

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Case No: HBM 3 OF 2019

BETWEEN : JAITUN BI

PLAINTIFF

AND : SUN INSURANCE COMPANY LIMITED

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. A. Sen for the Plaintiff
Ms. A. Sumer and Mr. H. Robinson for the
Defendant

Date of Hearing : 15 February 2021

Date of Decision : 11 March 2021

DECISION

PRACTICE & PROCEDURE: Application for stay of action to lead evidence of conviction – Delay in proceedings before the magistrate - inherent jurisdiction of court

1. The defendant filed a notice of motion dated 3 December 2020 and sought the following orders on the basis of the court's inherent jurisdiction:
 - a. *"That this action be stayed pending the final determination of the Savusavu Magistrate Court Traffic Case No.234 of 2014.*
 - b. *The Savusavu Magistrate Court be directed to expedite the hearing of the Traffic Case No. 234/14 and give monthly reports to the Master".*

The notice of motion was supported by the defendant's assistant claims manager, Binay Dutt.

2. The action referred to in the notice of motion was filed by the plaintiff to recover sums awarded by court based on a policy of insurance issued by the defendant covering motor vehicle bearing registration number FA 745. Previously, an application by the defendant to strike out the action was declined by court. A plea for stay – in the same application – until the conclusion of the Magistrate Court proceedings was also refused. In that ruling, given on 28 May 2020, the court directed that the action instituted by originating summons be continued as if begun by a writ in terms of Order 28 Rule 9 of the High Court Rules 1988.
3. The defendant has once again sought a stay of proceedings on the basis that a conviction by the magistrate would be crucial evidence to avert liability in this action. This – like the previous notice of motion – is upon the premise that the defendant is exempted from third party liability due to the driver's

intoxication at the time of the accident, resulting in a breach of the insurance policy. The defendant concedes that should the policy be valid, it would be obliged to satisfy damages that were awarded to the plaintiff in a previous action, HBM 40 of 2016.

4. The present action by the plaintiff is for the purpose of recovering the sums awarded to the plaintiff in HBM 40 of 2016. The defendant, which is the insurer, did not defend that action. The plaintiff met with the accident on or about 19 September 2014; well over six years ago. The defendant is seeking to stay this action on the basis that the magistrate court case instituted in 2014 is yet pending and thereby affecting its ability to lead relevant evidence to resist the plaintiff's action to enforce the unsatisfied judgment. The defendant is hopeful that a conviction against the driver would provide it with a sustainable defence against the present action.
5. The ruling of 28 May 2020 agreed with the defendant's contention that a conviction before the magistrate may be led in evidence in connection with an insurance policy even though regulation 9 (2) of the Land Transport (Breath Tests & Analyses) Regulation 2000 rendered inadmissible evidence relating to the use of the breath test and its analysis.
6. The defendant submitted that pursuant to the ruling given on 28 May 2020, pleadings in the action are complete and pre-trial conference is pending. The defendant's application is to stay the present action until the conclusion of proceedings before the Magistrate Court of Savusavu so as to lead evidence of the judgment of that court. Following the application made through the previous notice of motion, the ruling of 28 May 2020 directed the registrar to submit a report on the status of traffic case No.234 of 2014 in the Magistrate Court of Savusavu.
7. Proceedings in the Magistrate Court of Savusavu in traffic action 234 of 2014 is a matter for grave concern. A summary of the proceedings in that case discloses that the accused first appeared before the magistrate as far back as 22 September 2014 and bail was granted on that day. The case was most recently scheduled for hearing before the resident magistrate on 22 January 2021. However, hearing was vacated on that day, and re-fixed for 23 March 2021. Illness of the defence counsel is recorded as the reason for

postponement of the hearing yet again. In all, the case was taken up on 24 occasions and postponed without commencement of the hearing. By all standards, this delay cannot be considered reasonable. This meaningless delay, it needs to be said, does not paint a pretty picture of the way in which justice is administered. Needless to say, the failure to commence the hearing over such a long period has had an adverse bearing on the present proceedings.

8. Court is of the view that a stay of this action would not be a proper order to make in the circumstances of this case. The protracted and unnecessary delay in the Magistrate Court is one factor for the court's disinclination. Court is not inclined to perpetuate a deferral in this action by reason of an indefinite delay in the traffic offence case. Moreover, there is no unequivocal assurance that the suspension of proceedings, which if allowed could prejudice the plaintiff, is likely to be of assistance to the defendant's case. In context, the better option would be for this court to make necessary directives to ensure that the Magistrate Court of Savusavu concludes the hearing expeditiously. Paragraph (a) of the notice of motion is, therefore, declined.
9. The court takes cognizance of the defendant's concern that it may not be able to lead evidence related to the traffic case unless proceedings before the magistrate are concluded before the commencement of trial in the present action. The court will consider applications from the defendant for the reception of evidence related to traffic action 234 of 2014 of the Savusavu Magistrate Court where such evidence is relevant and admissible, and, if necessary, make suitable orders after consideration of the status of the traffic case. The rules of court vest a judge with authority to make orders for the proper and fair conduct of a trial to serve the interests of justice. The inherent powers of court are complementary of the rules in ensuring the proper administration of justice.
10. The resident magistrate of Savusavu will be directed to commence traffic action bearing number 234 of 2014 on 23 March 2021 as scheduled. Proceedings must be completed without further delay. The scheduled hearing must not be vacated unless there are exceptional reasons to be clearly recorded. The chief registrar will be tasked with closely monitoring the progress of the case and the early pronouncement of judgment. The order

sought in paragraph (b) of the notice of motion is substantially granted subject to the variation below.

ORDER

- A. Paragraph (a) of the defendant's notice of motion dated 3 December 2020 is declined.
- B. The resident magistrate of Savusavu is directed to commence inquiry of traffic action bearing number 234 of 2014 on the next date of hearing and conclude the case at the earliest. Postponements are not to be granted unless for exceptional reasons to be clearly recorded.
- C. The chief registrar is to monitor the progress and delivery of judgment in traffic action bearing number 234 of 2014 of the Savusavu Magistrate Court. The registrar is to report on the status of the case to the master of the Labasa High Court by 30 April 2021.
- D. The record of this case is to be sent to the master for directives to set down the action for trial.
- E. Each party will bear its own costs.

Delivered at Labasa this 11th day of March, 2021



M. Javed Mansoor
Judge

Solicitors:

MAQBOOL & COMPANY (*for the Plaintiff*)

GIBSON & Company (*for the Defendant*)