

ANZ BANKING GROUP LTD -v- RD PLUMBING AND HARDWARE CO. LTD. OFFICIAL
ADMINISTRATOR OF UNREPRESENTED ESTATES(As Administrator of RAM DHARI
(Deceased), NODE DHARI, DONALD DHARI, SURESH DHARI

High Court of Solomon Islands
(Awich, Registrar)
Civil case No. 47 of 1994
Hearing: 25 May 1995
Ruling: 26 May 1995

*A. Radclyffe for Plaintiff
T. Kama for Defendant*

Awich, Registrar: This hearing was for the application of the plaintiff seeking order that Registrar may sign instrument of transfer of parcel 097-005-77, Gizo that the Court ordered on 27 October 1994 to be sold. Before the date of hearing the 1st, 3rd, 4th and 5th defendants took out summons seeking to be heard on application to stay execution. I granted leave to have the application of the defendants heard together with that of creditor. I accepted the reason given by Mr. Kama that there was a mix up. While counsel for plaintiff had served Mr. Tegavota who was counsel for defendants, the newly engaged counsel Mr. Kama was not in fact aware of the plaintiffs application and thought the date was given for hearing of his own application. He was going to ask for postponement to allow him time to serve summons.

Mr. Kama's application on behalf of defendants is not grounded on submission that there has been error in law to ingranting judgment to the plaintiff or in the order made on 27.10.94 to have the charged property No. 097-005-77 sold in execution. The application is merely a plea that defendants want to keep that particular property because the value given to it in a valuation report is much higher than the price now obtained by tender. They offered as alternative, sale agreement made yesterday to sell parcel No. 097-004-50 for \$150,000 to a Mr. Cole. Mr. Kama submitted that there would be no prejudice if defendants were given 14 days to finalise the sale and pay off the judgment debt because interest continues to accrue.

It is my ruling that Mr. Kama's application for stay of execution must fail. There is order of court to sell, and to change the position the court must be reasonably assured that prejudice will not be occasioned to the creditor. This is particularly so where as it is the case here, sale has already taken place. Application to stop the sale will only succeed if it is shown that the sale was fraudulent.

The credit has now obtained price, possibly payment. The agreement referred to by Mr. Kama does not go far enough to offer protection against the prejudice likely to occur. I must mention here that judgment was sought as long ago as October last year, defendant had more than enough opportunity to do something. I refuse the application for stay of execution and grant that to have Registrar sign document of transfer. In view of the fact that the Registrar has dealt with this case, I order that sheriff Mr. Kwaimani sign the documents of transfer. Costs awarded to plaintiff.

(Sam Awich)
REGISTRAR