

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: **HBC 20 of 2024**

BETWEEN : **GOLDHOLD SOLAR PTE LTD**, a company duly incorporated in Fiji and having its registered office at 211 Ratu Sukuna Rd, Suva, Fiji

PLAINTIFF

AND : **KANKAN LI** of City Apartment, Huon St, Suva, Fiji

DEFENDANT

Coram : **Banuve, J**

Counsels : **Jamnadas & Associates, for the Plaintiff**
Gibson & Co, for the Defendant

Date of Hearing : **9 September 2024**

Date of Ruling : **8 August 2025**

RULING

A. Introduction

1. The Defendant filed a Notice of Motion on 16 July 2024 pursuant to Rules 16 and 26 (2) - (3), of the *Court of Appeal* Rules [Cap 12] and O.20, r.5(1) of the *High Court* Rules 1988 and the inherent jurisdiction of the Court, seeking the following orders;
 - (a) That leave is granted to the Defendant to appeal the Ruling of Honorable Justice Banuve delivered in the action on 8 July 2024;
 - (b) That the ex-parte orders made by the Honorable Court be stayed pending the final determination of the Appeal.
 - (c) That leave is granted to the Defendant to file an amended counter-claim
 - (d) That the costs of this application be paid by the Plaintiff to the Defendant.
2. A Notice of Motion was filed by the Defendant on 26 March 2024 seeking the following orders;
 - (i) *That the orders ex parte made on the 2nd of February 2024 be set aside unconditionally with an assessment of damages suffered by the Defendant due to the illegal actions of the Plaintiff company and its director, Mr Shen;*
 - (ii) *That the costs of the Application be paid by the Plaintiff to the Defendant.*
3. On 8 July 2024, the Court issued a ruling refusing the primary order sought in the Motion with costs, summarily assessed at \$1,500.00 against the Defendant.
4. Leave to Appeal is sought against the said ruling by the Defendant.
5. Both parties have filed submissions which the Court has found helpful in clarifying their respective positions.

B. Leave to Appeal

6. The Defendant's position is summarized;
 - (i) Interlocutory appeals need the leave of the High Court in the first instance and, if refused, then a further application is allowed to the Court of Appeal.¹
 - (ii) The High Court needs to re-evaluate whether there are any errors in its judgment creating substantial injustice, if so, then acting judicially in the interest of justice, the Court ought grant leave to appeal.
 - (iii) Even if the orders of 8 July 2024 are clearly wrong, this alone, is not sufficient, it must be shown in effect, to effect a substantial injustice by its operation.
 - (iv) In seeking and obtaining *ex-parte* injunctive orders, granted on 2 February 2024, and affirmed in the ruling of 8 July 2024, the Plaintiff did not comply with the rule to make full and frank disclosure of relevant facts- *Ghaffoor & Others v Cliff & Others* [2006] EWHC 825; [2006] 2 All ER 1079. Compliance with this Rule is fundamental to the court's process, on applications without notice, as other parties do not have the opportunity to supplement the evidence which has been put before the Court.
 - (v) If material non-disclosure is established, the Court will ensure that a Plaintiff who obtains an *ex parte* injunction is deprived of any advantage he may have derived from that breach of duty.
7. In assessing the evidence the Defendant asserts that certain matters were not disclosed;
 - (i) Vital accounting information was withheld and not disclosed at the *ex parte* hearing, by the Plaintiff to the Court that the sum of \$79,069.00 allegedly withdrawn without authority by the Defendant, represented unpaid salary owed to the Defendant by the Plaintiff company. The Court refused to take cognizance of vital documentary evidence, when this was divulged by the Defendant, at the hearing to set aside the *ex-parte* orders granted on 2 July 2024.

¹ Rule 26- Court of Appeal Rules

- (ii) There is material non-disclosure and any advantage to the Plaintiff obtained through non-compliance by misleading the Court, needs to be removed.
- (iii) The Defendant has sufficient assets in Fiji, holding 100,000 shares in the Plaintiff company to cover any judgment, in the event that the Plaintiff is successful. The Defendant also has a counter-claim for wrongful termination and Director's fees in the sum of \$7500 per month, from January 2024, until judgment, which ought to be factored in also to cover any judgment against the Defendant.
- (iv) An injunction restraining the Defendant from leaving the jurisdiction, until the determination of proceedings, breaches the principle behind the issue of a Writ Ne Exeat Regno-*Merchant Bank of Fiji Ltd v Raniga [1993] FJHC 61*. Substantial injustice will be caused to the Defendant, if he is made to remain in Fiji until the determination of proceedings.
- (v) Leave be granted for the Defendant to file a Counter-Claim to clarify the claim filed, to include missed sums, and to stream line the counter-claim. No prejudice will be suffered by the Plaintiff as it is already aware of all the sums sought by the Defendant by way of counter-claim.
- (vi) Leave for extension of time to file the appeal needs to be extended, and orders granted ex-parte be stayed.

8. The Plaintiff's response are summarized;

- (i) The true principle limiting the manner in which the appellate jurisdiction is exercised in respect of decisions involving discretionary judgement, is expressed in a strong presumption in favor of the correctness of the decision appealed from, and that decision should therefore be affirmed, unless the Court of Appeal is satisfied, that it is clearly wrong. A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists in acting on a wrong principle, or giving weight to extraneous or irrelevant matters, or failing to give weight or sufficient weight to relevant considerations, or making a mistake as to the facts².

² *Niemann v Electronic Industries Ltd [1978] Vic Rep 44*

- (ii) The general rule is there is a strong presumption against granting leave to appeal from interlocutory orders or judgments, which do not either directly, or by their practical effect, finally determine any substantive rights of either party. This is relevant, as in the current proceedings, the Court has not made any final determination of any rights of the parties to the proceedings, which is contrary to what the Defendant is seeking.
- (iii) The current orders of the Court do not finally determine any substantive rights of the Defendant, in fact, the Court clearly stated that the issues raised were disputed, (which includes everything the Defendant has tried to claim in his application and proposed grounds of appeal), and were not appropriate to be dealt with at an interlocutory stage, but at the trial proper.
- (iv) The Plaintiff then asserts that the proposed grounds of appeal fall short in these regard;

Ground 1

The Court erred in law and fact in considering Police prohibition orders as relevant to the proceeding and that a return date need to have been issued by the Court.

Order 29, rule 7 provides that a Court may make directions when dealing with any application made under rules 1 to 6, as to the further proceedings or causes. There is no mandatory provision within the High Court Rules requiring the Court to issue a returnable date, otherwise, there would be no need in the High Court Rules allowing the Defendant to set aside the injunction under o.32, r.7, which the Defendant has done.

Ground 2

The Court erred in law and fact, in failing to deal with the Defendant's preliminary objections that the Writ of Summons filed by the Plaintiff, was not authorized by the Plaintiff.

This ground of appeal is misconstrued. The Court dealt with this ground in its ruling of 8 July 2024. As stated in paragraph 15. This completely negates the specific ground that the Court "failed to deal with the objection". This

again shows that the ground is frivolous and conveniently ignores parts of the Court's ruling.

Ground 3

The Court erred in law and fact in failing to hold that the Affidavit of C. Shen and Dilip Jamnadas were not authorized by the Company.

This ground of appeal is entirely inconsistent with law. Sections 53 and 54 of the *Companies Act 2015* is clear, that the Court was permitted to assume that authorizations had been granted.

Ground 4

The affidavit deposited by Dilip Jamnadas ought to have been struck off

This point is wrong both in law and principle as;

- (a) The wording of Order 41, r.5 is clear and contradicts the Defendant's position;
- (b) A person deposing an affidavit can give hearsay evidence;
- (c) A party need not attach any sort of authorization, they are simply required to confirm that they are authorized.
- (d) In terms of the allegation of fraud, it comes down to a dispute between documents and is not an issue for determination at an interlocutory stage.

Ground 5

The Court failed to address the requirement that the Plaintiff was required to show why the ex-parte orders wrongly made were justified.

At no point in its Ruling, did the Court state that the orders were wrongly made, and that the Plaintiff had to justify the reason why orders 'wrongly made,' were justified, and needed. This ground appears to be a misguided and disguised challenge to the finding of the Court that the documents and issues raised were in dispute, and it was not proper to make such findings on these issue, at an interlocutory stage, a position which even the Supreme Court has taken, and is binding on the Court – *Wakaya Ltd v Chambers* [2012] FJSC 9; CBV0008.2011 (9 May 2012)

Ground 6

The Court erred in holding that the Defendant's Notice of Motion was not in compliance with O.8, r.3(2).

Ground 7

The Court erred in fact and law in not taking into account conflicts of evidence in the affidavits

The Court did not ignore the application or arguments of the Defendant in this regard. It simply showed that there was non-compliance and the vagueness of the Notice did not assist the Court.

Ground 8

The Court erred in not setting aside the *Writ Ne Exeat Civitate* as the claim was not justified and the onus was on the Plaintiff to show evidence that the Defendant would abscond when the Defendant has a return ticket.

This ground is frivolous and disingenuous. Whilst the Defendant had a return ticket the Court correctly dealt with this issue, that it did not guarantee, that the Defendant would return to Fiji.

It was an uncontested fact, that the Defendant was attempting to leave the country. This is proven by the fact that he was stopped at the Airport by the Police, and the Plaintiff was able to show messages with the Defendant's wife where he admitted he was going to China.

Grounds 9-16

Miscellaneous appeal grounds dealing with the shareholding of the Defendant, alleged error in placing the onus on the Defendant to show evidence that he was absconding, material non-disclosure, error in placing emphasis on the police departure prohibition , failure to evaluate balance of convenience.

Much of the grounds are repetitive, and have been addressed by the Plaintiff in its submissions on other grounds of appeal. The Defendant continues to belabor the point that the Court did not make final orders in its favor, based on its submissions, when the Court had clearly ruled on 8 July 2024, that it

could not issue a final determinative ruling on disputed issues based on affidavit evidence, filed in an interlocutory proceeding to set aside injunctive orders.

C. Analysis

9. First of all, the Court would apologize to the parties for the delay in the delivery of this Ruling.

10. The decision for which leave to appeal is being sought was that delivered by this Court on 8 July 2024, wherein it refused to set aside injunctive orders granted *ex-parte*, on 2 February 2024.³In reaching its decision to refuse the application, the Court had specifically ruled that the contested issues raised by the parties, (the principal disputants being both Directors of the Plaintiff company), *relating to the internal management of the Plaintiff company, particularly the competing position on the authority required for the withdrawal of company funds, the initiation of proceedings, the deposition of evidence on behalf of the company or the termination of a Company Directorship*, were not matters that could be assessed or determined, based on affidavit evidence, but were matters that had to be tested fully, at trial.
The Court's finding on this issue are not novel and settled in *American Cyanamid v Ethicon* [1975] 1 All E.R 504 at 510, and adopted in this jurisdiction, in cases like *Merchant Bank of Fiji Ltd v Girdhar Lal Raniga & Anor*-Civil Action 210 of 1993.
Despite it being clear, settled principle, the Defendant, continues to take issue with it and is the primary basis on which his application for leave to appeal is premised, a matter which the Court has difficulty, understanding .

11. The leading authority on the principles applicable for leave to appeal against an interlocutory decision, is *Kelton Investments Ltd v Civil Aviation Authority of Fiji* [1995] FJCA 15, where the Court of Appeal affirmed, that the requirement for leave was designed to reduce appeals from interlocutory orders, unless the Court finds reason to grant leave, (considering the nature and circumstances of a particular case)⁴
This Court in *AG v Naidu* –Civil Action No. HBC 202 of 2022 further confirmed the issues that it would consider when faced with an application for leave to

³ Notice of Motion filed on 26 March 2024

⁴ *Niemann v Electronic Industries Ltd* (1978) VR 431 ; *Décor Corp v Dart Industries* [1991] FCA 655; 104 ALR 621; *Ex Parte Bucknell* [1936] HCA 67; (1936) 56 CLR 221

appeal, (as opposed to that by the Court of Appeal). The High Court would take into account these matters;⁵

- (A) *Whether the issue is one of general importance or, whether it simply depends upon the facts of the particular case?*
- (B) *Whether there are involved in the case, difficult questions of law upon which different views have been expressed from time to time, or as to which he has been sorely troubled?*
- (C) *Whether the decisions given have the effect of altering the substantive rights of the parties or either of them?*
- (D) *Whether the decisions given do either directly or by their practical effect finally determine any substantive rights of either party.*

12. Whilst the Court has set out the proposed grounds of appeal, and the Plaintiff's response to them, the Court, will itself not embark on an assessment of the merit of the grounds of appeal, *but* will review them on the basis of the issues identified by the Court in *AG v Naidu*.

13. In this regard, the Court finds the written submissions provided by the Plaintiff to be pertinent in addressing these issues, in determining whether or not to grant leave to appeal, as set out in *AG v Naidu*, and the Court adopts these submissions;

- (A) Whether the issues raised are of general importance. or does it simply depend upon the facts of the particular case?

'There are no issues of general importance raised by the Defendant in his application. Whilst the grounds include the term "erred in law and fact" a look at the Defendant's grounds shows that he is actually trying to have factual disputes predetermined, as was evident from his relief in the setting aside application. The Court has rightfully found that it should not be trying to determine those factual issues at an interlocutory stage'.

⁵ Murphy, J in *Niemann* (supra) at p 441

(B) Whether there are difficult questions of law involved, upon which different views have been expressed from time to time, or as to which His Lordship has been sorely troubled?

(i) *'There is nothing in the Defendant's Affidavit or proposed grounds of appeal which come close to this point'.*

(ii) *'All issues raised with regard to the Court's findings were not supported by any case law shown to the Court by the Defendant, however the Plaintiffs were able to show the Court substantial case law which shows that there is no confusion with the judiciary on this issue, as opposed to confusion from the Defendant, which appears to be the case and is not a relevant consideration for the Court'*

(iii) *'The law is well settled with regards to the preliminary objections raised on the Affidavits, and the arguments advanced by the Defendant were not supported by any case law, nor do they come close to the many cases which have stated the same things over and over, with regards to Order 41 and Affidavits sworn on behalf of other parties, including companies. Some of these cases were raised in the Plaintiff's Submissions on Opposition and are relied on again.'*

(C) Whether the Order had the effect of altering the substantive rights of the Parties or either of them?

'The current Orders have the effect of protecting the Plaintiff's funds from being dissipated or removed from the jurisdiction and also prevent the Defendant from leaving, until he complies with the Court's Orders. The Orders do not alter any rights, but simply ensures that funds are held until the substantive matter can be dealt with, along with the ancillary orders which were necessary to prevent the Defendant from absconding. It is again noted that the Defendant has taken no steps to comply with the Orders for a substantial period of time.'

14. Further, in considering whether or not to grant leave to appeal the orders made by this Court, it is not sufficient for the Defendant to assert that they are wrong, rather, it must demonstrate that it has the effect of causing substantial injustice by its operation, that could not be cured in the appeal, after a final decision is made.⁶

⁶ *Shankar v FNPF Investments Ltd* [2017] FJCA 26;ABU 32 of 2016 (26 February 2017)

15. The Court again adopts the Plaintiff's submissions on this issue.

10.3 *In Templetec Fiji Ltd v Attorney-General of Fiji [2020] FJHC 367; HBC295.2011 (26 May 2020) where in dealing with an application for leave to appeal an interlocutory ruling the Court found at paragraph 2.13 that;*

"This Court also holds that no substantial injunction will be caused to the Applicant, if leave to appeal the decision is not granted for the reason that;-

(i) Applicant's action is still on foot;

(ii) All Applicant will need to do is to prove its claim in Court by calling evidence and opportunity to the Respondent to defend the Applicant's claim by putting forward its evidence before the Court"

10.4 *It submitted that these considerations are fatal to the Defendant's application for leave to appeal especially as this consideration has not actually been properly traversed, or explained at all in terms of the actual leave to appeal.*

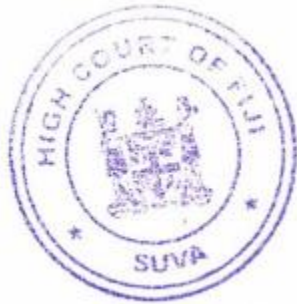
10.5 *It must be remembered that the Defendants Affidavit in Support itself is for several applications. Nowhere in the Affidavit does it specifically discuss this aspect in relation to the actual application for leave.*

16. Finally, the Court will also in its findings deal with the ancillary applications for amendment, stay and striking out raised by the Defendant and which both parties have dealt with in written submissions. Specifically, the application to strike out the Statement of Claim premised as it is, on the lack of due authority by the Plaintiff to institute this proceeding, is refused, because it again seeks a pre-determination of an issue at an interlocutory stage of proceeding which the Court has ruled, it cannot make, based on affidavit evidence, but has to be determined, at trial.

FINDINGS:

The orders sought in the Notice of Motion filed on 16 July 2024 are as follows;

- (i) **Leave to Appeal the Ruling of the Court delivered on 8 July 2024 sought in the Notice of Motion filed on 16 July 2024 is refused and dismissed, with costs;**
- (ii) **Stay of the orders of the Court is refused;**
- (iii) **Application to Strike Out the Statement of Claim is refused;**
- (iv) **Application to amend the Counter Claim is allowed with costs.**
- (v) **Costs summarily assessed at \$2000.00 to be paid within 7 days of this Ruling**
- (vi) **Defendant to comply with the orders of the Court made on 2 February 2024 within 7 days of this Ruling.**



Savenaca Banuve
Savenaca Banuve
Judge

At Suva
8th August 2025