

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No: HBC 364 of 2017

BETWEEN: PUSHPA DEVI of Lot 4 Manuka Street, Nakasi Park Estate, Domestic Duties as Executrix and Trustee of the ESTATE OF NARAYAN NAIR aka NARAIN NAIR.

First Plaintiff

AND: AVISHESH NAVNIT NAIR of Lot 4 Manuka Street, Nakasi Park Estate, Clerk as Executor and Trustee of the ESTATE OF NARAYAN NAIR aka NARAIN NAIR.

Second Plaintiff

AND: WASU DEWAN NAIR aka VASU DEWAN NAIR aka BASUDEWAN NAIR of 5987 Leonardo Way, Elk Grove, CA 95757, Retired Machine Operator.

Third Plaintiff

AND: NARAINI NAIR of Vitogo, Lautoka, Domestic Duties.

Fourth Plaintiff

AND: NAIR'S TRANSPORT CO. LTD a limited liability company having its registered office at Lot 81, 9 miles, Nasinu (alongside Kings Road – Wainibuku Road Junction).

First Defendant

AND: KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company Director.

Second Defendant

AND: VINOD NAIR of 1 Corin Road, Manurewa, Auckland, New Zealand, Retired.

Third Defendant

AND: SARITA DEVI NAIR of Lot 81, Wainibuku Road, 9 Miles, Nasinu, Domestic Duties as the trustee of the Estate of RAJESHWAR NAIR.

Fourth Defendant

AND: KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company Director as the Trustee of the Estate of SARADA NAIR aka SHARDA DEVI NAIR aka SARDA DEVI NAIR.

Fifth Defendant

Representation:

Plaintiffs: Mr. V. Singh (Parshotam Lawyers)

Respondents: Mr. S. Nandan (On Instructions of S Nand Lawyers).

Date of Hearing: 1<sup>st</sup> October 2025.

## Ruling

### A. Introduction

- [1] I had granted leave to the plaintiffs to issue committal proceedings against Shorene Shabina Kant, Ritesh Rishi Nair and Damodran Nair (Respondents). The Respondents then filed summons to set aside the leave so granted. After dealing with the summons seeking to set aside the committal proceedings. I refused the application.
- [2] Shorene Shabina Kant and Ritesh Rishi Nair are now seeking stay of proceedings and leave to appeal the ruling that I delivered on 22<sup>nd</sup> August 2025. An affidavit of Ritesh Rishi Nair supports the application. An affidavit in response of Avishesh Navnit Nair was filed on 19<sup>th</sup> September 2025. An affidavit in reply of Ritesh Rishi Nair was subsequently filed on 26<sup>th</sup> September 2025.

### B. The Submissions

- [3] The lawyers filed written submissions and briefly summarized their submissions in court.

### C. Determination

- [4] Sir Moti Tikaram (the then President of Fiji Court of Appeal) 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. He 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] UKLawRpKQB 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] The grounds of appeal of the Respondents raise serious questions which need to be addressed on appeal. It would greatly assist this Court if those issues are ventilated and clarified by the Court of Appeal. It will allay all doubts and clarify the issues for the parties.
- [7] Having considered everything I am of the view on the materials that are before me that stay and leave to appeal my ruling should be granted.

**D. Court Orders**

The application by Shorene Shabina Kant and Ritesh Rishi Nair seeking stay of proceedings and leave to appeal is granted.

  
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Hon. Justice Chaitanya S.C. A Lakshman  
**Puisne Judge**  
9<sup>th</sup> October 2025

