

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 55 of 2009

BETWEEN : RAVUAMA VONU 1<sup>st</sup> Plaintiff

AKARIVA VURA 2<sup>nd</sup> Plaintiff

AND : REVEREND SIMIONE KOROI 1<sup>st</sup> Defendant

: KEVERIELI VONO 2<sup>nd</sup> Defendant

: THE METHODIST CHURCH OF FIJI 3<sup>rd</sup> Defendant

: CORPORAL AME AND OTHER POLICE OFFICERS 4<sup>TH</sup> Defendant

: THE COMMISSIONER OF POLICE 5<sup>th</sup> Defendant

: THE ATTORNEY GENERAL OF FIJI 6<sup>th</sup> Defendant

COUNSEL : Mr. N. Tuifagalele for the Plaintiffs  
Mr. S. Valenitabua for the Defendants

Date of Hearing : 17<sup>th</sup> November, 2015

Date of Ruling : 10<sup>th</sup> December, 2015

## RULING.

- [01] The plaintiffs filed this action against the defendants claiming damages caused to their house. The plaintiffs' case is that they constructed the house in question but at the time the damage was caused to it no one was in occupation. The plaintiffs also averred that in 1993 they obtained a loan of \$ 18,000 from Colonial National Bank and renovated the house.
- [02] The 1<sup>st</sup> and the 2<sup>nd</sup> plaintiffs are the father and the son respectively. At all times material to this case the 1<sup>st</sup> defendant was the Minister of the Methodist Church in Vanuaso and also was the head Methodist Minister over Vanuaso, Nacavanadi, Malawai, Lamiti and Lebani villages. The 2<sup>nd</sup> defendant was the "Vakatawa" or Steward of the Nacavanadi village Methodist Church. The 3<sup>rd</sup> defendant is a religious body under whose administration and control, the 1<sup>st</sup> and 2<sup>nd</sup> defendants carried out their duties as ordained Methodist Church preachers at Nacavanadi village. The 4<sup>th</sup> defendants are police officers and the 5<sup>th</sup> defendant is the Commissioner of Police. The Attorney General has been named as the 6<sup>th</sup> defendant in accordance with the provisions of the State Proceedings Act (Cap 24).
- [03] The 1<sup>st</sup> plaintiff upon his return from the village found that his house had been broken into by someone and things that were inside the house had been damaged or burnt. The floor of the house had also been damaged and the ground underneath had been dug up. The plaintiffs have given a list of things that were either damaged or missing from the house in their statement of claim.
- [04] When contacted the 1<sup>st</sup> and 2<sup>nd</sup> defendants they had explained what transpired during his absence. The 1<sup>st</sup> and 2<sup>nd</sup> defendants had brought a lady who was supposed to have cleansing power through prayer and during the prayer session in the Church this lady supposedly became possessed with a spirit and the spirit had told the congregation that the 1<sup>st</sup> plaintiff was practicing witchcraft and worshipping a skull in his house.
- [05] The 1<sup>st</sup> and 2<sup>nd</sup> defendants with the assistance of the other members of the congregation search for a skull and in the process damaged the floor of the house and other things that were there in the house.

- [06] The plaintiffs sued the defendants for special and general damages. The learned High Court Judge ordered the 1<sup>st</sup> and 3<sup>rd</sup> defendants to pay the plaintiffs \$ 28045.76 as special and general damages within 30 days from date of the judgment with interest at the rate of 4%. Being aggrieved by the said award the 1<sup>st</sup> and 3<sup>rd</sup> defendants appealed to the Court of Appeal and sought the stay of the execution of the judgment pending the decision of the appeal.
- [07] Order 45 rule 10 of the High Court Rules provides that without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.
- [08] The above provisions have the effect of conferring a discretion upon the Court to stay the execution of judgements or orders pending appeal and the Courts have from time to time laid down certain guide lines to follow in deciding whether to grant an application for stay pending appeal or not.
- [09] The learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> defendants submitted that the Court in considering an application for stay the execution of the judgment pending appeal should follow these guide lines.
- [10] In **Natural Waters of Viti Ltd v Chrystal Clear Mineral Waters Fiji Ltd** ABU 0011.04S 18<sup>th</sup> March 2005 these guide lines were summarised as follows;
- (a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory.
  - (b) Whether the successful party will be injuriously affected by the stay.
  - (c) The bona fides of the applicant 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 Proceedings.
  - (g) The overall balance of convenience and the status quo.
- [11] In Halsbury Laws of England [4<sup>th</sup> edition, volume 37 at page 696] it is stated that two principles have to be balanced against each other as to whether a stay of execution pending the appeal should be granted: first that a successful litigant should not be



deprived of the fruits of the litigation, and secondly that an appellant should not be deprived of the fruits of a successful appeal.

- [12] The learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> defendants submitted that the appeal is primarily based on legal grounds or issues of law and it is not appropriate for this Court in dealing with the application for stay of execution to go into detailed examination of the grounds of appeal as to do so would be stepping in the shoes of the appellate Court. He also submitted that on these issues of law or legal grounds of appeal only, the applicant may have some prospect of success especially on the issue of vicarious liability and the Religious Bodies Registration Act.
- [13] This Court will not embark upon the exercise of deciding the appeal but it has to consider the merits of the appeal to ascertain whether the 1<sup>st</sup> and 3<sup>rd</sup> defendants have an arguable appeal and their chances of success.
- [14] One of the grounds of appeal is that the case was heard in the absence of the defendants. The defendants were represented by Q.B. Bale & Associates, a law firm that was wound up and the Court failed to issue notice of adjourned hearing on the defendants.
- [15] It appears from the minutes of the learned Judge of 25<sup>th</sup> February 2009 that there is no basis for the 1<sup>st</sup> and 3<sup>rd</sup> defendants to make this allegation.
- [16] The minute of the learned Judge reads as follows;
- Mr. Tuifasalele N. appears for the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff.
- 1<sup>st</sup> and 2<sup>nd</sup> defendants names called not present no appearance by the Counsel/Solicitor. Solicitor's clerk Maciu present and states that the counsel is engaged in a case in another Court before Magistrate. This is fixed for hearing today and adjourned till 10.15 a.m. and the matter will be taken up at 10.15 a.m.
- [17] Thereafter, the hearing was commenced at 10.30 a.m. but neither the defendants nor the counsel were present in Court and the learned Judge proceeded with the hearing. Although the 1<sup>st</sup> and 3<sup>rd</sup> defendants conveniently restrained from indicating as to when the law firm was wound up it appears from the minutes of the learned Judge that the counsel did not appear because he represented another client in another Court and the

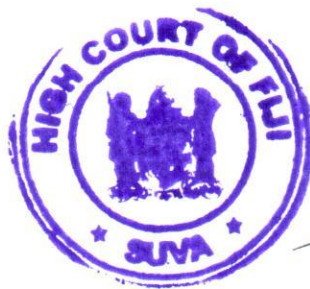
Court was adjourned till 10.30 a.m. In these circumstances there was no necessity for the Court serve notice of adjourned hearing on the 1<sup>st</sup> and 3<sup>rd</sup> defendants.

- [18] The other ground of appeal is that the action has been instituted against the Methodist Church and not against its trustees which is contrary to the provisions of the Religious Bodies Registration Act.
- [19] Section 2 of the Religious Bodies Registration Act (Cap 68) provides thus;
- All suits and proceedings at law instituted or brought by or against any religious body shall be instituted or brought by or against the persons registered as hereinafter provided as trustees for the time being of such religious body and any such suit or proceeding shall be carried to its final termination notwithstanding any alteration in the registered trustees of such religious body while such suit or proceeding is pending.
- [20] If the Court of Appeal holds that the action of the plaintiffs is contrary to the above provisions it will adversely affect the judgment against the 3<sup>rd</sup> defendant and not the judgment entered against the 1<sup>st</sup> defendant because the 3<sup>rd</sup> defendant has only been held vicariously liable.
- [21] That ground alone in my view is not sufficient for the Court to deprive the plaintiffs from taking the fruits of the judgment entered in their favour.
- [22] The Court found that the 1<sup>st</sup> defendant was responsible for the damages caused to the plaintiff's house. Out of the damages awarded by the learned High Court Judge \$ 12,660 is for the actual damage caused to the plaintiffs' house. The Court has to consider whether it is fair by it to make the plaintiffs to wait till the appeal is heard and concluded to compensate them for the damages caused to their house. The plaintiffs have obtained a loan and repaired the house before it was damaged by the 1<sup>st</sup> defendant. These proceedings were instituted in the year 2009. Since then, almost six years have lapsed but the plaintiffs are yet to be compensated for the damage caused to their house. Therefore, if the Court stays the execution of the judgment pending the appeal the plaintiffs will be placed at a more inconvenient and disadvantageous position than the 1<sup>st</sup> and 3<sup>rd</sup> defendants if the Court refuses the application for stay.

- [23] This is a personal action between the plaintiffs and the defendants I do not see any effect of whatever the decision that will be given in appeal on third parties and there are no novel and important questions of law involved in this action. The only question of law, as I have already discussed, is whether the action against the 3<sup>rd</sup> defendant is misconceived in law in view of the provision of section 2 of the Registration of Religious Bodies Act (Cap 69) which was not raised at the trial.
- [24] The burden of satisfying the Court that if the execution of the judgment is not stayed the right of appeal will be rendered nugatory is on the appellants (1<sup>st</sup> and 3<sup>rd</sup> defendants) but they have not been able to adduce any grounds for the Court to arrive at such a conclusion.
- [25] For the reasons aforesaid I make the following orders.

#### ORDERS

1. The application of the 1<sup>st</sup> and 3<sup>rd</sup> defendants for the stay of the execution until the final determination of the appeal is refused.
2. The 1<sup>st</sup> and 3<sup>rd</sup> defendants shall pay the plaintiffs \$ 500 as costs.



*Lyone Seneviratne*  
.....  
Lyone Seneviratne  
**JUDGE**

10.11.2015