

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 345 OF 2018

BETWEEN: **SAKIUSA BOLADAI WAQA** of Dakuinuku Village, Swakasa Tailevu, Fiji, Retired suing in propria persona, as Head of Mataqali Ulugai, and in representative capacity for and on behalf of other members of Mataqali Ulugai of Sawakasa, Tailevu, who qualify pursuant to the provisions of the iTaukei Land Trust Act (as amended) and as customary owners of the iTaukei Land.

RESPONDENT/ PLAINTIFF

AND: **BASIC INDUSTRIES PTE LIMITED** of and/or its subsidiary Standard Concrete, its servant and/or agents, having its registered office at 4th Floor, Ra Marama House, Suva, Fiji.

APPELLANT/DEFENDANT

Counsel: Ms. Samuela E for the Plaintiff
Mr. Nathan A for the Defendant

Date of Judgment : 2.9.2025

Catch words

Stay of judgment- contempt- disregard- court order- environmental damage- remedial action- deforestation- reserve- reforestation- statutory violation--benefit of doubt- refuse stay- discretion- EIA process-Public interest- Sections 27,28 of the Constitution-Section 16 of iTaukei Land Trust Act 1940- Environmental Management Act 2005-

JUDGMENT

INTRODUCTION

- [1] This is an application by the Appellant (Defendant) seeking an order for stay of execution of the orders made for civil contempt proceedings for violation of court orders and construction of access road through iTaukei Reserve (The Reserve) before de reservation.
- [2] The judgment appealed against found the Appellant in civil contempt for breach of not only court orders but also destruction of the Reserve without de-reservation and also without regard to sustainable development objectives, under Environmental Management Act 2005, through proper Environmental Impact Assessment (EIA) process.
- [3] Judgment delivered on 30.4.2019 stated the requirement of EIA process involved for the construction of the road access through the Reserve as the previous EIA obtained by Defendant for its gravel extraction had not included access road through Reserve hence EIA was deficient on this aspect and not being considered for environmental management which is required under Part 4 of Environment Management Act 2005.
- [4] The violation of the court orders invariably breached mandatory statutory provisions including Section 16 of iTaukei Land Trust Act 1940¹ and provisions contained in Part 4 of Environmental Management Act 2005
- [5] After judgment Defendant had obtained a purported lease for road without an EIA involved, and violated the orders of the court .
- [6] Defendant had prioritised the economic benefit, by not engaging EIA process for the construction of road through Reserve. This was direction given in the judgment of the court in this action.
- [7] Section 28 read with Section 27 of Constitution of Republic of Fiji(The Constitution) provides for protection of iTaukei Land and iTaukei Reserve is part of that that is more restricted when alienation for any purpose.
- [8] So strict statutory compliance is required in dealing with the Reserve and violation of Defendant when directions given by the court is a serious violation. So stay for orders for contempt refused.
- [9] Defendant was not able to produce acceptable mitigatory circumstances for its illegal actions, which disregarded environment impact, statutory provisions,

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16 (1) Subject to the provisions of the State Acquisition of Lands Act 1940, the Forest Act 1992, the Petroleum (Exploration and Exploitation) Act 1978, the Mining Act 1965, and to the provisions of this section, no land in any iTaukei reserve shall be leased or otherwise disposed of.

[subs (1) am Decree 8 of 2011 s 3, effective 1 March 2011]

iTaukei rights, last and not least orders of the court for which these proceedings initiated by Plaintiff.

- [10] Plaintiff's application for civil contempt was proved a Defendant had not denied construction of the road after judgment, but state that it had not entered the Reserve for the construction of access road prior to 11.6.2019, the date on which purported lease issued without de reservation and no EIA process followed.
- [11] Environmental protection order imposed a fine of FJD \$200,000 together with a security bond for due compliance of reforestation according to a plan of relevant authorities.
- [12] Defendant had neither paid the fine nor the bond deposited and also did not take measures to engage relevant authorities for remedial work.
- [13] The remedial measures ordered, and the bond that was ordered was to allow that such measures are being conducted with reasonable time frame without inordinate delay, considering the conduct of the Defendant.

FACTS

- [14] Due to the death of Plaintiff a substitution was made within this application, for substitution of the current *Turaga ni Mataqali* for Plaintiff
- [15] Plaintiff filed this action against Defendant and after hearing on 2.4.2019, this court ordered Defendant to restrain any type of work that would destroy fauna and flora of iTaukei Reserve area for the road is demarcated with a plan and said part de reserved for construction of road access for heavy vehicles for gravel extraction of Defendant. This also required EIA process to be included as directed by court.
- [16] There was no appeal from the said judgment delivered on 30.4.2019, but Defendant had not obtained de reservation of a defined road but had obtained a purported lease for the road access.
- [17] Plaintiff filed civil contempt and it was proved as there was no de reservation before clearance of the area for road access for heavy vehicles after judgment delivered on 30.4.2019.
- [18] It was proved that Defendant had violated orders of the court and also violated mandatory statutory provisions that required de reservation. Apart from that no EIA process adopted to mitigate damage to iTaukei Reserve.
- [19] Defendant was allowed to submit mitigatory circumstances and on 26.8.2022 orders were made for a fine of \$200,000 and also for a restoration of clearance of the Reserve done illegally and in violation of court orders. Defendant was also ordered to deposit a refundable deposit of \$200,000 for fulfilment of the

said orders to Environmental Trust Fund established in terms of Section 35 of Environmental Management Act 2005. The release of said security would be upon satisfactory completion of remedial work being proved to the of the court.

- [20] Defendant did not comply with the orders issued by the court for contempt.
- [21] Plaintiff appealed against the said orders and also filed stay of the orders made against civil contempt.
- [22] The Respondent opposes the application, asserting that the contempt orders were made to uphold the authority of the Court and ensure environmental compliance, and that a stay would undermine both.

Analysis

- [23] Rule 34(1) of the Court of Appeal Rules provides that an appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from unless the court below or the Court of Appeal otherwise directs.
- [24] In the context of breach of environment law the implication for stay can be high, especially when the potential for irreparable harm exists. In most cases such harm is instant and irreparable. So the only remedy is mitigatory and if delayed the irreparable harm continues.
- [25] When there is illegal environmental destruction such as Reserve the issues are typically time-sensitive in some way, yet the appeals process can be part of due process, but stay cannot be the rule, while an appeal is pending.
- [26] The breach of order of the court coupled with environmental harm is more serious civil contempt . This is aggravated when orders of the court was made when contempt due to hastiness and disregard for environmental process in terms of sustainable development such as EIA process.
- [27] Defendant could engage in gravel extraction with due compliance with statutory provisions and orders of the court.
- [28] A party cannot prioritize its economic gains over sustainable development objectives such as EIA process when it involves ecologically sensitive areas such as Reserves, River Beds, water catchment area ect.
- [29] When orders were made by the court for violation of environmental harm such orders needs to be complied and as they are mitigatory and harm is immediate and continuous.
- [30] It was proved that Defendant disregarded orders and cleared part of the Reserve illegally and an access road was constructed and used for heavy vehicles on it without regard to environmental impact, statutory violations and also in violation of court orders made after hearing.

- [31] This court in the judgment delivered on 30.4.2019 had indicated importance of EIA process for demarcation as well as construction of the road access through the Reserve.
- [32] Judgment of 30.4.2019 stated that a part of the Reserve required de reservation and this is statutory requirement in terms of Section 16 of iTaukei Land Trust Act 1940.
- [33] Section 27 and 28 of the Constitution also provides protection for iTaukei Land and accordingly such land can only be *alienated* in accordance with the statutory provisions . Section 16 of restricts *alienation* of iTaukei Reserve. Accordingly Plaintiff as iTaukei land owner is protected under the Bill of Rights Chapter of the Constitution. So Defendant's action of entering the Reserve and clearance of part of it without de reservation is aggravated .
- [34] It was proved that Defendant disregarded orders and cleared part of the Reserve illegally and an access road was constructed and used for heavy vehicles on it without regard to environmental impact, statutory violations and also in violation of court orders made after hearing.
- [35] After hearing of the application for civil contempt it is proved that Defendant had neither obtained EIA process nor de reservation but construction of the road on the guise of purported lease after 11.6.2019 (see paragraph 11 and 12 of affidavit in reply of CEO of Defendant filed on 30.7.2019
- [36] Considering nature of the contempt and its impact on environment Defendant was ordered a fine and also a bond for compliance of remedial measures for it action .
- [37] The law on stay pending appeal is discretionary and this discretionary right was discussed in Supreme court in *NLTB v Shanti Lal* [2012] FJSC; CBV 0009.11 (20 .1. 2012). Paragraph 14 of the said case summarised the principles as follows;

"[13] I had set out the approach to such applications in a ruling in *Stephen Patrick Ward v Yogesh Chandra* CBV0010.10 20th April 2011. It was this:

"[4] The issue for determination is whether the Petitioner's case prior to the hearing is sufficiently exceptional to allow for some interlocutory relief. For at the Supreme Court, that is at final Court of Appeal stage, the hurdles to be overcome for a petitioner seeking special leave are formidable. Sufficiently exceptional may be a stronger test than that favoured in New South Wales where the hurdle was said to be overcome if "the applicant could demonstrate a reason or an appropriate case to warrant the exercise of discretion in its favour": *Alexander v Cambridge Credit Corporation Ltd* (1985) 2

[NSWLR 685](#) at p.694; applied in *Penrith Whitwater Stadium Ltd & Anor v Lesvos Pty Ltd & Anor* [\[2007\] NSWCA 103](#)."

[14] The court considering a stay should take into account the following questions. They were the principles set out by the Court of Appeal and approved subsequently and applied frequently in this court. They were summarised in *Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji)Ltd* Civil Appeal ABU0011.04S 18th March 2005. They are:

"(a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative). See *Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd* [\[1977\] 2 NZLR 41](#) (CA).

(b) Whether the successful party will be injuriously affected by the stay.

(c) The bona fides of the applicants as to the prosecution of the appeal.

(d) The effect on third parties.

(e) The novelty and importance of questions involved.

(f) The public interest in the proceeding.

(g) The overall balance of convenience and the status quo."

[38] The above list is non exhaustive, and stay of judgment is a discretionary remedy so it can be adopted to any situation with additional considerations.

[39] Above general considerations are adopted by the court and affirmed by superior courts and these considerations had not addressed when the order was for civil contempt for violation or court order.

[40] Denial of iTaukei Rights protected under Section 27 and 28 of the Constitution and statutory breaches under Section 16 of iTaukei Land Trust Act 1940 and part 4 of Environmental Management Act 2005 are additional consideration..

If the stay is not granted the appeal will not be made nugatory.

[41] This is not determinative. Orders made by the court are remedial measures for undermining orders of the court. This required Defendant to engage relevant authorities and execute it accordingly. These activities take a while and the fines ordered and security for fulfillment can be paid by the Defendant as its financial position is sound by its own admission. If the appeal is successful fines can be paid and security is a refundable deposit .

[42] Defendant's contention that these fines are paid to members of Mataqali and cannot be recovered is without merit. Fines cannot be paid to individuals. Similarly bond was refundable and it was clearly stated in the order made on 26.8.2022

Successful Party Injuriouly Affected

[43] Already due to the actions of Defendant which violated orders of the court , Plaintiff was seriously affected in following manner;

- a. Plaintiff as iTaukei representative had taken legal measures to prevent Defendant's illegal act of destruction of the Reserve partially , but after judgment Defendant had continued to clear the Reserve without de reservation. This required remedial measures.
- b. So the delay in remedial measures not only affect the continuing violation of iTaukei Rights secured in the Constitution in Section 27 and 28 read with Section 16 iTaukei Land Trust Act 1940.
- c. A bond or security was ordered considering nature of the violation and also conduct of Defendant to prevent further violations or inordinate delay in execution of the orders for remedial action. If this provision is stayed , Plaintiff will be affected as there will not be an incentive to expedite the remedial measures.

Bona Fide of the Appeal

[44] The bona fide of the appeal needs to be considered from the grounds of appeal

[45] Grounds of appeal are briefly discussed;

- a. *"The Respondent/Plaintiff in the within action had filed its Notice of Motion seeking leave to institute committal proceedings against the Appellant/Defendant, however, the Respondent/Plaintiff had failed to personally serve the said application on the Appellant/Defendant within the required time pursuant to Order 52 Rule 3(3) of the High Court Rules. "*

Defendant is a corporate body and was represented by its solicitors in civil contempt and filed an affidavit in reply of its CEO, without objection

as to service. So Defendant had waived such objection in terms of Order 2 rule 1 of High Court Rules 1988²

- b. *“The Learned Judge of the High Court fell in error when it proceeded to hear and make orders on the application, when the application itself was defective in nature. “*

No objections raised by Defendant as to procedural irregularity by Defendant in terms of High Court Rules 1988³. There was no prejudice to Defendant and it was aware of its actions.

- c. *“The Honourable Court failed to consider that the Appellant/Defendant was granted an Agreement for Lease for Ulugai river extraction access road on 11 June 2019 by the iTaukei Land Trust Board which was issued in furtherance of a lease offer made by iTaukei Land Trust Board on 23 August 2018 and as such the Appellant/Defendant was not in breach of the Orders granted on 30 April 2019. However, the Court still held the Appellant/ Defendant for contempt of Court. “*

Above ground has no merits as it was admitted fact in hearing that in order to access the gravel extraction from river bed required de reservation of the Reserve but this was not obtained. The court also ordered EIA process involved for the road and this was also not done but Defendant had proceeded with the road upon purported lease of 11.6.2019

- d. *The Learned Judge further fell into error when he failed to consider that the Appellant/Defendant had a proper lease over the road access and thereby the Appellant/Defendant had regularized its legal use and access of the road.*

² Order 2 rule 1 of High Court Rules 1988,

1 (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

³ *ibid*

This argument has no merits as no lease can be granted over iTaukei Reserve without de reservation in terms of Section 16 of iTaukei Land Trust Act 1940 and Section 27 and 28 of the Constitution.

- e. *The Learned Judge misdirected itself when it relied on the annexed photographs in the Affidavit in Support filed by the Respondent/Plaintiff on 03 July 2019, and considered it to be true and accurate, given the fact that the dates on the photographs were handwritten and the source of the photographs were not provided by the Respondent/Plaintiff.*

There was opportunity given to Defendant and if they were inaccurate it could submit correct position with similar evidence but failed. So this ground is without merit. Defendant's CEO only said that it had not violated court orders prior to 11.6.2019 the date of the purported lease without de reservation . Apart from that here was no EIA process .

- f. *The Learned Judge therefore fell into error when he misconstrued the evidence of the Respondent/Plaintiff when the Respondent/Plaintiff failed to identify the area or location of the photographs taken. This was not a requirement as Defendant failed to obtain de reservation but had completed the road through Reserve area.*

Defendant had not denied entering of the Reserve after judgment. It denied such entry prior to 11.6.2019. The selection of the date is significant and this was the date of the purported lease for road access.

- g. *The Honorable Judge proceeded to make the Orders/Sentence in the Respondent's/Plaintiff's favor by relying on the above mentioned evidence submitted by the Respondent/Plaintiff.*

Defendant was allowed to provide evidence against serious violation and if desired could have requested further evidence but did not.

- h. *As a result of the errors of law made by the Learned Judge, the Appellant/Defendant has unfairly suffered a large Sentence of \$200,000.00 fine and a security bond of \$200,000.00. The Appellant/Defendant for the above stated reasons seeks a review of the Court's decision by way of an appeal.*

Defendant is entitled to due process of law and their appeal will be considered by Court of Appeal .

The effect on third parties

- [46] This action was filed by *Turaga ni Matqali* as customary owners of the Reserve and the Reserve benefit not only plaintiff and customary owners but others as well. So the effect is wider with statutory implication for breach of Section 16 of iTaukei Land Trust Act 1940 and Part 4 of Environmental Management Act 2005. These provisions needs to be interpreted along with Bill of Rights Chapter of the Constitution and rights protected under Section 27 and 28 of the Constitution . So the stay of orders made for breach of court orders have a wider application.
- [47] Economic Development must be conducted in sustainable manner and failure to do so affect all iTaukei members as owners of the land and failure to engage EIA process for the construction of the road inside the Reserve can have adverse impact on the environment , thus the effect is not limited to parties to this action.

The novelty and importance of question involved

- [48] There is novelty in this action due to arbitrary action of Defendant and disregard for court order . The actions of the Defendant raises some novel questions as to contempt and breach of mandatory statutory provision relating to iTaukei Reserve. These novel issues support refusal of stay than grant considering circumstances discussed earlier in this judgment.

The overall balance of convenience and the status quo

- [49] Defendant is a company with means to satisfy orders by its own admission and has not demonstrated that immediate compliance would cause irreparable harm beyond ordinary financial burden. Conversely, refusal of a stay will delay remedial measures and disregard for court orders.
- [50] The overall balance of convenience, therefore, favours Plaintiff, and the broader public interest in the enforcement of court orders.
- [51] More importantly, this application concerns **civil contempt arising from wilful disobedience** of environmental orders. The primary objective of contempt jurisdiction is to uphold the authority of the Court and secure compliance, not to allow contemnors to delay enforcement
- [52] There is a compelling public interest in maintaining the force of environmental protection orders and in ensuring obedience to court judgments. Granting a stay in circumstances where a party has shown total disregard for prior orders

would set a precedent that court orders can be flouted without immediate consequence

[53] If the Defendant had not destroyed the Reserve , when it engages EIA process through relevant government authorities it will be easy to prove. Instead of doing that Defendant attempt to achieve its objective through stay of judgment having violated orders of the court.

[54] Destruction of the Reserve without EIA process and de reservation not only violated orders of the court, but it has wider implication . So overall balance lies with Defendant.

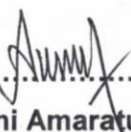
CONCLUSION

[55] It is the haste of Defendant that had disregarded not only court orders but also statutory provisions. If the Defendant had not entered and cleared the Reserve it could easily prove so by EIA process that the court ordered . This show the bon fides of the appeal and conduct of Defendant. It had neither obtained de reservation of road access nor engaged EIA process. Plaintiff's rights are violated due to the actions of the Defendant and it is continuing through environmental effects and this can be mitigated by remedial measures and this need not delay. Payment of fines and bond are recoverable if successful in appeal. Stay of the orders made against contempt is refused. The cost of this action is summarily assessed at \$1,500 to be paid by Defendant to Plaintiff within 21 days.

Final Orders:

- a. Application for stay of the orders made on 26.8.2022 refused.
- b. Cost of this application is assessed summarily at \$1500 to be paid by Defendant to Plaintiff within 21 days.




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Deepthi Amarātunga
Judge

At Suva this 02nd day of September, 2025.

Solicitors

Siwatibau and Sloan

Neel Shivam Lawyers

iTLTB