

**RATU SOLOMONI NAQA and 11 Ors v ATTORNEY-GENERAL OF FIJI
and 2 Ors**

HIGH COURT — CIVIL JURISDICTION

5 SINGH J

15 October 2002

10 [2002] FJHC 319

Practice and procedure — judgments and orders — interlocutory injunction — application to dissolve stay order — whether order extends to substantive actions — what the word proceedings include in the order.

15 Plaintiffs filed two actions pending in the High Court namely Civil Action 576 of 1998 and Civil Action 237 of 2002. An application was made to consolidate the two actions, but failed because Justice Byrne made a stay order in respect of the consolidation. Defendant filed an interlocutory injunction and application to dissolve the stay order on the ground that the order only stays the substantive action.

20 **Held** — (1) Justice Byrne imposed a condition that in Action 576 was stayed until such time Action 237 was determined. The effect is nothing further could be done in Action 576 until the other action is disposed of.

(2) The word proceedings was not intended to apply merely to the cause of action itself but to all day to day and interlocutory steps in the action. Anything or any steps that precede the final judgment or order are considered proceedings in the action.

25 (3) A stay of proceedings arises under an order of the court which puts a stop or stay on further conduct of the proceedings in that court at the stage which they have reached so that the parties are precluded thereafter from taking any further steps in the proceedings.

Interlocutory injunction and application to dissolve refused.

30 **Cases referred to:**

Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd [1991] 1 WLR 550, considered.

35 *I. Fa* and *Tuituku* for the Plaintiffs

S. Banuve and *G. Leung* for the 1st Defendant

N. Bukarau for the 2nd Defendant

40 *F. Hanif* for the 3rd Defendant

Decision

45 **Singh J.** The Plaintiffs have two actions pending in this court. In Civil Action 576 of 1998 the Defendants are the Attorney-General of Fiji, the Native Land Trust Board and the Fiji Electricity Authority. The second action is Civil Action 237 of 2002 where there is only one Defendant the Fiji Electricity Authority.

50 Civil Action 237 of 2002 was filed after the Plaintiffs failed in their attempt to have the writ of summons in Civil Case 576 of 1998 amended to allege breach of contract. Later an application was made to consolidate the two actions, which again failed.

Justice Byrne in the course of the ruling in respect of consolidation ruled as follows:

5 *I consider there is much common sense in the approach taken so belatedly by the three defendants here and accordingly, although I refuse an order for consolidation, I will order instead that the proceedings in Action 576 be stayed until the determination of action No 237. I therefore order that Action 237 now take its normal course ...*

10 The issue before the court is one of construction — whether the order extends to hearing of the substantive matter in Action 576 of 1998 or does it extend to all interlocutory matters in that action as well.

This matter of construction is of considerable importance to the 2nd Defendant as on 6th November 1988 Justice Byrne on an ex parte notice of motion had ordered:

15 *That the second defendant whether by itself or by its servants or agents or otherwise howsoever be restrained from entering into any contract with any third parties for the alienation of the Plaintiffs land within the water catchment area at Monasavu until the final determination of this matter or such further orders of this Honourable Court.*

20 On 1st June 2001 the 2nd Defendant had filed summons to set aside the ex parte injunction. This has not been heard so far.

The 2nd Defendant submitted that the only reasonable construction of Justice Byrne's order is it only stays the substantive action. Any other construction would do violence to the terms of original ex parte injunction where paragraph reads "*all parties be at liberty to apply on 72 hours notice*". Second, any other construction would effectively render ex parte injunction a permanent one, as it would paralyse all applications in the action.

30 It is not disputed that the order for stay was properly made. The purpose of the stay was to conserve resources and to save time. Justice Byrne considered that it would be pointless to hear two actions if resolution of one might effectively dispose of the other. This appears to be the reason, which led Justice Byrne to make the order he did. On p 5 of his decision he said that he agreed with last two paragraphs of 3rd Defendant's submission which read as follows:

35 *Since it is abundantly clear that success in the new action would have the effect of eliminating the original action, the appropriate order is that the original action be stayed until the determination of the new action. The plaintiffs appear not to oppose this course of action. They submit at page 8 of their submissions that it is in the interests of justice that the issue of settlement should be heard first ...*

40 At the point in time that he made the order, the present application was on the file. He would be fully aware of the ex parte injunction and the present application to dissolve the ex parte injunction. Despite this, he made the order of stay.

45 Mr Fa, counsel for the Plaintiffs, referred the court to a number of authorities. Those authorities deal with grant of stay and factors considered in granting a stay. Those cases are not strictly relevant to the present proceedings since stay has been granted. The only issue before the court now is one of construction and effect of that order.

The effect of a stay was explained in *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd* [1991] 1 WLR 550 at 556 by Lord Oliver of Aylmerton as follows:

50 *A stay of proceedings is an order which puts a stop to the further conduct of proceedings in Court or before a tribunal at the stage which they have reached, the object being to*

avoid the hearing or trial taking place ... It simply means that the relevant Court or tribunal cannot, whilst the stay endures, effectively entertain any further proceedings except for the purpose of lifting the stay.

Halsbury Laws of England, 4th ed, vol 37, para 437 at 325 describes stay of
5 proceedings as follows:

A stay of proceedings arises under an order of the Court which puts a stop or "stay" on further conduct of the proceedings in that court at the stage which they have reached so that the parties are precluded thereafter from taking any further steps in the proceedings.

10 The learned authors then go on to consider effect of stay of proceedings. The effect of stay depends on whether it is a general stay or one to which conditions are attached:

15 *In case of a general stay, an application for its removal is necessary. On the other hand, the order to stay proceedings may define the circumstances in which it will be removed ... In these circumstances the stay is removed immediately upon performance or compliance with the specified act or condition, and no application for the removal of the stay is necessary.*

20 Justice Byrne imposed a condition in that proceedings in Action 576 were stayed until such time Action No 237 was determined. The effect is nothing further could be done in Action 576 until the other action is disposed of.

The word "proceedings" is not intended to apply merely to the cause of action itself but to all day to day and interlocutory steps in the action. Anything or any steps that precede the final judgment or order in my view are "proceedings" in the
25 action.

An interlocutory injunction and an application to dissolve it therefore fall within the ambit of the word "proceedings". The stay granted therefore extends to the type of application which is before the court. Hence it cannot be heard so long as Justice Byrne's order dated 23rd July 2002 subsists. The 2nd Defendant
30 is to pay costs to the Plaintiff in respect of this application to be taxed if not agreed.

Interlocutory injunction and application to dissolve refused.

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