

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBA 23 of 2024**
[On Appeal from the Environment
Tribunal Action No. 2/24].

IN THE MATTER of an application by the
Director of Environment under Section 43 of the
Environment Management Act 2005.

BETWEEN: **THE DIRECTOR OF ENVIRONMENT** whose registered office is based at
Levels 1 & 2, Bali Tower, 318, Toorak Road, Suva, Fiji.

FIRST APPELLANT

AND: **ATTORNEY - GENERAL OF FIJI**

SECOND APPELLANT

AND: **GREAT HAN INTERNATIONAL PTE LTD** whose registered office is at
Princess Road, Tamavua, PO Box 2589, Suva, Fiji.

RESPONDENT

BEFORE **:** **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Mainavolau J. for the Appellant**

Mr. Haniff F. with Garry R. for the Respondent

DATE OF DECISION: 21st January, 2026 @ 9-30am.

DECISION

[Notice of Motion and Summons for Stay of Execution of Orders Pending Appeal]

Introduction

1. There are two (2) applications and a Notice of Appeal filed by the Appellant(s) as follows:
 - (a) **Notice of Motion**

There be an extension of time given to the Appellants to move the appeal for hearing.
The Honourable Court issue a time-line for the Ruling of Copy Records and Submissions.
The Honourable Court fix a hearing date in the matter.
Any other orders deemed just by the Honourable Court.
Costs of this Action.
 - (b) **Summons for Stay of Execution of Orders Pending Appeal**

For an order that a stay of execution of the orders made by the Honourable Court on 20th November 2024 be granted pending an Appeal of the Court of Appeal and/or such others as deemed just by this Honourable Court on the grounds set forth in the affidavit of Apete Bauleka.
Costs of this application be costs in the cause.
 - (c) **Notice of Appeal**

Seeks an order that the Appellants be allowed to Appeal the Ruling of the Environment Tribunal delivered on 20th November 2024 on the premised that the Appeal be wholly set aside.
An order for costs.
There are altogether nine (09) Grounds of Appeal filed by the Appellant(s).
2. The Respondent opposed the application(s) filed by the Appellant(s) and sought for the Court to allow the completion of Buildings 1 and 2 on level 1 of Great Hans development on Princess Road, Tamavua as it is nearing completion.
3. The rationale for the First Applicant to seek an order for Stay of Execution Pending Appeal is that Pursuant to the law under section 43 of the Environment Management Act 2005, the Respondent requires the prior approval of the First Applicant before carrying out any development works as defined under the Environment Management Act 2005. The First Applicant has not given any approval for the Respondent to carry out works on the site. The First Applicant seeks for Stay of Execution of orders of 24th November 2024 be granted pending Appeal.
4. Both parties to the proceedings finished Court with written submissions and orally argued the applications.

Backgrounds to case

5. The Suva City Council [SCC] on 25th November 2013 announced the proposal to rezone Lots 1-7, on DP no. 5478 on Certificate of Title No. 21966 along Princess Road, from Residential A to Residential B.
6. The Mineral Resources Department [MRD] under Ministry of Lands conducted a limited geotechnical investigation consisting of four (4) 20m deep bores for above lots. Suva City Council issued a Notice to advise that the rezoning had been approved on 31st January 2014.
7. The Appellant's Contention is that the approval for rezoning to Residential B by the Director of Town and Country Planning [DTCP] did not take into consideration the various scientific articles within the geology field identifying the presence of significant active faults lines, fractures and discontinuities in the underlying bedrock along the Tamavua -i- wai area.
8. The Department of Environment on 11th April 2014 approved with conditions a Construction Environment Management Plan/ Operation [CEMP/OEMP] Management Plan for the Respondent in respect of the development of a single, 7 tier, split-level building structure along Princess Road, Tamavua. The Construction Environment Management Plan [CEMP]/Operational Environment Management Plan [OEMP] was a condition under the building approval issued by the Department of Town and Country Planning [DTCP] and Suva City Council.
9. The design of the Apartment was changed from 7-tier structure to the 6-apartment block with Building 1 and 2 to be a 2-storey building and Buildings 3 and 4, and 5 and 6 were to be three-storey buildings.
10. Department of Town and Country Planning [DTCP] and Suva City Council approved the change to add an additional floor to Buildings 1 and 2 and the approval was received on 1st August 2023 by the Respondent.
11. The Respondent commenced building of the additional third floor on Building 1 and 2, the Suva City Council referred the Respondent to the Department to undertake the Environmental Impact Assessment [EIA] screening process.
12. The Respondent submitted an Environmental Impact Assessment [EIA] screening application to the Department on 9th October 2023 for the additional third floor.
13. The Environmental Impact Assessment [EIA] Administrator sought for a Construction Environment Management Plan [CEMP] and Operational Environment Management Plan [OEMP] to be developed, which was submitted by the Respondent on 2nd November 2023.
14. The Technical Review Committee deemed that the Respondents Construction Environment Management Plan [CEMP] /Operational Environment Management Plan [OEMP] Respondent

inadequate since it lacked the information and data necessary to approve it. The Committee also highlighted the significant works associated with the geological instability of the site, including high possibility of land slips. Therefore, it was recommended by the Technical Review Committee that the Department reconsider the proposed expansion.

15. Based on the Report/recommendation of the Technical Review Committee, the Environmental Impact Assessment [EIA] Administrator declined the Construction Environment Management Plan [CEMP]/ Operational Environment Management Plan [OEMP] on 24th November 2023.
16. The Department indicated to the Respondent that no further requests from the Respondent would be processed in terms of the development work plan until such time the Construction Environment Management Plan [CEMP]/ Operational Environment Management Plan [OEMP] conditions have been duly satisfied.
17. Suva City Council had issued a stop order against the Respondent on 8th September 2023 for non-compliance of Suva City Council requirements, however, uplifted on 22nd August 2024, subject to the Respondent complying with the Department's requirements prior to commencement of construction on site.
18. On 18th September 2024, the Department confirmed through an inspection the Respondent was working on Building 1 and Building 2 on site.
19. Under Section 43(1) of the Act, the Respondent required the prior approval of the first Applicant before carrying out any development works. The First Appellant has not given any approval for the Respondent to carry out works on site because of the Respondent's failure to submit an adequate Construction Environment Management Plan [CEMP] report.

Preliminary issue

20. At this juncture, the Court pose the question to both Counsels:

'Does the Court have jurisdiction to hear the stay application?'

Determination

21. In terms of the **Preliminary issue**, the Appellant(s) Counsel submitted that the **Environmental Tribunal** has the same jurisdiction as the Magistrates Court and as such is governed by the **Magistrate's Court Rules** by virtue of **Section 56** of the **Environment Management Act 2005** [EMA].
22. *Section 56 (2)* states that:

'The Tribunal may hear and determine any appeal referred to it under this Act or any other written law.'

Section 56(3) The Tribunal may confirm or dismiss the appeal.'

Section 56(4) In hearing an appeal, the Tribunal may state a case to the High Court for its opinion.'

23. **Order 37 Rule 9 of the Magistrate's Court Rules** deals with the 'control of Appellate Court while appeal pending' and states:

"After a record of appeal has been transmitted until the appeal is disposed of, the Appellate Court shall be in possession of the whole proceedings between the parties to the appeal. Every application in the proceedings shall be made to the Appellant Court and not to the Court below, but any application may be made through the Court, provided that, in cases of urgency, the Court below may make any interim order to prevent prejudice to the claims of any party pending an Appeal, but every such order may be discharged or viewed by the Appellate Court."

24. However, the Respondent's Counsels submitted that at the Court Appearances on 11th June 2005, the Respondent informed the Court that the Court did not have the jurisdiction to hear the Summons for stay of Execution of orders pending Appeal. The Respondent says that the application should have been filed in the **Environmental Tribunal** and cited Court with some case authorities.
25. The Respondent says that in the alternative that no plausible reason is given by the Applicants for a stay.
26. The Counsel added that the matters raised in the Appeal are legal in nature. Suva City Council and the Mineral Resources Department has lifted its stop work notice on Buildings 1 and 2. The Environment Tribunal has also held that Buildings 1 and 2 can be completed. As with Suva City Council and Mineral Resources Department, the Environmental Tribunal has ordered no work for Buildings 3 and 6.
27. Buildings 1 and 2 is just about completion. No justifiable reason is given by the Applicants to stop work for buildings 1 and 2.
28. The Appellant(s) herein are seeking for Stay of Execution of Orders pending appeal and that **the Appellate be allowed to appeal the ruling of the Environment Tribunal delivered on 20th November 2024.**
29. At the time of the Delivery of the Ruling dated 24th November 2024. The presiding Resident Magistrate focused on the very narrow scope of 'whether the company, Great Han International Pte Ltd, can continue to work on Buildings 1 and Buildings 2 in order to complete Level 3 of the Construction Works?

30. The Tribunal ruled in favour of 'Great Hans, granting them permission to finalise the Construction of Buildings 1 and 2 exclusively. 'The tribunal also determined that the factors, evidence and arguments presented by Great Hans were more compelling than those put forth by the Ministry of Environment.'
31. The orders granted by the Court were:
- (1) Orders sealed on 23rd September 2024 ordering the Respondent to cease all development work on Certificate of Title No. 21966, Lot 1-7 on Deposit Plan No. 5478 be set aside,
 - (2) The Respondent is permitted to continue with the works on buildings 1 and 2 on Level 1 only on Certificate of Title No. 21966, Lot 1-7 on Deposit Plan No. 5478.
 - (3) Order (1) pertains exclusively to the orders issued by this Tribunal and does not impact or supercedes any orders that may be issued by other authorised entities.
 - (4) Cost awarded to the Respondent in the amount of \$2,500.
32. **Section 56(2)(3) and 4 of the Environment Management Act 2005** deals with **Appeals** only and not with '**Stay of Execution of orders pending Appeal**'; However, Order 45 Rule 10 [O.45, R10] of the High Court Rules deals with '**Stay of Execution of orders pending Appeal**.'
33. Therefore, the High Court is in fact empowered and has the Jurisdiction under **Order 45 Rule 10** to hear and determine the '**Stay of Execution of orders pending Appeal**' which this Court has now heard.
34. Further, **in terms of the Appeals**, the Environment Tribunal has the same jurisdiction as the Magistrate's Court and as such is governed by the Magistrate's Court Rules by virtue of Section 56 of the Environment Management Act 2005.
35. An appeal from the Environment Tribunal lies in the first instance, to the High Court. Order 37 Rule 9 of the Magistrate's Court Rules implies that the Appellate Court being the High Court assumes the jurisdiction over the entire proceedings once the record of the Appeal is being transmitted from the Environment Tribunal.
36. Now coming back to the Application for 'Stay of Execution of orders granted on 20th November 2024 pending appeal:

The presiding Resident Magistrate had in his ruling on 20th November 2024 permitted the Respondent to continue with the works on Buildings 1 and 2 on Level 1 only on the Certificate of Title No. 21966, Lots 1 - 7 on Deposited Plan No. 5478 and the Learned Magistrate very clearly in his order at No. 3 stated

that Order 1 pertains exclusively to the orders issued by the Tribunal and does not impact or supercede any orders that may be issued by other authorized entities.

37. It is also noted that there is already a 'stop work order' for Buildings 3 and 4 on Level 2 and Buildings 5 and 6 issued by the Suva City Council and the Mineral Resources Department.
38. The court further noted that there were clearly outside vested interests that is having repercussions on Great Han International's Princess Road Project. Building 1 and 2 on Level 1 is nearing completion. The Suva City Council gave Great Han International the building permit on 10th April 2017 and that Suva City Council has made serial several mandatory site inspections at each stage of the Construction approving the Construction of Buildings 1 and 2 on Level 1.
39. On 12th September 2023, Suva City Council only issued a 'stop work notice' for Great Han International to stop work on the Princess Road Project when a group calling itself the Tamavua Action Group had made a complaint to Suva City Council that Princess Road Project would put Tamavua - i - wai residents right at the bottom of the Princess Road Project at risk because a **geotechnical survey** had not been carried out by Great Han International prior to commencing the Princess Road Project.
40. The question arises that "If **no geotechnical Survey** was carried out by Great Han International, then why did the Suva City Council give Great Han International the building permit on 10th April 2017 bearing in mind also that Suva City Council made several mandatory site inspections at each stage of the Construction **approving the Construction of Buildings 1 and 2 on Level 1?**"
41. Taking into consideration, the oral and written submission coupled with the arguments heard during the proceedings, I am not satisfied as to why I should grant a Stay of Execution of the orders made on 20th November 2024.
42. The Appellant's summons seeking 'for Stay of Execution of orders pending Appeal' is not acceded to and accordingly refused and dismissed in its entirety.
43. On the Application for Notice of Motion, this Court grants and allows an Extension of 14 days' time to the Appellant(s) to move the Appeal coupled with the Grounds of Appeal for a hearing date.

Costs

44. At this juncture, this Court will not make any orders for any cost against the parties to the proceedings until the Grounds of Appeal are heard and determined accordingly.

In Conclusion


45. The High Court is empowered and has the jurisdiction under Order 45 Rule 10 [O.45, R10] of the High Court Rules 1988 to hear and determine the application of Stay of Execution of orders granted on 20th November 2024, which it has heard now.
46. In terms of the 'Appeal', the **Environment Tribunal** has the same jurisdiction as the Magistrates Court and is governed by Section 56 of the Environment Management Act 2005.
47. Order 37 Rule 9 of the Magistrate's Court Rules implies that the Appellate Court being the High Court, assumes the jurisdiction over the entire proceedings to hear and determine the appeal.
48. The Appellant is allowed and granted 14 days' time to Appeal the Ruling of the Environment Tribunal of 20th November 2024 and move the Appeal for hearing coupled with the Grounds of Appeal filed herein.
49. There will be no orders as to costs.

Orders

- i The Appellant's Summons seeking for Stay of Execution of orders of 20th November 2024 is dismissed in its entirety.
- ii An extension of 14 days' time is granted to the Appellant(s) to Appeal the Ruling of 20th November 2024 and move the Appeal for Hearing together with the Grounds of Appeal accordingly.
- iii There will be no order as to costs against the parties to the proceedings.

Dated at **Suva** this **21st** day of **January** ,2026.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Attorney General Chamber, Suva
Haniff Tuitoga, Suva