

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 83 of 2019

BETWEEN: **AIYAZ SAYED-KHAIYUM** of Suvavou House, Victoria Parade, Suva, the
Attorney General, Minister for Economy, Civil Service and Communications of Fiji.

PLAINTIFF/RESPONDENT

AND: **RATU ISOA DELAMISI TIKOCA C/-SODELPA** Office, Denison Road, Suva.

DEFENDANT/APPLICANT

BEFORE: **Hon. Mr. Justice Vishwa Datt Sharma**

COUNSEL: **Ms. Fatima B.** - for the Plaintiff/Respondent
Mr. Naivalu M. - for the Defendant/Applicant

DATE OF DECISION: **13th February, 2024**

DECISION

[Summons for Leave to Appeal, Stay of Execution and Leave to file emailed affidavit].

A. INTRODUCTION

1. The Defendant/Applicant, Ratu Isoa Tikoca filed a Summons on 18th August 2022 and sought for the following orders:
 - [1] That the Defendant/Applicant be granted Leave to Appeal against the Decision of the High Court delivered on 04th August 2022 refusing to set aside the Interlocutory Judgment entered against the Defendant/Applicant on 07th November 2019.
 - [2] That the execution of the Judgment dated 07th November 2019 and 04th August 2022 be stayed pending the Determination of the application for Leave to Appeal.
 - [3] The Plaintiff/Respondent objected to the application.
 - [4] Both parties made submissions to the Court on the Hearing date on 16th August 2023.

B. BACKGROUND

2. Writ of Summons was filed by the Plaintiff on 21st March 2019 against the Defendant.
3. On 16th May 2019 at 12.45pm the process server Nilesh Kumar served Defendant with copy of the Writ of Summons and an Acknowledgement of service.
4. No acknowledgment of service or any statement of defence was filed. Accordingly, the Plaintiff made a search and filed its Interlocutory Judgment into Court which was sealed on 05th November 2019.
5. Subsequently, Summons was filed by the Plaintiff seeking for Assessment of Damages and other relief against the Defendant on 16th July 2020.
6. On 25th February 2021, Judgment on Assessment of Damages was delivered against the Defendant together with costs.
7. On 01st April 2021, the Defendant filed summons and sought for the setting aside of the Interlocutory Judgment entered against the Defendant on 07th November 2019.
8. The application was heard, determined and a decision delivered on 04th August 2022.
9. Currently, on 18th August 2022, the Defendant filed a Summons and sought for Leave to Appeal, Stay of Execution and Leave to file emailed Affidavit free from Blemishes.

10. Hence, the application for Courts determination and Decision accordingly.

Applicant/Defendant's Contention

11. The Courts Decision of 07th November 2019 on setting aside default judgment was denied.

12. There were two main issues placed before the court in which the Applicant/Defendant was seeking that the Court set aside its orders on Interlocutory Judgment dated 05th November 2023 and sealed on 07th November 2023. These are:

- (i) Service of documents
- (ii) Alleged defamatory words.

13. The Applicant/Defendant argued that '**placing the documents on the Defendant's doorsteps**' is bad precedent by legal standards for good and proper service.

14. A defamation case in a crux involves generally two persons - the alleged defamer and the alleged defamed. Hence, a third person appears - Aklesh Vince Singh.

Plaintiff/Respondent's Argument

15. The Applicant/Defendant had made in application to **set aside the Interlocutory Judgment on the grounds of irregularity.**

16. The Plaintiff submitted that the irregularity was two fold i.e.

- (i) No personal service
- (ii) Pleadings were defective

17. The Defendant had failed to satisfy the requirements of Order 2 Rule 2(2) of the High Court Rules 1988 which specifically deals with setting aside on the basis of irregularity.

18. There was personal service effected onto the Defendant.

19. On the issue of defective pleadings, there was no proposed **statement of Defence** setting out grounds on which the Defendant felt that the pleadings were irregular.

C. DETERMINATION

20. The issues for this Court to determine are '**whether leave to appeal an interlocutory order together with stay of proceedings be granted?**'

21. Reference is made to the case of *Goundar v Minister for Health* [2008] FJCA 40; ABU0075.2006S (9 July 2008). This is relevant to the current application. In that case Fiji Court of Appeal under paras 37 & 38 in its decision said:

"This is the position. Where proceedings are commenced in the High Court in the Court's original jurisdiction and the matter proceeds to hearing and judgment and the judge proceeds to make final orders or declarations, the judgment and orders are not interlocutory."

"Every other application to the High Court should be considered interlocutory and a litigant dissatisfied with the ruling or order or declaration of the Court needs leave to appeal to that ruling order or declaration'. The following are examples of interlocutory applications:

- i. An application to stay proceedings;*
- ii. An application to strike out a pleading;*
- iii. An application for an extension of time in which to commence proceedings;*
- iv. An application for leave to appeal;*
- v. The refusal of an application to set aside a default judgement;*
- vi. An application for leave to apply for judicial review."*

22. The Court has arrived at the finding that the impugned Decision of this Court delivered on 04th August 2022 on '**setting aside default judgment entered on 07th November 2019**' is an **Interlocutory Order** for all the purposes.
23. The next hurdle the Applicant/Defendant has to face is the question of obtaining Leave to Appeal and is at Liberty to seek for stay of proceedings as per the summons filed on 18th August 2022.
24. Reference is made to the case of *Tortis Inc Spor (Fiji) Limited & Anor. v John Leonard Clark & Anor* (FCA No. 35 of 1996 at 15 (as cited in *Rajendra Prasad Brothers Ltd v FAI Insurances (Fiji) Ltd* (supra) Tikaram J said:

It has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal. Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed. The Fiji Court of Appeal has consistently observed the above principles by principles by granting leave only in the most exceptional circumstances."

25. In *Kelton Investment Limited and Tappoo Limited and 1.Civil Aviation Authority of Fiji Motibhai & Company Limited, Civil Appeal No. ABU 0034.1995, Court held:*

"The courts have thrown their weight against appeals from interlocutory orders or decisions for very good reasons and hence leave to appeal are not readily given. Having read the affidavits filed and considered the submissions made I am not persuaded that this application should be treated as an exception. In my view the intended appeal would have minimal or no prospect of success if leave were granted."

26. The Applicant/Defendant submitted that '**placing the documents on the Defendant's doorsteps**' is bad precedent by Legal Standards for good and proper service.

Next - a defamation case in a crux involves generally two (2) persons - the alleged defamer and defamed. The person who should be sued for defamation here is not the Defendant/Applicant; the third person - Aklesh Vince Singh.

27. Further, the Applicant/Defendant submitted that, in defamation, the Plaintiff is required by law to plead the precise words of defamatory statement because the words that are alleging defaming the Plaintiff's is material to their claim (order 18 rule 6 (2) of the High Court Rules 1988 refers).
28. The pleadings on defamation does not comply with this rule of law.
29. Bearing in mind that when the facts of this case and the settled law on the '**Leave to Appeal**' application remains as stated hereinabove, then, I need not delve further into this questions.
30. The Decision and the order in question in the setting aside of the default judgment of 04th August 2022 is no doubt an Interlocutory one and is not a final order or Judgment. In the light of the applicable law, no order granting Leave to Appeal and stay of proceedings would succeed and/or have been possible in favour of the Applicant/Defendant accordingly.
31. I find that the Applicant/Defendant has failed to adduce any evidence to show that there are exceptional circumstances in the current application for this Court to accede granting '**Leave to Appeal and/or stay of proceedings, and/or leave to file emailed affidavit**' as sought for by the Applicant/Defendant herein.
32. Therefore, I have no alternative but proceed to dismiss the Applicant/Defendant's summons seeking for '**Leave to appeal and stay of proceedings and leave to file emailed affidavit**' accordingly.

D. COSTS

33. The application proceeded to full hearing with parties to the proceedings making oral and written submissions.

34. In all fairness, it is only appropriate that each party bears its own costs at the discretion of this court.

E. ORDERS

- (i) The Applicant/Defendants' Summons filed on 18th August 2022 is in its entirety dismissed.
- (ii) Each party to the proceedings to bear their own costs at the discretion of this Honourable court accordingly.
- (iii) Filed is closed.

Dated at Suva this 13th day of February, 2024.




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Vishwa Datt Sharma
JUDGE

cc: R Patel Lawyers, Suva.
Law Naivalu, Lautoka