

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No.: HBC 289 of 2015

**BETWEEN** : **NAIPOSE VERE**, Barrister and Solicitor of Koroqaqa, Baulevu Road,  
Nausori

**APPELLANT**

**AND** : **JAYWANT PRATAP**, Businessman of Koroqaqa, Baulevu Road,  
Nausori

**RESPONDENT**

Appearance : **The Appellant In person**  
**Mr. S. Kumar for the Respondent**  
Date of Hearing : **2<sup>nd</sup> March, 2018**  
Date of Judgment : **7<sup>th</sup> March, 2018**

**JUDGMENT**

**INTRODUCTION**

1. This is an action filed by the Plaintiff against a solicitor, Defendant. The matter is before the Master and he had made some orders against the Defendant including an unless order previously on 2.11.2017. On 21.11.2017 the unless order was not activated, but it was extended and the Defendant was given further 7 days, time to file an affidavit verifying list of documents. The Defendant had filed a notice of appeal and grounds of appeal against the order of the Master made on 21.11.2017, without seeking leave from a Judge of High Court. On 28.11.2017 summons was filed seeking inter alia, a stay of execution of the order of the Master made on 21.11.2017 for payment of costs, on the basis that there was a pending appeal.

**FACTS**

2. According to the typed transcript that is pasted to the cover of the case record the order of the Master made on 21.11.2017 reads as follows

1. Refer to orders made on 02/11/17.
  2. Unless Order was imposed and upon non-filing of Defendant's Affidavit Verifying List of Documents within 14 days, this Court would have proceeded to activate the 'Unless Order'
  3. After hearing both parties submissions (orally) this Court notes that the substantive issue impending of Court's determination is that of defamation.
  4. The Defendant has defaulted and or failed to comply with this order of 21/11/17.
  5. After a careful consideration and exercising its discretion, this Court is of the view that the Defendant ought to be given a final opportunity to file and serve Defendant's Affidavit Verifying List of Documents within 7 days which will allow him to at least comply with this order and proceed to hearing of the substantive issue.
  6. I know and have noted that the Plaintiff had cautiously labored that the Defendant's defence should be struck out upon non-compliance of Court's Unless Order, procuantly in nature since Defendant has also failed to pay ordered costs.
  7. This court using its discretion is whelmed to give the Defendant one final opportunity and directs or orders Defendant to file and serve Defendant's Affidavit Verifying List of Documents within 7 days.
  8. Upon failure to do so this Court imposes or extends the order of Unless Order till the 28/11/17 (7 days to comply) and will automatically activate the same accordingly.
  9. Matter adjourned for mention on 29/11/17 at 9am."
3. A notice of appeal and grounds of appeal was filed against the said order of the Master made on 21.11.2017.
  4. No application seeking leave was filed, but on 28. 11. 2017 a summons was filed.
  5. The summons filed by the Defendant on 28.11.2017 reads as follows
    1. That his Honourable Court makes an order for a stay of execution of the order made by Master Vishwa Datt Sharma on 21/11/2017 for the Appellant to pay costs to the Respondent pending the Appellant's appeal already filed.
    2. That this Honourable Court makes an order that the Appellant's appeal and this summons be consolidated under Order 4 Rule 1(a) to (c) of the High Court Rules 1988.
    3. That the Appellant make an application to this Honourable Court to allow the Appellant's appeal against the interlocutory orders/decisions of the Master of the High Court to be heard.
    4. Any other order that this Honourable Court deems just and expedient."

6. There is an affidavit in support of the summons and when the Defendant said that they would not be filing any affidavit in opposition to the summons.
7. The Defendant raised a legal issue that the summons needs to be struck off since there was no leave obtained from a Judge of the High Court.

#### ANALYSIS

8. The order of the Master was made in the exercise of case management, and it is an interlocutory order. So any appeal of such an interlocutory order needs the leave from a judge in terms of Order 59 rule 8(2) which reads as follows  
*'No appeal shall lie from an interlocutory order of judgment of the Master to a single Judge of the High Court without the leave of a single Judge of the High Court which may be granted or refused upon the papers filed'*
9. The objection of the Plaintiff is that the summons for a stay needs to be struck off since there was no leave granted for the appeal against the order of the Master made on 21.11.2017
10. The since the order of the Master made on 21.11.2017 was not a final order and it was an interlocutory order and the Defendant cannot appeal against such an order without obtaining leave from a Judge of the High Court. This had not been done.
11. The time period for such an application for leave in terms of Order 59 rule 11 is 14 days from the said judgment or order of the Master.
12. Leave against an interlocutory order of Master needs to be sought by way of filing and serving, a summons supported by an affidavit, within the stipulated time.
13. There is no such application pending before this court and application for stay of the Master's order cannot sustain and needs to be struck off, in limine.
14. The order of the Master was made in the course of the exercise of case management which is vital for timely adjudication of matters. Determination of civil matters without

unreasonable delay is guaranteed in the Bill of Rights of the Constitution of Fiji. (See Section 15(3) of Constitution of the Republic of Fiji).

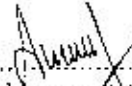
15. It is appropriate to state the words of Lawrence Collins LJ in *Fattal v Walbrook Trustee (Jersey) Ltd* [2008] EWCA Civ 427, [2008] All ER (D) 109 (May) (at [33])  
*'[A]n appellate court should not interfere with case management decisions by a judge who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.'*
16. The above statement was applied in recent UK Supreme Court decision of *Revenue and Customs Commissioners v BPP Holdings Ltd and others*[2017] 4 All ER 756 (Per Neuberger P).
17. So, it is rare for a Judge to interfere with the order of the Master in the exercise of case management unless it is plainly wrong.
18. Without prejudice to what is stated above, the stay sought by the Defendant is regarding an order of cost made on an earlier order of the Master.
19. The summons filed by Defendant had sought stay of a cost order made on 21.11.2017, but from the transcript, there was no cost order made on that day. So the request for stay is refused.
20. As regards to the other orders sought in the summons needs no determination as the Defendant at the hearing informed that he is not perusing order 3 sought in the summons.
21. The summons filed on 28.11.2017 is struck off. Considering the circumstances of the case I would not award any cost.

**FINAL ORDERS**

- a. The summons dated 28.11.2017 is struck off.
- b. No costs.

**Dated at Suva this 7<sup>th</sup> day of March, 2018**



  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**