

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

Civil Action No. HBC 57 of 2011

BETWEEN: **BULILEKA HIRE SERVICES LIMITED** a limited liability company having its registered office at Lot 14 Vakamasisuusua Subdivision, Nasekula, Labasa.
Applicant/ Original Plaintiff

AND: **THE HOUSING AUTHORITY** a statutory body constituted under the housing Authority Act and having its registered office at Valelevu House, Valelevu, Nasinu.

1st Respondent/Original 1st Defendant

AND: **MIKAELE TUPUA** address unknown to the Plaintiff, Project Manager, Housing Authority.

2nd Respondent/ Original 2nd Defendant

Representation

Applicant/Original Plaintiff: Mr. A. Pal (AP Legal).

Respondents/ Original Defendants: Mr. V. Maharaj (Vijay Maharaj Lawyers).

Date of Hearing: 27th November 2024

Ruling

A. Introduction

- [1] The Applicant/Original Plaintiff filed Summons for leave to appeal my Ruling of 17th September 2024. They are also seeking a stay of execution pending this application and the delivery of the judgment of the Court of Appeal.
- [2] In my Ruling I had dismissed the Plaintiffs preliminary objections. The Plaintiff was to pay the 1st Defendant \$2000.00 as costs with 14 days. The Plaintiff had raised 2 issues. The first objection related to the First Defendant filing a notice of intention to proceed and a summons to strike out on the same day. The other issue was the deposition of the affidavit in support of the summons to strike out by Priya Preetika Lal.
- [3] No affidavit in opposition has been filed. Both parties relied on written submissions and case authorities.

B. Determination

- [4] Sir Moti Tikaram (Then President of FCA) in *Kelton Investments Ltd v. Civil Aviation Authority of Fiji [1995] FJCA 15; Abu00345d.95s (18 July 1995)* in dealing with leave to appeal against an interlocutory order and stay of interlocutory order pending determination of appeal clearly set out the principles. Sir Moti Tikaram said:

"I am mindful that Courts have repeatedly emphasised that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals (see Hubball v Everitt and Sons (Limited) [1900] UKLawRpKOB 17; [1900] 16 TLR 168)."

[5] I further note what Sir Moti Tikaram stated as pertinent in **Kelton** (supra) as follows:

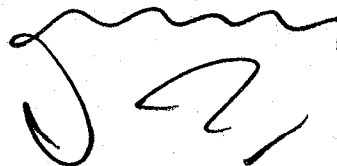
- (a) *The requirement for leave is designed to reduce appeals from interlocutory orders as much as possible (per Murphy J in Niemann v. Electronic Industries Ltd [1978] VicRp 44; (1978) VR 431 at 441-2). The legislature has evinced a policy against bringing of interlocutory appeals except where the Court, acting judicially, finds reason to grant leave (Decor Corp v. Dart Industries 104 ALR 621 at 623 lines 29-31).*
- (b) *Leave should not be granted as of course without consideration of the nature and circumstances of the particular case (per High Court in Exparte Bucknell [1936] HCA 67; (1936) 56 CLR 221 at 224).*
- (c) *There is a material difference between an exercise of discretion on a point of practice or procedure and an exercise of discretion which determines substantive rights.*
- (d) *It must be shown, in addition, to effect a substantial injustice by its operation" (per Murphy J in the Niemann case at page 441).*
- (e) *In Darrel Lea v. Union Assurance (169) VR 401 at 409 the Full Court of the Supreme Court of Victoria said:*

"... that error of law in the order does not in itself constitute substantial injustice, but that it is the result flowing from the erroneous order that is the important matter in determining whether substantial injustice will result.

[6] Having noted the law on leave to appeal interlocutory orders I am of the view that the preliminary issues dealt with does not directly or indirectly determine any substantive right of either party. The Parties upon a final order or judgment if aggrieved would have the right to appeal to the Court of Appeal against such order or Judgment. No injustice would result from refusing leave to appeal. Leave to appeal is therefore refused. Costs in favour of 1st Defendant in sum of \$2000.00 to be paid by the Applicant/ Original Plaintiff within 21 days.

C. Court Orders

- (a) Applicant/Original Plaintiff's leave to appeal application refused.
- (b) Applicant/Original Plaintiff's to pay 1st Defendant \$2000.00 as costs within 21 days.



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Chaitanya S.C.A. Lakshman
Puisne Judge

30th January 2025

