

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 204 OF 2019

BETWEEN : **EDWARD RAJENDRA NAGAIYA aka EDWARD NAGAIYA**
APPELLANT
(ORIGINAL DEFENDANT)

AND : **TRUSTEES FOR THE COLONY OF FIJI OF THE CHURCH OF**
ENGLAND
RESPONDENT
(ORIGINAL PLAINTIFF)

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Ms. S. Moceinavaga, for the Plaintiff- Respondent.
Defendant- Appellant- In person.

DATE OF HEARING : 23rd May 2023

DATE OF DECISION : 21st July 2023.

JUDGMENT

A. INTRODUCTION:

1. This is an Appeal preferred by the Defendant – Appellant (“the Appellant”) against the judgment dated 19th March 2021 pronounced by the learned Master (“the Master”).

BACKGROUND:

2. The Respondent , namely, THE TRUSTEES FOR THE COLONY OF FIJI OF THE CHURCH OF ENGLAND, on 08th August 2019 filed the Summons for Ejectment , pursuant to Section 169 of part XXXIV of the Land Transfer Act , requiring the Appellant to show cause why he should not give up immediate vacant possession to the Respondent of all that land and premises comprised in Certificate of Title No- 13102, Lot 47 & 48 on DP No. 2678 known as “Waqadra” containing an area of two roods in the district of Nadi situated at Kennedy Avenue , Nadi.
3. The Summons was supported by the Affidavit of RIGHT REVEREND GABRIEL MAHESH PRASAD SHARMA and the exhibits marked and annexed thereto as “GS-1” to “GS-4”, which included the Authority given by the Respondent to the deponent to swear the Affidavit in support.

4. The Appellant filed his Affidavit in opposition, along with exhibits marked as “ERN-1” to “ERN-5” and the Respondent filed the Affidavit in reply, following which the Appellant filed his supplementary Affidavit as well. Subsequently, the Master, having entertained written submissions from both the parties pursuant to the hearing, delivered the impugned Judgment on **19th March 2021** ordering the Appellant to immediately deliver the vacant possession of the subject property unto the Respondent and to pay a sum of \$1,000.00, being the summarily assessed costs.
5. Being aggrieved of the aforesaid judgment of the Master, the Appellant filed his Notice of Appeal on **09th April 2021** at 8: 20 am, together with **07** grounds of Appeal, which was reportedly served at the Respondent’s Solicitors office on the same day at 1: 01 pm. Thereafter, the Appellant on **11th June 2021** filed the Summons for Direction, which was served on the Respondent’s Solicitors only on **21st June 2021**. The Appellant also had filed 06 Supplementary grounds of Appeal on 05th April 2022.

B. GROUND OF APPEAL:

6. The Appellant’s, purported, grounds of Appeal are as follows.

Initial Grounds of Appeal:

 - 1) *That the learned Master erred in law and in facts in failing to consider there is no evidence from the Respondent authorizing the eviction of the Appellant when in fact the only authorization had come from the Dioceses of Polynesia Anglican Church Trust Office , who are not the last registered proprietors; and*
 - 2) *That the learned Master erred in Law and in fact by assuming that Arthur Smith was the authorized officer of the Plaintiff by virtue of giving necessary authority to Right Reverend Gabriel Mahesh Prasad to institute the eviction proceedings ; there being lack of evidence to confirm Arthur Smith’s appointment as the Acting Trust Manager and/ or lack of evidence thereof to confirm the persons appointed as Trustees for the Colony of Fiji the Church of England; and*
 - 3) *The Learned Master erred in law and in fact in failing to consider the minuetts of Vestry Meetings dated 6th November 2016, 20th August ,2017 and 27th August, 2017 as arguable evidence by the Appellant in showing the cause pursuant to Section 172 of the Land Transfer act ; there being evidence to confirm the appellant was allowed to occupy the property and that rent would be offset from monies owed to him by St Christopher’s Anglican Church , Nadi, giving rise to an arguable defence of promissory estoppel; and*
 - 4) *That the learned Master erred in fact and law in failing to consider the arbitrary actions of the Respondent in disconnecting Electricity and Water from the subject property , causing great inconvenience and/ or emotional distress on the Appellant, and thus requiring the Summary eviction proceeding to be converted into a writ action; and*
 - 5) *That the Learned Master erred in fact and law by failing to recognize that there were enough facts and evidence submitted by the Appellant for the Summary eviction proceeding to converted into a writ action; and*
 - 6) *That the judgment is wrong in fact and in Law having regard to the facts and circumstances; and*
 - 7) *That the Learned Master erred in fact and in Law in awarding costs of \$1,000.00 to the Respondent. In all regards, the Cost awarded was too high.*

Supplementary Grounds of Appeal:

- 8) *That the Learned Master failed to give me the opportunity to have sufficient space where I could place my document folders so as to easily peruse through to argue my case, hence I was completely baffled and taken aback.*
- 9) *That the learned Master erred in law and in fact not to allow the trustees search which is a public document and very crucial evidence in this action in accordance with the public documents Act 1884 and last updated on 28th November 1974 (PD2) and this caught me off-guard. And I intend to make an application to this honorable court for introduction of new evidence and/ or annex the trustees search in my submission whenever I am ordered to submit the same by this honorable court that the entire discretion of the honorable judge.*
- 10) *That the Learned Master erred in Law and in fact in not taking into account that the Fiji Competition and Commerce Commission had grossly misrepresented me and this was mentioned as an observation in the ruling and judgment of the Magistrate's Court at Nadi and the High court appeal at Lautoka respectively whereby I was victimized due to FCCC's incompetence/ misjudgment.*
- 11) *That the Learned Master erred in law and in fact in not taking into account the email sent by the Chairman of the Trustee, the most Reverend Ifireimi Cama had mentioned that the case is between vestry and myself which clearly indicated the vestry is the controlling authority of the church in its vicinity of the parochial District.*
- 12) *That the Learned Master erred in law and in fact in not taking into account that deponent whilst taking out the eviction action had not respected the rule of law to await the decision of the honorable court and chose to cut off my electricity and water, causing great inconvenience to my wife and myself and acted in absolute disregard towards my constitutional rights.*
- 13) *That the Learned Master failed to recognize the fact that the standing committee of the church acted illegally and unconstitutionally by not giving me that opportunity to put my side of the case and penalized me in passing a resolution for eviction proceeding further to this my wife being an ordained I priest of the church was suspended without any fault of hers causing the greatest pain and suffering which is totally unjustified, unwarranted and unacceptable.*

C. ANALYSIS:

7. At the outset, let me examine the position taken up by the Counsel for the Respondent at the hearing to the effect that the time for **filing and serving** of the Notice of Appeal and/ or the Summons for direction had expired in terms of the relevant orders and rules of the High Court Rule 1988. If this position is found to be correct, no necessity would arise for this Court to go into the merits of the, purported, grounds of Appeal and the matter could be disposed on the application of the law alone.
8. Appeals from the Master are dealt in Part II of the Order 59 of the High Court Rules of 1988 and state as follow

PART 11 – APPEAL FROM THE MASTER

Appeal from Master's decision (o.59, r.8)

(1) An appeal shall lie from a final order or judgment of the Master to a single judge of the High court.

(2) No appeal shall lie from an interlocutory order or 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.

Time for appealing (O.59, r.9)

An appeal from an order or judgment of the Master shall be filed and served within the following period –

(a) 21 days from the date of the delivery of an order or judgment;

Or

(b) in the case of an interlocutory order or judgment, within 7 days from the date of the granting of leave to appeal.

Extension of time (O.59, r.10)

(1) An application to enlarge the time period for filing and serving a notice of appeal or cross-appeal may be made to the Master before the expiration of that period and to a single judge after the expiration of that period.

(2) An application under paragraph (1) shall be made by way of an inter-parte summons supported by an affidavit.

Application for Leave to Appeal (O.59, r.11)

Any application for leave to appeal in interlocutory order or judgment shall be made by summons with a supporting affidavit, filed and served within 14 days of the delivery of the order or judgment.

Notice of appeal (O.59, r.12)

An appeal shall be brought by way of a notice of appeal, which may be given in respect of the whole or any specified part of the order or judgment of the Master.

Cross-appeal (O.59, r.13)

Where a respondent to an appeal under this part wishes to appeal, the respondent shall file and serve a notice of cross-appeal within 7 days from the service of the notice of appeal.

Contents of notice of appeal and cross-appeal (O.59, r.14)

A notice of appeal or cross-appeal filed under rules 12 or 13 shall state –

(a) Whether the appeal is from the whole or part only and what part of the order or judgment of the Master;

(b) The grounds of appeal succinctly;

(c) The precise form of the order which is sought in place of the order or judgment of the Master.

Amendment of notice of appeal and cross-appeal (O.59, r.15)

(1) A notice of appeal or cross-appeal may be amended by or with leave the Court.

(2) An application for amendment under paragraph (1) shall be by way of a summons filed and served on each of the parties to the appeal not less than 14 days before the date on which the appeal is listed for hearing.

Stay of proceedings or execution (O.59, r.16)

(1) The filing of a notice of appeal or an application for leave shall not operate as a stay of execution or proceedings, or any step therein, unless the Court so directs.

(2) An application under paragraph (1) shall be made by way of an inter-parte summons supported by an affidavit.

Procedure after filing appeal (O.59, r.17)

(1) The appellant shall, upon serving the notice of appeal on the party or parties to the appeal, file an affidavit of service within 7 days of such service.

(2) The appellant shall, within 21 days of the filing of notice of appeal, file and serve a summons returnable before judge for directions and a date for the hearing of the appeal.

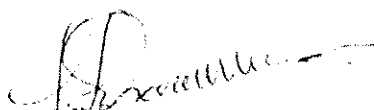
(3) If this rule is not complied with, the appeal is deemed to have been abandoned.”
(Emphasis & underlining is added)

9. The impugned judgment by the Master was pronounced on 19th March 2021 and the Notice of Appeal was filed and served on the 9th April 2021. It is observed that both the filing and serving have been done exactly on the 21st day from the date of the impugned judgment. Affidavit of service has been filed on 15th April 2021, which is within 7 days from the date of service. Thus, I see that the Appellant has filed and served the Notice of Appeal within 21 days from the date of judgment and also filed the Affidavit of service within 7 days from the date of service.
10. Accordingly, I find that the Appellant has not contravened the Order 59 rule 9 in relation to filing and serving of the Notice of Appeal and the Order 59 rule 17 (1) in relation to filing of the Affidavit of Service of the Notice of Appeal. The Appellant need not have sought for the extension of time to file and serve the Notice of Appeal. Since he has filed the Affidavit of service within 7 days from the date of service, he has duly observed the Order 59 rule 9 and Order 59 Rule 17 (1).
11. However, I find that the procedure, after filing the Notice of Appeal and the Affidavit of service, has not been duly complied with by the Appellant. In terms of Order 59 Rule 17 (2), the Appellant was required to file and serve, summons for directions and a date for hearing within 21 days from the date of filing and serving of the Notice of Appeal. But he filed the Summons for direction only on **11th June 2021** and served it only on **21st June 2021**, which was after more than two (2) months from the date of filing the Notice of Appeal. He should have filed and served the Summons for direction on or before 30th April 2021 (within 21 days from the date of filing and serving of the Notice to Appeal).
12. The consequence of failure to file and serve summons for direction within the prescribed time is contained in Order 59 rule 17(3) High Court Rule 1988 and such failure renders the, purported, Appeal to be deemed as abandoned. I used the word “purported Appeal” as it now stands abandoned from 30th April 2021 due to the failure to file and serve the Summons for direction in terms of Order 59 Rule 17 (2) of the High Court Rules 1988.
13. As a result, there is no Appeal on board for the Appellant to proceed with and for the Court to allow it by setting aside or disallow by affirming the impugned judgment.

14. The violation of Order 59 Rule 17 (2) being committed by the Appellant, the purported Appeal is no more in existence by automatic abandonment of it in terms of Order 59 Rule 17 (3).
15. Since the Appeal stands abandoned, the court need not go into the purported grounds of Appeal. However, for the sake of completeness, I must put on record that the merits of those, purported, grounds of Appeal have already been gone into by this Court in my ruling dated 2nd August 2022 on the Summons for Stay of execution pending the Appeal preferred by the Appellant on 23rd May 2022. In my ruling, I have found them to be devoid of merits.
16. Even if the Appellant had complied with the Order 59 Rule 17 (2) in the prescribed manner, the purported grounds of Appeal would not have led him to the victory in the purported Appeal as they are devoid of merits. Moreover, the Appeal stands abandoned due to his failure to follow the Order 59 Rule 17 (2).
17. The deeming provision will operate automatically. The Respondents need not have filed an Application to have the Appeal deemed abandoned.

D. Final Orders:

- a. The Appeal preferred by the Appellant is deemed abandoned.
- b. The Judgment of the Master dated 19th March 2021 is to remain intact.
- c. The Appellant shall pay the Respondent a sum of \$500.00, being the summarily assessed costs within 28 days.


A.M. Mohammed Mackie
Judge



At High Court Lautoka this 21st day of July 2023.

SOLICITORS:

For the Appellant: In Person

For the Respondent: Messrs: K Law – Barristers & Solicitors.