

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CIVIL JURISDICTION**

**CASE NUMBER:** HBC 191 of 2001/L

**BETWEEN:** **NATIVE LAND TRUST BOARD**

**PLAINTIFF**

**AND:** **HARI PRASAD**

**DEFENDANT**

**Appearances:** *Mr. Boseiwaqa for the Plaintiff.*

*Mr. G. P. Shankar for the Defendant.*

**Date / Place of Judgment:** *Friday 25 July, 2014 at Suva.*

**Coram:** *The Hon. Justice Anjala Wati.*

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## **JUDGMENT**

**Catchwords:**

*High Court's jurisdiction to grant stay of orders of Agricultural Tribunal pending appeal to Central Agricultural Tribunal.*

**Legislation:**

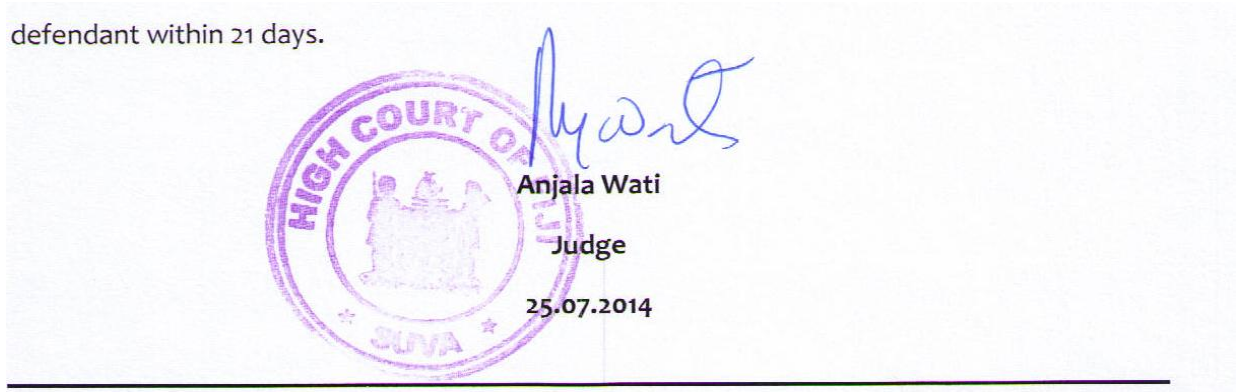
*The High Court Rules 1988 ("HCR").*

*The Magistrates' Courts Rules Cap.14.*

*Agricultural Landlord and Tenant (Tribunal Procedure) Regulations Cap. 270.*

1. The plaintiff seeks from High Court an order that the judgment of the Agricultural Tribunal of 6 March 2000 be stayed pending the appeal of Agricultural Tribunal References No. WD 2 of 1999; 3 of 1999; and 4 of 1999 to Central Agricultural Tribunal.
2. Pursuant to the order of the Agricultural Tribunal, the enforcement proceeding by a writ of fieri facias was issued by the Magistrates' Court at Lautoka on 6 April 2000. The plaintiff in particular wants this writ to be stayed.
3. On 5 July 2001, an ex-parte order was granted staying the judgment of the Agricultural Tribunal until 20 July 2001.
4. On 20 July 2001, a further order was made that the judgment of the Agricultural Tribunal be stayed pending further orders of the Court.
5. The question before the Court is principally that of the jurisdiction of the High to grant stay of the orders of the Agricultural Tribunal pending appeal to the Central Agricultural Tribunal.
6. It is very clear that the High Court is not the appellate court in this case. The Central Agricultural Tribunal will hear the appeal. The High Court thus does not have jurisdiction to hear the question of stay in this matter.
7. The counsel for the plaintiff says that the application is made under **Order 45 Rule 1(1)** of the **HCR**. This legal provision applies where the substantive matter was before the High Court and not otherwise.
8. The proper jurisdiction vests in the Agricultural Tribunal pursuant to **Regulations 3 and 44** of the **Agricultural Landlord and Tenant (Tribunal Procedure) Regulations Cap. 270**. The procedure to make such applications is enshrined in **Order XXXVII Rules 6 and 9** of the **Magistrates' Courts Rules Cap. 14**.
9. The application is thus declined on the grounds of jurisdiction. I order that the stay granted by this Court be dismissed.
10. The plaintiff is at liberty to apply for stay at the Agricultural Tribunal.
11. This application for stay should not have been made ex-parte or in the High Court at all. The defendant has been put to legal costs of defending the proceedings. An affidavit in

opposition of the stay application and submissions were filed. There were also court appearances which all involved costs. The defendant is therefore entitled to costs of the proceedings which I summarily assess to be at \$750 to be paid by the plaintiff to the defendant within 21 days.



**To:**

1. **ITLTB.**
2. **Defendant.**
3. **File No. HBC 191 of 2001/L.**