

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 18 of 2020

BETWEEN

TOTA RAM of Cuvu, Sigatoka, but currently at East Lakes, New South Wales, Australia, Taxi Driver.

Plaintiff

AND

RENU KUMARI of Cuvu, Sigatoka, Domestic Duties.

Defendant

Before

Master U.L. Mohamed Azhar

Counsels

The plaintiff in person
Ms. B. Mohammed (Legal Aid Commission) for the defendant

Date of Decision

27.10.2023

DECISION

01. The defendant by her Motion which is supported by her affidavit, moved the court to set aside the Ex-Parte Orders granted by this court on 03.02.2020.
02. On 29.01.2020, the plaintiff filed an originating summons pursuant to Order 113 of the High Court against the defendant and sought an order on the defendant to deliver vacant possession of all that land known as Lot 1 NDSW 1079 in the Tikina of Sigatoka in the province of Nadroga/Navosa. In addition to this summons, the plaintiff filed an Ex-Parte Motion and sought an interim order on the defendant to immediately vacate the house situated at the said property.

03. The interim orders sought by the plaintiff was somewhat similar to the final orders sought in the Originating Summons for vacant possession. The plaintiff alleged that, the defendant forcefully entered the subject property when the matter was still sub judice. The court had judicial notice of the some pertinent facts in relation to the relief sought by plaintiff, in addition to the facts deposed in the affidavits that supported the Motion. They are firstly, the plaintiff and the defendant who are the siblings had long term dispute over the subject property and the house situated on it. The issue involved with distribution of the property held by their late father on Tenancy at Will. Secondly, the defendant previously attempted to evict the plaintiff by an Originating Summons filed pursuant to section 169 of the Land Transfer Act. However, she failed as the then Master Tuilevuka (as he then was) by his ruling dated 14.12.2011 dismissed the application for lack of *locus standi*.
04. Thirdly, the defendant then summoned the caretaker of the plaintiff who was occupying the house on the subject property in the Action No. HBC 192 of 2014. This was another summons filed pursuant to Order 113 of the High Court Rules. This application was heard in this court and the ruling was pending. The defendant in fact had forcefully entered the subject property when the ruling was pending in that Civil Action 192 of 2014 filed by her against the caretaker of the plaintiff. Actually, the defendant had taken the law into her hand whilst the matter was still sub judice. The defendant invoke the jurisdiction of the court by seeking vacant possession of the house situated in subject property from the caretaker of the plaintiff. The court heard her application and reserved for judgment. Whilst the judgment was pending, she forcefully entered the house. It became then necessary to maintain the status quo of the subject property pending the determination of the Civil Action 192 of 2014. As a result, the court granted interim order on the defendant to immediately vacate the house situated on the subject property.
05. The interim order was served on the defendant and she retained a solicitor to represent her. However, no constructive step was taken by her and her solicitors. The Practicing Certificate of the solicitors was not renewed for sometimes and finally the solicitors withdrew. The defendant too did not comply with the interim order and she continued in defiance of the court's orders. The plaintiff then obtained leave to proceed with the committal proceedings against the defendant for defying the order of the court. It was only after 3 months from the date on which the leave was granted by the court pursuant to Order 52 rule 2 (2), the defendant filed the current Motion to set aside the interim orders granted on 03.02.2020. The plaintiff opposed the Motion of the defendant and filed his affidavit in opposition.

06. The defendant also filed an application for stay of the interim orders granted on 03.02.2020 which was also opposed by the plaintiff. Altogether, there were four (04) applications were pending between the parties in this matter. They are namely, the original application by the plaintiff seeking vacant possession of the subject property and house situated therein, two applications by the defendant for setting aside the interim orders and staying the same respectively and finally, the committal proceedings against the defendant for breaching the interim orders. Justice Stuart decided to take up all four matters as the committal proceedings were before him. After he left the bench the matters were before succeeding judge. Finally, after hearing of the some application, the matter was referred back to this court for determination of the application for setting aside the interim orders and the hearing was conducted accordingly.
07. The defendant was still in defiance of the said Interim Orders granted by the court on 03.02.2020 at the time of hearing of the current Motion. At present, there are three orders by the court in relation to the subject property. Firstly, the then Master Tuilevuka (as he then was) made a finding on 14.12.2011 dismissed the defendant's application under section 169 of the Land Transfer Act for lack of *locus standi*. Secondly, this court dismissed her second application filed pursuant to Order 113. The defendant did not appeal any of those two decisions. Thirdly, this court made the interim orders on 03.02.2020 and ordered her to maintain the status quo of the subject property. The defendant is not bothered at all to honour and obey the court's orders.
08. The defendant in her affidavits deposed her defences and opposes the summons for ejectment. The defendant has not provided any reason why the interim order should be set aside. Nor she has provide any reason for her deliberated disobedience of the court order which was made for purpose of maintaining the status quo. It is the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged (*per* Somervell and Romer, L.JJ. in **Hadkinson v Hadkinson** [1952] 2 All ER 567)
09. The defendant in continuous contempt of court. Lord Denning in **Hadkinson v Hadkinson** (*supra*) stated that:

the fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed.

10. In fact, this court should have refused to hear the defendant on her Motion to set aside the interim orders made on 03.02.2020, for her continuous contempt which had impeded the course of justice in this case. However, an audience was given to her to support her Motion. The defendant failed to adduce any evidence whatsoever as to why the status quo of the subject property should not be maintained.
11. As stated above, the main issue involves with the distribution of a property held by late father of the parties on a Tenancy at Will. The father died testate. A copy of their late father's Will is marked as "TR 2" annexed with the Originating Summons filed by the plaintiff. According to the said Will their late father had bequeathed the subject property and the house to the plaintiff. The defendant together with the plaintiff and others inherited some moneys held by their late father in the Bank of New South Wales. This makes the plaintiff's claim to the subject property and the house comparatively stronger than that of the defendant. The defendant had never been in the possession of the subject property though she filed several applications in courts seeking vacant possession of the subject property and the house. The defendant was represented by private solicitors in her previous two applications. However, she is now represented by the Legal Aid Commission and accordingly, her ability to pay the damages if ordered by the court is minimal.
12. Justice Laddie having considered number of cases including American Cyanamid (supra) concluded in Series 5 Software v. Clarke [1996] 1 All ER 853 at page 865 as follows:

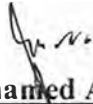
"...it appears to me that, in deciding whether to grant interlocutory relief, the court should bear the following matters in mind. (1) The grant of an interim injunction is a matter of discretion and depends on all the facts of the case. (2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible. (3) Because of the practice adopted on the hearing of applications for interim relief, the court should rarely attempt to resolve complex issues of fact or law. (4) Major factors the court can bear in mind are (a) the extent to which damages are likely to be an adequate remedy for each party and the ability of the other party to pay, (b) the balance of convenience, (c) the maintenance of the status quo, and (d) any clear view the court may reach as to the relative strength of the parties' cases." (Emphasis is added).
13. For the above reasons, I hold that, it is necessary to maintain the status quo of the subject property until determination of the current Summons filed by the plaintiff. Furthermore, the defendant who failed in two attempts to recover the possession of the subject property

had forcefully occupied it and this led the plaintiff to bring the current summons against the defendant, incurring additional costs. The plaintiff therefore must be compensated for this application for interim reliefs.

14. In result, I make the following orders:

- a. The application made by the defendant to set aside the interim orders granted on 03.02.2020 is dismissed,
- b. The interim orders granted on 03.02.2020 are made permanent till determination of the current summons filed by plaintiff.
- c. The defendant should pay summarily assessed costs in sum of \$ 1,500.00 to the plaintiff within a month from today.




U. L. Mohamed Azhar
Master of the High Court

At Lautoka
27.10.2023