

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA,**

**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. HBC 4 of 2018**

On an appeal from an Order given by the  
Learned Master of the High Court of Fiji on  
18<sup>th</sup> day of May, 2018 in Civil Action No. 4  
of 2018

**BETWEEN** : **SANGODI AMMAL** and **SHASTA NAND** of Savusavu, Nadi,  
Domestic Duties and Farmer respectively.

**APPELLANTS**  
**(Original Defendants)**

**AND** : **SUBBA NAIDU** and **BALA KRISHNA NAIDU** of 5129  
Lippizan PL. Alta Loma. CA 91737. U.S.A. and 4721 Louises  
Ave, Encino CA 91316, U.S.A., respectively, Businessmen.

**RESPONDENTS**  
**(Original Plaintiffs)**

**Counsel** : **Mr Jadhav Prashneel Prakashan for the appellants**  
**The respondents are absent and unrepresented**

**Date of hearing** : **Wednesday, 27<sup>th</sup> February, 2019**  
**Date of ruling** : **Friday, 26<sup>th</sup> April, 2019**

**R U L I N G**

[1]. This is an appeal from an order pronounced on 18<sup>th</sup> May, 2018 by the learned Master of the High Court. The matter before the learned Master was an application for ejectment. The proceedings were brought pursuant to section 169 of the Land Transfer Act, [Cap 131].

[2]. The order was sealed on 25<sup>th</sup> May, 2018 and it is as follows;

***UPON READING** the Summons for Ejectment dated the 10<sup>th</sup> day of January, 2018 and Affidavit in Support of Subba Naidu and Bala Krishna Naidu sworn on 1<sup>st</sup> December, 2017, both filed on 11<sup>th</sup> January, 2018.*

***AND UPON HEARING** Ms Barbara Kristine Angco Doton, Counsel for the Plaintiffs and Mr Jdhav Prakashan, Counsel for the Defendants.*

***IT IS HEREBY ORDERED** as follows;*

1. *That the Defendants give immediate vacant possession to the Plaintiffs of that portion of all that piece and parcel of land comprised in Certificate of Title No. 48/4706 situated at Nasavusavu, Nadroga in Fiji having an area of 89.37 acres which the Defendants are occupying.*
2. *That the Defendants to pay costs summarily assessed in the sum of \$300.00 within 14 days.*

***SEALED this 25<sup>th</sup> day of May, 2018.***

**BY THE COURT**

*(signed)*  
**DEPUTY REGISTRAR**

[3]. It would appear that the plaintiffs (now the respondents) subsequently made an application for leave to issue Writ of Possession. The court on 19<sup>th</sup> July, 2018 granted leave to issue Writ of Possession against the defendants (now the appellants).

[4]. It is against the Orders made on 18<sup>th</sup> May, 2018 that the defendants seek to appeal. The defendants seek an order from this Court that the order of the learned Master be set aside on the following grounds;

1. ***THAT** the learned Master erred in law and in fact in not allowing the Appellants/Original Defendant to file their Affidavit in Opposition to the Summons for Ejectment.*
2. ***THAT** the learned Master erred in law and in fact in not considering that the delay in filing the Affidavit in opposition was due to the delay on the part of Legal Aid Commission previous counsel on record.*

3. ***THAT*** the learned Master erred in law and in fact by failing to consider that the Appellant/Original Defendant had equitable right over the subject land.
4. ***THAT*** the learned Master erred in law and in fact by failing to consider that the Appellant/Original Defendant had stayed in the property for over 70 years.
5. ***THAT*** the learned Master erred in law and in fact by not allowing further time to the Appellant/Original Defendant to file their Affidavit in Opposition whereby causing breach of natural justice.

- [5]. The proceedings were commenced by the Plaintiffs in the High Court as summary proceedings under section 169 of the Land Transfer Act, Cap 131 by way of summons dated 10<sup>th</sup> January, 2018. The plaintiffs sought an order that the defendants “*Show cause*” why they should not give up immediate vacant possession to the plaintiffs of that portion of all that piece and parcel of land comprised in Certificate of Title No. 48/4706 situated at Nasavusavu, Nadroga in Fiji having an area of 89.37 acres which the defendants are occupying”.
- [6]. The application was supported by a joint affidavit sworn on 01<sup>st</sup> December, 2017 by the plaintiffs. In that affidavit the plaintiffs deposed that they are the last registered proprietors of the land described in Certificate of Title No. 48/4706 situated at Nasavusavu having an area of 89.37 acres. The copy lease that was annexed to the affidavit showed that the lease was registered in the plaintiffs name on 27<sup>th</sup> June, 2007.
- [7]. Certainly, on the basis of the copy lease annexed to the Affidavit, the plaintiffs had established that they are the registered proprietors of the land in question thereby establishing a basis for summoning the defendants to show cause why they should not give up possession of the land to the plaintiffs.
- [8]. Therefore, the defendants are required under Section 172 of the Land Transfer Act to show cause why they refused to give up possession of the land on which they were residing. The defendants are required to prove to the satisfaction of the Court that they had a right to the possession of the land in question. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced.

[9]. The important question is whether the defendants can prove to the satisfaction of the Court a right to the possession of the land. To show cause the defendants need to file an answering affidavit.

[10]. In the Notice of Appeal filed on 07<sup>th</sup> June, 2018 the defendants pleaded five (05) grounds of appeal. Those grounds of appeal are:

1. ***THAT** the learned Master erred in law and in fact in not allowing the Appellants/Original Defendant to file their Affidavit in Opposition to the Summons for Ejectment.*
2. ***THAT** the learned Master erred in law and in fact in not considering that the delay in filing the Affidavit in opposition was due to the delay on the part of Legal Aid Commission previous counsel on record.*
3. ***THAT** the learned Master erred in law and in fact by failing to consider that the Appellant/Original Defendant had equitable right over the subject land.*
4. ***THAT** the learned Master erred in law and in fact by failing to consider that the Appellant/Original Defendant had stayed in the property for over 70 years.*
5. ***THAT** the learned Master erred in law and in fact by not allowing further time to the Appellant/Original Defendant to file their Affidavit in Opposition whereby causing breach of natural justice.*

[11]. Grounds (1), (2) and (5) can be conveniently be dealt with together. The defendants complain is that the learned Master;

- A. *erred in law and in fact in not allowing the Appellants/Original Defendant to file their Affidavit in Opposition to the Summons for Ejectment.*
- B. *erred in law and in fact in not considering that the delay in filing the Affidavit in opposition was due to the delay on the part of Legal Aid Commission previous counsel on record.*
- C. *erred in law and in fact by not allowing further time to the Appellant/Original Defendant to file their Affidavit in Opposition whereby causing breach of natural justice.*

[12]. The proceedings were commenced by the plaintiffs in the High Court as summary proceedings under section 169 of the Land Transfer Act Cap 131 by way of summons dated 10<sup>th</sup> January, 2018. The record shows that the defendants have sought legal aid assistance and after taking more than one month, Legal Aid Commission has informed court that they have declined legal aid assistance to the defendants. Thereafter, the defendants had retain the current solicitors and upon their first appearance, counsel had made an application for further time to show cause by filing an answering affidavit. The Master then granted order in terms of plaintiff's summons for ejection.

[13]. The minute sheet dated 18/5/2018 reads;

**Counsels Submissions:**

*The plaintiffs' Counsel seeks order in terms of the Summons.*

*The Counsel for the defendants seeking to file the appointment and 7 days for the Affidavit in Opposition.*

*The plaintiffs' Counsel objects for the adjournment as 5 months granted from the defendant.*

**Order:**

*No reason for not filing an appointment either. LTA requires early disposal. Hence, I grant order in terms of the Summons filed on 11/01/18 with summarily assessed cost of \$300.00 to be paid within 14 days.*

[14]. It should be noted that the delay in filing an answering affidavit to show cause was due to the failure of the legal aid commission to process the defendants' application expeditiously. On the date of first appearance of the defendants Solicitors, the learned Master has refused their application for extension of time to show cause by way of an answering affidavit. In my opinion, the learned Master has fallen into an error in reaching his conclusion. The learned Master's refusal to grant an extension of time to show cause amounted to a denial of a fair hearing as postulated by the principle *audit alteran partem*. **Justice may not be sacrificed to speed.** I am of the view that, there has been a wrongful exercise of discretion on the learned Master's part in refusing the application for extension of time to show cause made by the defendants Solicitors on the first date of their appearance and it has constituted a denial of a fair hearing and a violation of the principles of natural justice – both *nemo judex in causa qua and audi alteram partem*. In those circumstances, I allow ground (1), (2) and (5).

[15]. The (3) and (4) grounds will amount to a merits review of the decision. The order sealed on 25<sup>th</sup> May, 2018 reads as follows:

**UPON READING** the Summons for Ejectment dated the 10<sup>th</sup> day of January, 2018 and Affidavit in Support of Subba Naidu and Bala Krishna Naidu sworn on 1<sup>st</sup> December, 2017, both filed on 11<sup>th</sup> January, 2018.

**AND UPON HEARING** Ms Barbara Kristine Angco Doton, Counsel for the Plaintiffs and Mr Jdhav Prakashan, Counsel for the Defendants.

**IT IS HEREBY ORDERED** as follows;

1. That the Defendants give immediate vacant possession to the Plaintiffs of that portion of all that piece and parcel of land comprised in Certificate of Title No. 48/4706 situated at Nasavusavu, Nadroga in Fiji having an area of 89.37 acres which the Defendants are occupying.
2. That the Defendants to pay costs summarily assessed in the sum of \$300.00 within 14 days.

**SEALED this 25<sup>th</sup> day of May, 2018.**

**BY THE COURT**

**(signed)  
DEPUTY REGISTRAR**

[16]. The crucial paragraph in the order is;

**AND UPON HEARING** Ms Barbara Kristine Angco Doton, Counsel for the Plaintiffs and Mr Jdhav Prakashan, Counsel for the Defendants.

**IT IS HEREBY ORDERED** as follows;

1. That the Defendants give immediate vacant possession to the Plaintiffs of that portion of all that piece and parcel of land comprised in Certificate of Title No. 48/4706 situated at Nasavusavu, Nadroga in Fiji having an area of 89.37 acres which the Defendants are occupying.

2. *That the Defendants to pay costs summarily assessed in the sum of \$300.00 within 14 days.*


(Emphasis added)

- [17]. Firstly, the sealed order says that the learned Master made an order having heard the submissions and counter submissions of the parties. Critical to this case is section 172 which provides that, if the person summoned appears, he may show cause why he refuses possession of the land and if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons. The question for this court is whether the learned Master has reached a conclusion that the defendants have not established to the court's satisfaction that there was an arguable case for them to remain in possession? **I have not been able to trace a decision dealing with the order granting the plaintiffs' application under section 169 of the Land Transfer Act. Besides, one needs to know the evidence relied upon by the learned Master to grant the order that was sought.** I do not see the Master's notes of the evidence and submissions. Secondly, has the learned Master given reasons for his decision (if any)? Admittedly, the answer is in the negative. Thirdly, could an appeal be lodged by an aggrieved party without knowing the decision and even if known, without knowing the reasons for the decision? The answer should again be in the negative. The law does not compel the doing of impossibilities; nor does it compel a person to do that which he or she cannot possibly perform (*Lex non ad impossibilia*). It is well-settled that a judge, Master or a Magistrate at first instance in cases has an obligation to provide reasons for the judgment or order given. That obligation arises as a matter of judicial duty. Perhaps the primary reason for an obligation on courts to provide reasons is the fact that a party seeking an appeal may generally only appeal where the court has made an error of law. The absence of reasons or insufficient reasons may not allow an appeal court to determine whether the court's verdict was or was not based on an error of law or an appealable error. A failure to provide sufficient reasons can and often does lead to a real sense of grievance that a party does not know or understand why the decision was made. The court is bound to expose its reasoning in sufficient detail to enable a losing party to understand why they lost. The absence of reasons or inadequate reasons can lead to a sense of injustice and a reduced appreciation or understanding of legal rights and obligations and can serve to undermine public confidence in the judiciary and in the judicial system.
- [18]. The learned Master offered nothing by way of reasons as to why he is making an order for immediate vacant possession of the land to the plaintiff. The learned Master made no reference at all to the evidence, submissions and counter submissions, the onus rests on the defendants under section 172 of the Act and whether there was an arguable case for the defendants to remain in possession. There is a miscarriage where what is and is not disclosed involves a breach of the principle that justice must not only be done but must seem to be done. The requirement to provide reasons for the order can operate prophylactically on the judicial mind, guarding against the birth of an unconsidered or impulsive decision or order. It enhances judicial accountability.

**ORDERS:**

1. Appeal allowed.
2. Master's Order dated 18<sup>th</sup> May, 2018 is set aside.
3. Respondent's to pay Appellant's costs of the appeal.



  
**Jude Nanayakkara**  
[Judge]

**At Lautoka,**

**Friday, 26<sup>th</sup> April, 2019**