

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

Civil Action # HBC 364 of 2017

**IN THE MATTER of the Companies Act
2015.**

AND

**IN THE MATTER of an application by the
Plaintiffs to have the register of members of
Nair's Transport Co. Ltd ("the Company")
rectified and other reliefs.**

BETWEEN:

**PUSHPA DEVI of Lot 4 Manuka Street, Nakasi Park Estate,
Domestic Duties as Executrix and Trustee of the ESTATE OF
NARAYAN NAIR aka NARAIN NAIR.**

First Plaintiff

AND:

**AVISHESH NAVNIT NAIR of Lot 4 Manuka Street, Nakasi
Park Estate, Clerk as Executor and Trustee of the ESTATE OF
NARAYAN NAIR aka NARAIN NAIR.**

Second Plaintiff

AND:

**WASU DEWAN NAIR aka VASU DEWAN NAIR aka
BASUDEWAN NAIR of 5987 Leonardo Way, Elk Grove, CA
95757, Retired Machine Operator.**

Third Plaintiff

AND:

NARAINI NAIR of Vitogo, Lautoka, Domestic Duties.

Fourth Plaintiff

AND:

**NAIR'S TRANSPORT CO. LTD a limited liability company
having its registered office at Lot 81, 9 miles, Nasinu (alongside
Kings Road – Wainibuku Road Junction).**

First Defendant

AND:

**KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company
Director.**

Second Defendant

AND:

**VINOD NAIR of 1 Corin Road, Manurewa, Auckland, New
Zealand, Retired.**

Third Defendant

AND: SARITA DEVI NAIR of Lot 81, Wainibuku Road, 9 Miles, Nasinu, Domestic Duties as the trustee of the Estate of RAJESHWAR NAIR.

Fourth Defendant

AND: KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company Director as the Trustee of the Estate of SARADA NAIR aka SHARDA DEVI NAIR aka SARDA DEVI NAIR.

Fifth Defendant

Representation/Appearances

Plaintiffs: Mr. V. Singh (Parshotam Lawyers)

1st Defendant: Mr.S. Nandan (Reddy & Nandan)- (On Instructions of S Nand Lawyers)

Date of Hearing: 3rd March 2025.

Stay Pending Appeal

A. Introduction

[1] The 1st Defendant has filed an appeal against my judgment delivered on 25th November 2024. They are seeking a stay of execution of the judgment pending the hearing and determination of the appeal. They filed summons with an affidavit on 12th December 2024.

B. Submissions

[2] I have heard the lawyers and read the submissions and noted the authorities that they have relied upon.

C. The Law on Stay Pending Appeal

[3] The principles governing the application for stay pending appeal have been summarized in Natural Waters of Viti Ltd v Crystal Clear Mineral Water (Fiji) Ltd [2005] FJCA 13; ABU0011.2004S (18 March 2005) as follows:

“(a) Whether, if no stay is granted, the applicant’s right of appeal will be rendered nugatory. (This is not determinative). See -Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd [1977] 2 NZLR 41 (CA).

(b) Whether the successful party will be injuriously affected by the stay.

(c) The bona fides of the applicants as to the prosecution of the appeal.

(d) *The effect on third parties.*

(e) *The novelty and importance of questions involved.*

(f) *The public interest in the proceeding.*

(g) *The overall balance of convenience and the status quo.”*

- [4] I note from **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065; [2001] All ER (D) 258 (Dec) that an appeal does not operate as a stay of execution of the orders, and “...it follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellants being able to recover any monies paid from the respondent?” (My emphasis)

D. Discussion

- [5] I have noted the law on stay pending appeal. I have also noted the submissions (oral and written) and the affidavits filed.
- [6] In dealing with stay pending appeal I note a number of issues in the submissions which challenge my judgment. I will not deal with those. That is not my role. It is for the Court of Appeal to determine. I find the written submissions on behalf of the Plaintiff to be useful and to the point.
- [7] I do not find that the applicant’s right of appeal will be rendered nugatory if stay is refused. The company will continue to operate as the appeal will be dealt with. The company will not be affected if no stay is granted. As opposed to that the Plaintiffs will continue to be left out of the shares and the business which they inherited.
- [8] The dispute relates to shares in the company. The company should not be involved in the dispute. The dispute is between the shareholders. The company is not in dispute with any party. The company seems to be used by the Directors. The bona fides of the appeal do not relate to the company. It is about the interests of the shareholders. It is not a bona fide appeal by the company.
- [9] There is no effect on the third parties. The issues are not novel and the questions are not related to the company. They relate to shares in the company. There is no public interest in the proceedings. It relates to a family run business. However, the business, which is buses are involved in providing public service. The overall balance of convenience favours the Plaintiffs. The status quo which I am informed is that the Registrar of Companies has rectified the Register, be maintained.

[10] The application for stay pending appeal is dismissed. The 1st Defendant to pay the Plaintiffs \$2000.00 as costs within 21 days. The costs have been summarily assessed.

E. Orders

[11] For the reasons I have given I make the following orders:

(a) The application for stay pending appeal by the 1st Defendant is dismissed.

(b) The 1st Defendant to pay the Plaintiffs \$2000.00 as costs within 21 days. The costs have been summarily assessed.



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Chaitanya S.C. A Lakshman
Puisne Judge

17th March 2025

