

TIMOCI NACO & MEREANI NACO

v.

SHERIFF OF THE REPUBLIC OF FIJI

[HIGH COURT, 1990 (Jayaratne J) 7 September]

Civil Jurisdiction

- B** *Practice (Civil)- execution- whether Sheriff of Fiji a private individual or an officer of the state- whether the Sheriff is liable for actions taken as an agent of the High Court- Crown (State) Proceedings Act (Cap. 24).*

The Plaintiffs brought proceedings against the Sheriff of Fiji after a writ of *fifa* had been executed against them. On application being made to strike out the proceedings the Plaintiffs argued that the Sheriff could not be represented by the Attorney-General's Chambers as he was, since Fiji had become a republic, no longer an officer of the crown. The High Court HELD: (i) that the Sheriff was an officer of the state and hence was properly represented and (ii) that a Sheriff acting as agent of the High Court is not liable for those actions.

- D** Cases cited:

Vijay Parmanandam v. Attorney-General (C/A 137/89)

Williams v. Williams & Nathan (1937) 2 All ER 559

V. Parmanandam for the Plaintiffs

Mrs. K. A. Hayhow for the Defendant

- E** Application in the High Court to strike out statement of claim.

Jayaratne J:

- F** This ruling is in respect of a summons to strike out the statement of claim of the Plaintiff dated 30/3/90 which (summons) was subsequently restored to the list on 4/6/90 returnable on the 15 June 1990. It is evident going through the file that the Plaintiff has been given a date to file an affidavit regarding this preliminary objection and an affidavit in reply was to have been filed by the Defendant thereafter.

By the time of the summons returnable date, none of the affidavits were in the file and arguments on both sides proceeded in a very brief form.

- G** Mr. Parmanandam raised a preliminary objection to the legal officer of the Attorney General's Chambers appearing on behalf of the Defendant. He argued that the Defendant is a private party and therefore he cannot be represented by the officer of the Attorney General's Chambers. Arguing further he said that the word "Crown" can no longer be used. Now it is Republic.

The legal officer, Ms Hayhow countered that she has the right to appear as the

Sheriff is a Government servant paid by Government and appointed by the Chief Justice.

Arguing further Mr. Parmanandam said this matter of the Defendant's summons to strike out must not be allowed. It is an arguable matter which cannot be decided without evidence. Advancing the argument further he said that the Sheriff did not execute the writ according to the court ruling and acted contrary to it.

On this brief oral submission, I take it that I can dispose of the summons to strike out the statement of claim. I shall first deal with the preliminary objection of Mr. Parmanandam.

It is apposite to quote Section 3(6) of the Crown Proceedings Act Cap. 24:-

"No proceedings shall lie against the Crown by virtue of this section in respect of any act, neglect or default of any officer of the Crown unless that officer has been directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund or was at the material time holding an office in respect of which the Chief Accountant certifies that the holder thereof would normally be so paid,"

The Sheriff is appointed by the Chief Justice and is paid out of the Consolidated Fund. He therefore becomes an officer of the Crown as contemplated in Section 32(2) which I give below:-

"In this Act, except in so far as the context otherwise expressly provided-

"agent" when used in relation to the Crown, includes an independent contractor employed by the Crown;

"civil proceedings" include proceedings in the High Court for the recovery of fines or penalties but do not include proceedings of a nature such as in England are taken on the Crown side of the Queen's Bench Division;

"officer" in relation to the Crown includes any servant of Her Majesty in right of its Government of Fiji and accordingly (but without prejudice to the generality of the foregoing provisions) includes the Governor General."

As Mr. Parmanandam argued, the word "Crown" has no place in the country after the transformation of its political status to a Republic. Nonetheless it is equally accepted in common parlance of Constitutional Law that the word 'state' is used thereafter with the President as the Head of the State. Furthermore there is now a constitution of the Sovereign Democratic Republic of Fiji in force. Clause 8(1) of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990 reads thus:-

A “All existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and this Decree.”

B Civil Action 137/89 Vijay Parmanandam v. Attorney General has no application in this case and it is of no assistance at all. In that the Sheriff was not the Defendant. If he was, the objection raised in this case would have become relevant.

In the circumstances I rule that Sheriff is an officer of the State and he can be represented by legal officer of the Attorney- General’s Chambers.

Now I shall come to the merits of the application to strike out the statement of claim.

C In this regard I shall give a brief history as to how the Plaintiff came to file the writ. There had been a case 548/88 where the Plaintiff in this case was the Plaintiff there too and some other Defendants. The case had ended in a settlement whereby the Defendants’ obligation was to transfer some shares and the Plaintiff was to pay some moneys to the Defendants.

D I am not expected to go into the merits of that case except to state that a writ of *fifa* was issued to the Defendant to go against the property of the Plaintiff in satisfaction of the writ.

E The Sheriff in pursuance of the issuance of this writ of *fifa* by the Registry has executed the writ. He had only to get instructions from the Registrar of the Civil Registry who is also the Sheriff by virtue of the office as Registrar. The bailiff who goes for execution carries out the instructions of the Sheriff. Thus he becomes an agent of the Sheriff, Mr. Parmanandam’s allegation as mentioned in the amended statement of claim is that he has seized more goods of the Plaintiff the value of which exceeds the amount of \$5000.00 to be recovered. That is a matter of personal opinion. The particulars alleged as a breach of duty by the Defendant in F (a), (b), (d) under the heading Particulars in the statement of claim are strictly matters which do not concern the Sheriff in the execution process.

G The decision in Williams v. Williams & Nathan [1937] 2 All E.R. 559 is in point where Greer L.J. has held thus: ‘it appears to me that the law is as stated G. Parke B in Howard v. Cosset at p.435 that the Sheriff and his officers executing a judgment, however wrong the judgment may be, or however mistaken they may be as to the effect of the judgment, are not liable to have an action brought against them for damages for what they have done. On the authority of that very great Judge, it seems to me right to say that the Sheriff and his officers are free from liability for what they did in this case however mistaken they may have been in thinking that they were entitled to turn out the respondents’.

The writ protects the Sheriff in all his actions towards the execution of it so long as he acts as an agent of the High Court. On the face of the statement of claim I have no reason to think or believe that he has in any way faulted. He has just carried out the execution. Paragraph 428 Halsbury Law of England Vol 17 is worthy of mention:- A

“The writ is the Sheriff’s jurisdiction for the acts done under it, and he is not bound to execute it unless it is in proper form and properly indorsed; but if the writ is regular he bound to execute it without question, and it gives him an absolute justification for all acts done under it, even though the judgment is afterwards set aside.” B

In resume I come to the irresistible conclusion that there is no cause of action disclosed against the Sheriff and I do hereby strike out the statement of claim and dismiss the action. The Defendant is entitled to costs taxed if not agreed. C

(Application allowed; action dismissed.)

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