

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 318 of 2023

BETWEEN : JAYWANT PRATAP

Plaintiff

AND : NAIPOTE VERE

Defendant

**Appearances : Mr S Kumar for the Plaintiff
Ms A Bilivalu for the Defendant**

Hearing : 7 February 2025

Judgment : 5 May 2025

JUDGMENT

(Summons seeking Charging Order Absolute under O.50, r.1)

[1] On 8 July 2024 I granted interim charging orders over three properties allegedly owned by the defendant. The plaintiff now seeks that the charging orders are made absolute under Order 50, rule 1 of the High Court Rules 1988.

[2] On 4 August 2022, the High Court issued a judgment in favour of the plaintiff against the defendant in the amount of \$100,000 plus costs of \$1,500. The cause of action was for defamation. The defendant had initially defended the claim but did not attend the trial. The plaintiff sealed the judgment on 16 September 2022 and served the same on the defendant on 21 September 2022.

- [3] The defendant did not make any payment towards the judgment debt. The plaintiff filed a summons seeking a committal of the defendant for non-payment. I was not prepared to make this order due to the defendant's medical condition.¹ There followed, on 10 June 2024, a summons by the plaintiff seeking charging orders over three properties in the name of the defendant – as stated, interim orders were granted on 8 July 2024.
- [4] The defendant filed an affidavit in opposition on 14 November 2024. The plaintiff filed a reply on 28 November 2024.
- [5] Once an applicant has satisfied the criteria for the grant of interim charging orders, the burden shifts to the defendant to show why the charging orders should not be made absolute. The court has a discretion whether to make the orders absolute. It must do equity having regard to the circumstances of the particular case.²
- [6] When the interim orders were granted I was satisfied that the plaintiff had met the criteria under Order 50, rule 1(5). Namely, satisfied of the fact of the judgment of 4 August 2022 in favour of the plaintiff against the defendant, that the amount of the judgment debt remains unpaid, and that the plaintiff identified three properties which on the face of it were owned by the defendant.
- [7] The defendant does not deny the judgment against him or the fact that the debt remains unpaid. He does not dispute that he is the registered proprietor of the three properties in question although deposes that he sold Crown Lease No 11584 before the plaintiff filed his summons on 10 June 2024.³ The defendant has produced no evidence of this alleged sale. With respect to Certificate of Title No. 21517, the defendant deposes that this is his primary residence where he lives with his family. He is 80 years old, unemployed and has Alzheimer's Disease.⁴

¹ *Pratap v Vere* [2024] Civ. Action No. 318/2023 (16 May 2024).

² *Sindhu v Lateef* [2023] FJHC 458 (14 July 2023), [9]-[12].

³ It is not clear whether he refers here to Crown Lease No 522103 over which the interim charging order has been made.

⁴ I made a finding in my decision of 16 May 2024 accepting that he had this medical condition.

[8] The defendant opposes the making of the charging orders absolute. He relies on the following grounds:

- i. There is a procedural irregularity with service of the judgment on the defendant. The defendant argues that pursuant to Order 42, rule 8 the plaintiff was required to serve the sealed judgment on the defendant within 14 days of entry of the judgment. The judgment was issued on 4 August 2022 but not served until 21 September 2022. He argues that such failure precludes the plaintiff from being permitted to pursue any enforcement action against the defendant. The defendant also complains that the delay with service prejudiced his appeal rights causing him to lose any opportunity to appeal from the judgment.
- ii. This Court cannot impose any charging order over Crown Lease No 1154 as the defendant no longer owns this property.
- iii. It is inequitable for the Court to make the charging order absolute over Certificate of Title No 21517 as this is the defendant's family property.

[9] Order 42, rule 8 does not provide for any consequence where a party is in breach of that provision. I am inclined to the view that failure under the provision to serve the sealed judgment within 14 days neither affects the judgment nor precludes the judgment creditor from enforcing the judgment against the judgment debtor. There is no justification for such a penalty simply because of the delay serving the sealed judgment. Certainly, where any delay with service has adversely affected the judgment debtor's rights of appeal the court may take this into account when considering an application to enlarge the time to file an appeal. Here, however, despite the defendant deposing that he has instructed his solicitors to take steps to file an appeal, there is no evidence before me that any such application has been filed.

[10] It is unclear whether the defendant claims to have sold Crown Lease No 522103 (for which an interim charging order has been granted) or another unrelated Crown Lease. Whatever the case, I am not satisfied that the defendant has demonstrated

that he has sold the Crown Lease. Merely stating that he has done so does not suffice. He must produce documentation of the sale. In the absence of independent evidence, I am not prepared to accept that the defendant has sold the Crown Lease.

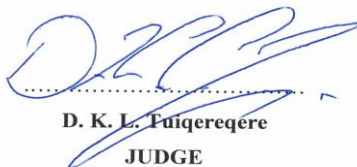
[11] In terms of equity, the plaintiff is entitled to the fruits of his judgment. The judgment was served on the defendant on 21 September 2022, yet he has made no effort to pay the debt nor filed any appeal. Whilst his medical condition precludes his committal for non-payment, the condition is not a basis to deny the plaintiff his judgment.

Orders

[12] I make the following orders:

1. The interim charging orders made on 8 July 2024 are made absolute for the following properties:
 - i. Certificate of Title No. 17807 being Lot 31 on Deposited Plan No. 4341.
 - ii. Certificate of Title No. 21517 being Lot 2 on Deposited Plan No. 5438.
 - iii. Crown Lease No. 522103 being Lot 1 on Deposited Plan No. 8227.
2. There will be no order as to costs.




D. K. L. Fuiqereqere
JUDGE

Solicitors:

Sunil Kumar Esquire for the Plaintiff

The Office of the Legal Aid Commission for the Defendant