Writ of Summons filed by the Plaintiff on 31st May 2022 which we had provided to our Solicitors then namely IQBAL KHAN & ASSOCIATES who then filed a Summons to Strike Out Writ of Summons and Statement of Defence on or about 8th August 2022.

3. That the same was heard by Honorable Justice Brito-Mutunayagam and he ruled on 27th February 2023 that the Summons by the Defendants be declined with a cost of \$500.

4. That the matter was listed on 18th July 2023 before the Honorable Master and there being some misunderstanding and disagreements between the Defendants and their previous Counsels the same was not attended to, whilst the defendants put across of Memorandum of the Defendants seeking an adjournment and excuse of their counsels who were then lacking instruction, as there was also an issue of all our documents in the possession of previous counsel being missed or lost and upon thorough search the same could not be located.

5. That the matter was adjourned to 21st August 2023 and by then we had instructed SUNIL GOSAI LAW FIRM to present the Defendants, Mr Gosai had a difficulty that we could not provide him with a copy of the Writ of Summons dated 31st day of May 2022.

9. That our dilemma at all material times was that we did not have a copy of the Writ of Summons dated 31st May 2022, whilst according to our previous counsel the Writ of Summons had been misplaced or lost and they could not provide us with a copy of the same in a timely manner.

10. That upon retrieving a copy of the Writ of Summons by our current counsels we are in a better position to file a Statement of Defence which as a prospect of a counter claim and we are advised that we have a meritorious defence in respect of the Statement of Claim by the Plaintiff.

11. There was no intended malice or disrespect towards this Honorable Court at any material times by the Defendant whilst they were faced with the challenges of communicating with their previous counsels as two of the first and second defendants are residing overseas and there was a break down in communications whilst the third defendant had to rely on the availability and assistance of her other sibling SRI NIVASAN MANI in communicating and liaising with the previous counsel and civil registry on the follow up of this matter.

13. That in a different matter arising from same/similar facts, the Plaintiff now had filed another matter being Caveat No. 36 of 2017 challenging the validity of the will of late MASLA MANI and placed a caveat on the property in issue which was duly ruled by Justice Sharma VD removing the caveat and allowing the Defendants being the Respondents then to proceed with the finalization of the Grant No. P 60935 and in accordance with the same the grant been issued and the property duly transferred as per the will of Masla Mani dated 14th January 2015 and any adverse grant of orders as per the Writ of the Plaintiff will have adverse effect on the defendants especially the Third Defendant who is resident on the

property in issue. (Annexed hereto and marked with letters L002 is a copy of the Decision dated 30th January 2019).

5. In response the Plaintiff had filed his Affidavit as follows:

“14. That the defendants were informed by the court to file defense and time was allocated, and further in non-compliance I had moved for formal proof and now they have asked for extension of time to file a defense which I am of the opinion is wrong in law. That the fact that the third defendant is deposing the Affidavit without any authority of the other defendants nor that the same being mentioned in the Affidavit is an attempt to mislead the Court and prejudice me the fruits of the proceedings as I am suffering loss and damages due to the result.

21. That the Defendants does not have any meritorious defence and this application without lawful authorities by other defendants is further being a contempt of court rules and practices and procedures and having me to suffer loss and damages thus the Notice of Motion should be dismissed with costs.”

PART C: LAW AND ANALYSIS

6. Order 18 Rule 2 of the High Court Rules prescribes the timeline for filing of a Statement of Defence from when the Defendant has acknowledged service of the Writ of Summons.
7. Where the timeline is not complied with, the Court has the power to extend or abridge the time for service of defence. The proviso for extending time (for filing of Statement of Defence) automatically occurs where the Plaintiff files an application under Order 14 for summary judgment or Order 86 for Actions for Specific Performance in Summary Judgments.
8. The application before the Court seeks leave to file a Statement of Defence. The Affidavit is sworn by the third Defendant. The Plaintiff argues that there was no delegated authority by any of the other two defendants for the third defendant to depose an Affidavit on their behalf.
9. Contrary to this argument, the latest case of RB Patel Co. Ltd -v- Central Board of Health [2023] FJCA 246; ABU032.2022 (30 November 2023) Jitoko P, Qetaki JA and Morgan JA has held that deponent may depose of all information within her knowledge without requiring further authority or authentication. The Court of Appeal stated as follows –

“O.41 r.5 is all encompassing as to the legal requirements of the contents of affidavits that are filed into Court. The interpretation and effect of the Rule was

carefully analyzed by Master U.L.Mohamed Azhar in Sundresan Pillai v Barton Limited CA No. HBC 63 of 2014. He had earlier, in Sharma v Prasad [2018] FJHC 250; HBC 239.2015, made a comparative analysis of the contents required of the affidavits under O.41 r.5 of the Supreme Court Practice (White Book) 1999 and its predecessor, O.38 r.3, and Fiji's High Court Rules O.41 r.5 and specifically, on whether there is a requirement for written authorization from the parties to the proceedings. The conclusion of the court in Pillai v Barton (supra) is that, under O.41 r.5 except in exceptions identified, a deponent of an affidavit in support, including where it is sworn on behalf of a company, does not need any written authority from the company to swear an affidavit on behalf of the company. The only exceptions are as stated under the Rule namely:

Affidavits under O.14, rr.2 (2) and 4 (2) either by the plaintiff or by the defendant on an application or opposition to, or summary judgment;

Affidavits made pursuant to O.38, r.3 (2) (a), where evidence of any particular fact, on the order of the court, may be given by a statement on oath of information or belief;

Affidavits under O.86 r.2 (1), on summary judgment application and summons contending the deponents belief there is no defence to the action.

So unless the affidavit falls into any of the exceptions which would need additional authority, all that is required, is for deponent to swear to such facts as he/she able of his knowledge to prove.

To contextualize the requirements as to contents of the affidavit is to understand its purpose. As stated by Scott J in Peter Stinson v Miles Johnson [1996] HBC 326, the purpose of affidavits is to provide evidence, deposing only as to facts, "not vehicles for opinions submissions or statements of the law." Or to state it in another way, affidavits are akin to oral evidence which a witness, privy to the information surrounding the incident or event, is allowed to state before the court. The High Court in Vodafone Fiji Ltd v Pacific Connex Investment Ltd [2010] FJHC 419; HBE097.2008 (30 August 2010) expressed it this way:

"Affidavits are a source of providing evidence and anyone privy to knowledge and information has a right to depose to an affidavit.

56. The correct position of the law, as regards the filing of affidavits into court is that espoused by Pillai v Barton (supra) and approved in Smak Works Pte Ltd v Total (Fiji) Pte Ltd [2020] FJHC 781, per Stuart J.

57. All affidavits filed into Court, need only to comply with Order 41 and under it, there is no requirement for any affidavits, excluding those exceptions under Order 4 Rule 5 (1), to be authenticated or deposed with a written authority in case of a company annexed to it.

58. In this instance, the affidavit of Mr. Deepak Rathod, the Chief Operating Officer of the Appellant, deposing as he did in his affidavit, of matters acquired on the

basis of this knowledge and information available to him, does not need further authentication from the Appellant.”

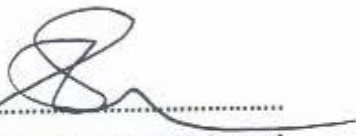
10. The Affidavit before the Court is sworn by the Third Defendant and admits she has done so on behalf of the other Defendants on her own information and belief. The Court accepts that the Affidavit is sworn based on her personal knowledge and thus accepts the Affidavit.
11. My brother Judge, Justice Mutunayagam had ordered, after refusing to strike out the Plaintiffs Writ of Summons, the Defendant to file a Statement of Defence by 15th July 2022 and Affidavit in opposition by 20th July 2022. This was never complied with.
12. The Defendant has explained the reasons for failing to provide a Statement of Defence in accordance with the orders of the Court which the Court finds is not satisfactory but there are reasonable grounds not to deny the Defendant of their Defence in the matter given the claims being filed by the Plaintiff.
13. The Court will grant the application for Leave to file Statement of Defence. However costs will be imposed against the Defendant for delaying the matter.
14. Pending also before this Court is an application for Formal Proof. This will be set aside in order to allow the parties to respond to pleadings.

Orders of the Court:

15. **The Court orders as follows:**

- (a) That the Court grants Leave for Statement of Defence to be filed within 14 days;*
- (b) The setaside application for Formal Proof;*
- (c) That costs awarded to the Plaintiff summarily assessed at \$300;*
- (d) Liberty to the Plaintiff to reply within 14 days thereafter of receipt of Statement of Defence.*




Mrs Senileba LTTW- Levaci
Acting Puisne Judge