

**IN THE FAMILY DIVISION OF THE HIGH COURT**

**AT LAUTOKA**

**APPELLATE JURISDICTION**

<b>ACTION NUMBER:</b>	<b>Family Appeal # 16 of 2023</b> Magistrate's Court File #22/LTK/0089)
<b>BETWEEN:</b>	<b>DYLAN AND VANCE</b> <b>APPELLANT</b>
<b>AND:</b>	<b>MADELINE</b> <b>1<sup>ST</sup> RESPONDENT</b>
	<b>AIDEN</b> <b>2<sup>ND</sup> RESPONDENT</b>
<b>APPEARANCES:</b>	<b>Ms. R Lal &amp; Ms Turaga</b> (Lal Patel Bale Lawyers) for the Appellant
<b>DATE/PLACE OF JUDGMENT:</b>	Monday 31 <sup>st</sup> July 2023 at Suva
<b>DATE OF HEARING:</b>	Thursday 27 <sup>th</sup> July 2023
<b>CORAM:</b>	Hon. Mr. Justice Chaitanya Lakshman
<b>CATEGORY:</b>	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i>

**Ruling - Ex- Parte Application**

**Stay Pending Appeal**

## Introduction

1. On **26<sup>th</sup> July 2023** the Appellants filed an Ex-Parte Application (Form 12) seeking the following orders:

*“1. An order for interim stay pending the outcome of the Appellants appeal via Form 26 Appeal filed herein.  
2. An order for an early Court date.  
3. Any other orders that this Honorable Court deems just and fair in the circumstances.”*

The Application accompanied an Affidavit (Form 23) of Ms Payal Jayshree Kumar.

2. Section 202 (3) of the Family Law Act 2003 provides that *“A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court thinks appropriate.”*
3. This Court has granted the Applicants an early Court date. This Court has noted the urgency of the matter, and the intricate issues involving the consent orders entered into between the Respondents. Especially those involving the transfer of shares of companies and the harm it may cause to the Applicants if the matter did not proceed on an ex-parte basis.
4. A brief history of this matter is that on 23<sup>rd</sup> March 2022 the Respondents filed a Form 8 (Application for Consent Orders). The Respondents in the consent orders amongst other issues of residence and contact of their children, schooling, residency, maintenance, expenses, and overseas travel, included assets. Under the head of assets, the Respondents entered into an agreement for transfer of shares of certain companies from the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondents and their children. A set of orders were sealed separately where the 1<sup>st</sup> Respondents and their children became the new party (through an entity nominated by the 1<sup>st</sup> Respondent to the Vunabaka Bay Joint Venture and the shareholders of Vunabaka Bay Fiji Limited in the same proportions as held by Satori Holdings Limited (31.66%). These orders were granted on 30<sup>th</sup> March 2022.
5. The Applicants are the Receivers and Managers of Island Grace (Fiji) Limited (in Receivership and Liquidation) (IGFL). IGFL was the legal owner of the Resort trading as “Six Senses Fiji” in its capacity as trustee of Island Grace Joint Venture (“IGJV”). The 2<sup>nd</sup> Respondent is the sole director and legal shareholder of Satori Holdings Limited (in liquidation).
6. On 10<sup>th</sup> May 2022 the Applicants filed an Ex-Parte Application seeking interim stay pending the hearing of the application for the setting aside of the consent order granted on 30<sup>th</sup> March 2022. On 11<sup>th</sup> May 2022 (orders sealed on 16<sup>th</sup> May 2022) the Learned Magistrate granted an interim stay in respect of the 30<sup>th</sup> March 2022 consent orders. On 7<sup>th</sup> June 2023 the Applicants through Nambiar Lawyers filed an

Application (Form 12) seeking an order to be granted leave to intervene in the proceedings. It was accompanied by affidavits (Form 23) of Mussarrat Misbah Shameer and Vaughan Neil Strawbridge. In a ruling delivered on 15<sup>th</sup> June 2023 the Form 12 and 23 were struck out. The Applicants were at liberty to file further Form 12 and 23 to seek to intervene.

7. On 21<sup>st</sup> June 2023 the Applicants filed a Form 12 (Application) and an Affidavit of Isoa Matanitobua seeking leave to intervene in the proceedings. On 24<sup>th</sup> July 2023 the Learned Magistrate dismissed the application for leave to intervene citing lack of locus and the interim stay order sealed on 16<sup>th</sup> May 2022 was revoked. This is the decision the Applicants are seeking a stay of and appealing.

8. The law on stay pending appeal is well settled. In **Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd** [2005] FJCA 13; ABU0011.2004S (18 March 2005) the factors for consideration by a Court in stay application are set out as:

*“(a) Whether, if no stay is granted, the applicant’s right of appeal will be rendered nugatory (this is not determinative).*

*(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.”*

9. We shall now go over each factor in turn. Having considered the submissions of the lawyers for the Applicant and all the material before it this Court finds that in the event a stay is not granted and the Applicants succeed in the appeal, the appeal will be rendered nugatory. The chance that the Respondents will transfer the shares and interests in the companies before the appeal is dealt with is high. It will be difficult for the Applicants to recover its legal claim if the shares and interests are transferred to any other person or entity.

10. The Respondents will not be injuriously affected by a stay. The Applicants have filed their appeal when they filed this application. The bona fides of the Applicants is not in question. This Court is mindful that the Applicants may lose out if according to their information the shares are transferred to a Delaware Company and are then beyond the reach of the creditors and liquidators.

11. The appeal raises a number of novel and important issues. Section 179 of the Family Law Act 2003 dealing with intervention by other persons, setting aside of consent

orders, whether Section 163 of the Family Law Act 2003 is limited only to parties to a marriage and other issues need to be considered during the appeal.

12. The Applicants contend that as Receivers and Administrators of Island Grace (Fiji) Limited they have a duty to collect and realise the assets of Island Grace (Fiji) Limited for the benefit of its secured creditors and all creditors generally. There is considerable public interest consideration in this matter. It is not only so within Fiji but internationally with the High Court of New Zealand in **Island Grace (Fiji) Limited (in Receivership and in Liquidation) v. Satori Holdings Limited (In Interim Liquidation) [2022] NZHC 219** in a judgment delivered by Associate Judge PJ Andrew on 17<sup>th</sup> February 2023 in para 107 commented as follows *“on their face, the circumstances in which Mr Griffiths sought and obtained orders from the Fijian Family Court are of concern. Mr Griffiths purported to replace Satori as party to the VBJV with the Delaware corporation associated with his wife and to transfer Satori’s 31.66 per cent shareholdings in VBFL to that Delaware corporation. However, it is not possible for me to reach a concluded view on that matter. I would nonetheless, observe that the order sought by the receivers staying the consent order, whilst protecting the position in the interim, does not address the question of whether there was a valid basis for the order in the first instance. Nor has Mr Griffiths provided a full explanation of the circumstances giving rise to the consent order.”*
13. The balance of convenience is in favour of the Applicants. The Applicants who represent the creditors will be affected financially in the event a stay is not granted. The interest of justice demands that this Court grant an interim stay pending the appeal.

**Court Orders:**

- (i) **Interim Stay of the decision of Acting Senior Resident Magistrate Mr Dalituicama dated 24<sup>th</sup> July 2023 pending the determination of the appeal.**
- (ii) **The Interim Stay granted by the Learned Magistrate, Mr Lewaravu and sealed on 16<sup>th</sup> May 2022 is re-instated pending the determination of the appeal.**
- (iii) **Costs are reserved pending the appeal.**
- (iv) **The Respondents and/or their lawyers are to be served the orders of this Court, with the applications and the notice of appeal.**
- (v) **Matter is listed for mention at Lautoka Family High Court on 29<sup>th</sup> August 2023 at 10 am.**

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Chaitanya Lakshman

**Acting Judge**

31<sup>st</sup> July 2023  
(Delivered in Suva)