

IN THE HIGH COURT OF FIJI  
EXERCISING CIVIL JURISDICTION  
AT LAUTOKA

Civil Action No: 289 of 2021

**BETWEEN** : **SAVENACA SIGA** of Meguniyah, Nadi, Manager.  
**PLAINTIFF-RESPONDENT- APPLICANT**

**AND** : **JAHARUL NISHA** of Meguniyah, Nadi, Domestic Duties.  
**DEFENDANT -APPLICANT- RESPONDENT**

**BEFORE** : Hon. A.M. Mohamed Mackie-J.

**APPEARANCE** : Applicant (Original Plaintiff) in person.  
Mr. Chand K. -for the (Original Defendant) Respondent.

**HEARING** : Disposed by way of written submissions as agreed on 5<sup>th</sup>  
December 2025

**W. SUBMISSIONS** : Tendered by the Plaintiff- Respondent on 27<sup>th</sup> Nov. 2025.  
Filed by the Defendant- Applicant on 18<sup>th</sup> Dec. 2025.

**RULING** : Delivered on 13<sup>th</sup> February 2026

**RULING**

(On Application for Leave to Appeal to the Court of Appeal & Stay of Execution Pending Appeal)

**A. INTRODUCTION:**

1. Before me is an application filed by the Plaintiff – Respondent- **Applicant** (“**the Applicant**”) in person on 19<sup>th</sup> June 2025 seeking the following orders;

1) Leave to appeal against the interlocutory orders of Justice A.M. Mohamed Mackie made on 10<sup>th</sup> June 2025 whereby His Lordship ordered: -

- A. *The Defendant- Applicant’s Summons filed on 18<sup>th</sup> March 2024 succeeds.*
- B. *The Order (B) prayed for in the Summons is granted, requiring the Plaintiff- Respondent to deposit a total sum of \$30, 100.00, being the arrears of rental from the date of the expiry of the Tenancy Agreement on 4th July 2021 till the month of May 2025.*
- C. *The said payment should be made to the credit of this Case, at the Registry of this Court, within 21 days from the date of service of these Orders, and the money, if so deposited, will remain intact pending the final determination of the substantive matter.*

D. *The Plaintiff-Respondent shall also continue to deposit the monthly rental of \$600.00 from the month of June 2025 till the termination of this action.*

E. *The Plaintiff- Respondent is at liberty to proceed with his purported claim, provided he complies with the Orders (B) and (C) above.*

F. *In the event the Plaintiff- Respondent fails and neglects to abide by the Order (B) above, his purported Statement of Claim and the Defence to Counter Claim will stand struck out, and the Defendant- Applicant will be at liberty to move for further orders.*

G. *The Plaintiff-Respondent shall pay the Defendant- Applicant a sum of \$1500.00, being the summarily assessed costs of this Application to be paid within 21 days.*

- 2) **STAY** of execution of the orders made by Justice A.M. Mohamed Mackie on 10<sup>th</sup> June 2025 until the final determination of the appeal to Fiji Court of appeal.
  - 3) That the time for filing and service of the Notice and Grounds of appeal be extended by 21 days from the date of the leave.
  - 4) Such other and further reliefs.
2. The above application is supported by an affidavit sworn by the Applicant and filed on 19<sup>th</sup> June 2025, together with annexures marked as “A”, “B” and “C”.
  3. The Defendant- Applicant- **Respondent (“the Respondent”)**, namely, JAHARUL NISHA swore her Affidavit in opposition on 6<sup>th</sup> August 2025 and filed it on 7<sup>th</sup> August 2025, together with annexures marked as “JN-1” & “JN-2”. The Applicant **SEVENAKA SIGA** filed his affidavit in Reply on 03<sup>rd</sup> September 2025, together with an annexure marked as “A”.

**B. HISTORY IN BRIEF:**

4. The Applicant had on 4<sup>th</sup> July 2020 become the monthly tenant of the Respondent by entering into a tenancy agreement on 4<sup>th</sup> July 2020 for a period of 3 years on an agreed monthly rental of \$600.00.
5. After paying the rental for sometimes, the Applicant stopped the payment by alleging that the Respondent was not the registered lessee and/or the owner of the subject property.
6. When the Respondent demanded the payment of the arrears of rent, the Applicant filed the substantive action hereof against the Respondent land-lord seeking certain, purported, declaratory reliefs, an order for the recovery of the rentals so far paid by him to the Respondent land-lord, for damages and costs.
7. After closure of the Pleadings and compliance with the PTC formalities, when the matter stood fixed for trial on 2<sup>nd</sup> July 2024, the Respondent’s Solicitors filed a SUMMONS on 18<sup>th</sup> March 2024 seeking the following reliefs against the Applicant;

- A. *An injunction restraining the Respondent from further occupying the subject property, identified as Crown Lease Number 15599, Lot 2 on S04017, known as part of Nasou, Nadi, until such time as the rental arrears is settled in full or appropriate arrangements are made*
- B. *That all monthly rental payments, along with the arrears amounting to \$21,100.00 (twenty-one Thousand and One Hundred Dollars), owed by the Respondent under the Tenancy Agreement dated 4th July 2020 over the property comprised in Crown Lease Number 15599, Lot 2 on S04017, known as part of Nasou, Nadi, be directed to be paid into Court pending the determination of the Writ Action.*
- C. *The Costs of this application to be borne by the Respondent.*
- D. *Any other Orders that this Honourable Court deems just and fitting under the circumstances.*

8. After hearing the above Summons, this Court by its Ruling dated **10<sup>th</sup> June 2025** made the Orders *inter – alia* as reproduced in paragraphs **1 (1) A to G** above, particularly requiring the Applicant to deposit the monthly rental arrears of \$30,100.00 up the date of said ruling and the future monthly rental on due dates to the Credit of the case in an Account with the High Court Registry till the final determination of the action. These deposits were to remain intact till the final determination of the substantive action.

9. It is against the said ruling; the Applicant is seeking leave to Appeal to the Court of Appeal and stay as prayed for in the current Application in hand.

**C. SUMMONS FOR LEAVE TO APPEAL AND STAY**

10. As per the Summons in hand, the Applicant seeks, *inter alia*, for leave to appeal my interlocutory ruling dated 10<sup>th</sup> June 2025 and stay of the execution thereof pending Appeal.

**D. THE PROPOSED GROUNDS OF APPEAL:**

11. In the proposed Notice of Appeal and Grounds of Appeal marked and annexed as “C” to the Affidavit in Support of this Summons, the Applicant has adduced 7, purported, Grounds of Appeal, which I shall not reproduce here as I do not see those grounds to be meritorious. Those grounds, though I am not supposed to delve deep into at this stage, in my cursory view, do not appear to be warranting any favourable consideration.

**E. LEGAL PROVISIONS AND ANALYSIS:**

12. The Applicant has filed this Summons pursuant to Section 12 (2)(f) of the Court of Appeal Act (Chapter 12); Rule 34(1) of the Court of Appeal Rules Cap 12. It is also to be noted that Rules 26 and 27 of the Court of Appeal Rules too will come into play when an Application of this nature is considered.

13. Section 12 of the Court of Appeal Act has laid down the provisions applicable for “Appeals in civil cases.” Section 12(2) (f) provides that:

“(2) No appeal shall lie-

.....  
(f) without the leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge of the High Court, except in the following cases, namely: -  
(i) where the liberty of the subject or the custody of infants is concerned;  
(ii) where an injunction or the appointment of a receiver is granted or refused;  
(iii) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act (Cap. 247) in respect of misfeasance or otherwise;  
(iv) in the case of a decree nisi in a matrimonial cause or judgment or order in an Admiralty action determining liability;  
(v) in such other cases as may be prescribed by rules of Court.

14. Rule 26 of the Court of Appeal Rules states:

*“26. -(1) Every application to a judge of the Court of Appeal shall be by summons in chambers, and the provisions of the High Court Rules shall apply thereto.*

*(2) Any application to the Court of Appeal for leave to appeal (whether made before or after the expiration of the time for appealing) shall be made on notice to the party or parties affected.*

*(3) Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal it shall be made in the first instance to the Court below.”*

15. Rule 27 of the Court of Appeal Rules sets out that “Without prejudice to the power of the Court of Appeal, under the High Court Rules as applied to the Court of Appeal, to enlarge the time prescribed by any provision of these Rules, the period for filing and serving notice of appeal under rule 16 may be extended by the Court below upon application made before the expiration of that period.”

16. Rule 34(1) of the Court of Appeal Rules is reproduced below which reads:

*“34.- (1) Except so far as the court below or the Court of Appeal may otherwise direct-*  
*(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;*

*(b) no intermediate act or proceeding shall be invalidated by an appeal.”*

17. Both parties, having agreed to dispose the hearing by way of written submissions instead of an oral hearing, have filed their respective written submissions, along with the copies of the cited case law authorities for which I thank them profusely.

18. In their written submissions, both parties have addressed the Court on the principles the Court should take into account in considering applications for leave to appeal against interlocutory decisions and rulings in the course of the trial process and also the factors that should be considered for granting of a stay pending appeal.

19. In the case of **The Public Service Commission v. Manunivalagi Dalitucama Korovulavula [Unreported] Civil Appeal No. 11 of 1989 (23 June 1989)**; which was

an application for leave to appeal against an interlocutory order made by the High Court (Per Jesuratnam J); the Fiji Court of Appeal held:

*".....I must bear in mind that I am dealing with an application for leave to appeal and not with the merits of an appeal. It would therefore, not be appropriate for me to delve into the merits of the case by looking into the correctness or otherwise of the order intended to be appealed against.*

*However, if prima facie, the intended appeal is patently unmeritorious or there are clearly no arguable points requiring decision then it would be proper for me to take these matters into consideration before deciding whether to grant leave or not."*

20. In ***KR Latchan Brothers Limited v. Transport Control Board and Tui Davuilevu Buses Limited [1994] FJCA 24; ABU 12e of 1994s (27 May 1994)***; the full bench of the Court of Appeal (Tikaram, Quillam and Savage JJ) upheld the decision of Thompson JA who had held:

*"The granting of leave to appeal against interlocutory orders is not appropriate except in very clear cases of incorrect application of the law. It is certainly not appropriate when the issue is whether discretion was exercised correctly unless it was exercised either for improper motives or as result of a particular misconception of the law. The learned judge has given full reasons for the order he has made. There is no suggestion of impropriety in the appellant's affidavit. There is an allegation of misconception of the law, but if there was a misconception of the law, it is not a clear case of that. That matter can be made a ground of appeal in any appeal against the final judgment of the High Court, if the appellant is unsuccessful in the proceedings there."*

21. In so doing Their Lordships said:

*"We do not agree that the intended question for the Court of Appeal involves a point of law of any great significance. The control of proceedings is always a matter for the trial Judge. We adopt what was said by the House of Lords in *Ashmore v Corp of Lloyd's* [1992] 2 All E R 486 -*

*"Furthermore, the decision or ruling of the trial judge on an interlocutory matter or any other decision made by him in the course of the trial should be upheld by an appellate court unless his decision was plainly wrong since he was in a far better position to determine the most appropriate method of conducting the proceedings."*

22. Sir Moti Tikaram, then President Fiji Court of Appeal in ***Kelton Investments Limited and Tappoo Limited v. Civil Aviation Authority of Fiji and Motibhai & Company Limited [1995] FJCA 15; ABU 34d of 1995s (18 July 1995)*** held;

*"I am mindful that Courts have repeatedly emphasised that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals (see *Hubball v Everitt and Sons (Limited)* [1900] UKLawRpKQB 17; [1900] 16 TLR 168).*

Even where leave is not required the policy of appellate courts has been to uphold interlocutory decisions and orders of the trial Judge - see for example *Ashmore v Corp*

of *Lloyd's* [1992] 2 All ER 486 where a Judge's decision to order trial of a preliminary issue was restored by the House of Lords.”

.....

*“If a final order or judgment is made or given and the Applicants are aggrieved, they would have a right of appeal to the Court of Appeal against such order or judgment. Therefore, no injustice can result from refusing leave to appeal.*

*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. I am also of the view that the Applicants will not suffer an irreparable harm if stay is not granted.”*

23. In ***Kelton Investments Limited (supra)*** His Lordship also relied upon a decision of the Supreme Court of Victoria in *Niemann v. Electronic Industries Ltd* [1978] VicRp 44; (1978) VR 431; where Murphy J said (at page 441):

*“Likewise in *Perry v Smith* [1901] ArgusLawRp 51; (1901), 27 VLR 66 & *Darrel Lea Case* [1969] VicRp 50; [1969] V.R. 401, the Full Court held that leave should only be granted to appeal from an interlocutory judgment or order, in cases where substantial injustice is done by the judgment or order itself. If the order was correct, then it follows that substantial injustice could not follow. If the order is deemed to be clearly wrong, this is not alone sufficient. It must be shown, in addition, to affect a substantial injustice by its operation.*

*It appears to me that greater emphasis must lie on the issue of substantial injustice directly consequent on the order. Accordingly, if the effect of the order is to change substantive rights, or finally to put an end to the action, so as to effect a substantial injustice if the order was wrong, it may more easily be seen that leave to appeal should be given.”*

24. Sir Moti Tikaram in ***Totis Incorporated, Sport (Fiji) Limited & Richard Evanson v. John Leonard Clark & John Lockwood Sellers [Unreported] Civil Appeal No. 35 of 1996S (12 September 1996)***, at page 6 said:

*“It has long been settled law and practice those 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 principle by granting leave only in the most exceptional circumstances.”*

25. These principles have been adopted by the Fiji Court of Appeal in ***Gosai v Nadi Town Council [2008] FJCA 1; ABU 116.2005 (22 February 2008)***.

26. In ***Patel v Kant [2014] FJHC 252; HBC16.2011 (11 April 2014)***; it was held by the High Court of Fiji:

*“The defendant in leave to appeal application should satisfy court that;*

*The decision was wrong, or at least attended with sufficient doubt to justify granting leave and; Substantial injustice would be done if it's not reversed as held in. Niemann –v- Electronic Industries Ltd[1978] VicRp 44; , 1978 VR 431 and also should satisfy court that there are arguable legal issues and the intended appeal has merit. The Fiji Public Service Commission –v- Manunivalagi Dalituicama Korovulavula (unreported) FCA Civil Appeal No. 11 of 1989.”*

27. Furthermore, in ***Dinesh Shankar v. FNPF Investments Limited and Venture Capital Partners (Fiji) Limited [2017] FJCA 26; ABU32.2016 (24 February 2017)***; President Fiji Court of Appeal, His Lordship Justice Calanchini held:

*“The principles to be applied for granted leave to appeal an interlocutory decision have been considered by the Courts on numerous occasions. There is a general presumption against granting leave to appeal an interlocutory decision and that presumption is strengthened when the judgment or order does not either directly or indirectly finally determine any substantive right of either party. The interlocutory decision must not only be shown to be wrong but it must also be shown that an injustice would flow if the impugned decision was allowed to stand (Niemann –v- Electronic Industries Ltd [1978] VicRp 44; [1978] VR 431). See: Hussein –v- National Bank of Fiji [1995] 41 Fiji LR 130.*

28. Therefore, it is clear that leave to appeal against interlocutory decisions should only be granted in the most exceptional circumstances. Leave to appeal would not normally be granted unless substantial injustice would be caused to a party (in this instance to the Plaintiff- Applicant). It is also incumbent on the applicant to establish that there is a reasonable prospect that the appeal would succeed on the proposed grounds of appeal, which he is relying upon if leave were to be granted. The same principles would apply to stay pending appeals as well.
29. Therefore, it is my considered view that the Applicant has failed to establish any exceptional circumstances for the granting of leave to appeal or that substantial injustice would be caused to them if leave to appeal is refused. Further the Defendants have failed to establish that there is a reasonable prospect that the appeal would succeed on the proposed grounds of appeal which he is relying upon. For the same reasons, I am of the opinion that the Applicant has failed to establish any exceptional circumstances for the granting of a stay pending appeal.
30. In my impugned Ruling dated 10<sup>th</sup> June 2025 pronounced on the application of the Respondent JAHARUL NISHA, which is found in “Paclii” under ***Nisha v Siga [2025] FJHC 335; HBC289.2021 (10 June 2025)***, I have given all my reasons, that prompted this court to order the applicant hereof to deposit total arrears of rental in a sum of \$30,100.00 from the date of default till the date of the Ruling and the monthly rental thereafter to the credit of the case at the registry.
31. No prejudice whatsoever was or is to be caused to the Applicant owing to the said ruling. He came in as a monthly Tenant of the Respondent and was bound to pay his rental by leaving no arrears. There was no single valid ground for him to have evaded the payment of monthly rental.

32. Though, he purported to reveal in his statement of claim that the Respondent was not the Registered Lessee and/ or the owner of the subject land and premises and it was someone else, he neither brought him as a party to the action nor took up the position that he is paying the rental to such a person.
33. As I stated in my said ruling, the Applicant was enjoying free accommodation on the expense of the Respondent JAHARUL NISHA and continue to do so by making this kind of frivolous application and in the act of abusing the process of this Court. In short, it appears that he is in a “*Nit Picking and petty-Fogging exercise*” in order to deprive the Respondent of her monthly rental for the premises in question.
34. The Applicant, who came into the subject land and premises as a tenant of the Respondent on a written Agreement, cannot subsequently change his position detrimental to the respondent land-lord.
35. The Respondent has to either continue to pay for occupying the property in dispute or leave the property as the Applicant cannot tolerate the presence of the Respondent any further in the absence of payment of the rentals, particularly, when the Respondent has not prayed for a relief for his continued occupation of the property in question.
36. It is unfair on the part of the Respondent to occupy the premises without paying the monthly rental that he had agreed to pay. He does not show any valid ground for him to continue to occupy the property without paying the rental as agreed. He neither advances a claim for any right, title or interest in the subject property in dispute, nor makes a claim for the continued occupation of the subject property.
37. Since this court stands convinced that no leave to appeal my interlocutory Ruling dated 10<sup>th</sup> June 2025 should be granted, no necessity would arise to consider the application for stay as prayed for by the applicant.

**F. Costs:**

38. The conduct of the applicant hereof in making this type of frivolous application and abusing of the process of this Court should be condemned and met with higher cost being ordered against him in favour of the Respondent Land-lord. Having considered all the circumstances, I decide to order the Applicant to pay the Respondent a sum of \$5,000.00 (Five Thousand Dollars) being the summarily assessed costs of this Application.

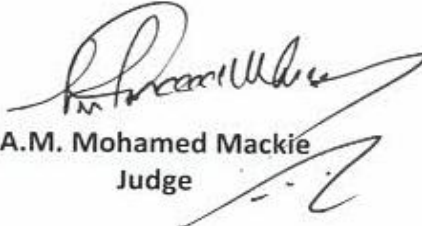
**G. CONCLUSION:**

39. For all the aforesaid reasons, I am of the view that leave to appeal should not be granted. Accordingly, the application filed by the Plaintiff-Applicant seeking leave to appeal has to be necessarily refused. For the same reasons, the application for the stay of execution is also refused.
40. Accordingly, I make the following Orders:

E. **FINAL ORDERS:**

- a. Plaintiff's Application for Leave to Appeal and Stay fails.
- b. Plaintiff's Application filed on 19<sup>th</sup> June 2025, seeking for Leave to Appeal and Stay, is hereby dismissed.
- c. The Plaintiff shall pay the Defendant a sum of **\$5,000.00 (Five Thousand Dollars)** as summarily assessed costs.



  
A.M. Mohamed Mackie  
Judge

At the High Court of Lautoka on this 13<sup>th</sup> day of February, 2026.

**SOLICITORS:**

For the Plaintiff/ Respondent/ Applicant  
For the Defendant/ Applicant/ Respondent

Appeared in person  
Messrs Pillai Naidu & Associates –  
Barristers & Solicitors.