

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 163 of 2025

BETWEEN: **CATHERINE GAIL O’CONNOR** of Lot 31, Calia Back Road,
Navua, Domestic Duties

PLAINTIFF

AND: **RUSSEL THORNLEY** of Unit 2, Level 11, Phillip Street,
Waterloo, Redfern, New South Wales, Australia, Occupation
unknown

DEFENDANT

For the Plaintiff: Mr. Vula. E

For the Defendant: Mr. Singh S & Ms. Saumaki K.

Date of Hearing: 26th November 2025

Date of Ruling: 11th February 2026

RULING ON STAY APPLICATION

1. This is the Ruling on an application by Originating Summons filed on the 2nd of May 2025 seeking the following orders: -

- a) That the Ruling by the Family Division of the Magistrate’s Court at Navua under Case No. 22/NAV0017 from Form 12 and Form 23 Application and the respective order made by the Learned Magistrate Senikavika L Jiuta on 12 day of March 2025 for the Plaintiff to vacate her matrimonial home situated on the land more particularly described under Certificate of Title No. 33269 “Tokotoko” (Part of) Lot 16 on Deposited Plan No. 8162 containing an area of 4176 square metres (hereinafter referred to as the property) and/or any execution of the said Order be stayed until the said property is sold, settlement date at the Titles Office is determined and confirmed by the Real Estate Agent and/or their solicitor and that the Plaintiff is paid and/or to receive her \$250, 000 share entitlements from the sale proceeds of the said property on the

settlement date from the Real Estate agent or their solicitors as part of the Order for the matrimonial settlement.

- b) That all ruling and Order and any further execution processes of the said Order under the Family Division of the Magistrate's Court under case no. 22/NAV/0017 from Form 12 and Form 23 at the Navua Magistrate's Court be stayed and put on hold up till this matter is fully determined by this Honourable Court.
 - c) Costs and/or any other relief this Honourable Court may deem just and expedient in the circumstance.
2. The application is made under Order 17 Rule 8 of the High Court Rules and the inherent jurisdiction of the Honourable Court. The application is supported by the affidavit of Catherine Gail O'Connor deposed on the 2nd of May 2025 and filed on the same day.
 3. The application is opposed and the Defendant has elected not to file any affidavit but instead asked for a quick hearing date.
 4. The matter was fixed for hearing on the 26th of November 2025.

The submission for the Plaintiff

5. At the hearing the Plaintiff made oral submissions seeking the stay orders set out in the Originating Summons.
6. Her position is that she needs to remain on the property in order to safeguard her interests while at the same time the Defendant can make arrangements for the sale of the property as directed by the Family Court in Navua.
7. She submits that there is no prejudice to the sale process as the realtor can bring potential buyers to inspect the home so that the sale can proceed. She seeks the protection of the Court to maintain the status quo and so she remains in the property while the sales process is going through.
8. She therefore seeks order in terms of the Summons.

The submissions of the Defendant

9. The Defendant provides the following by way of background: -

- i. The Plaintiff and Defendant are parties to matrimonial proceedings in Family File No. 22/NAV/0017 in Navua Magistrate's Court.
- ii. On 27 November 2025, consent orders were entered into between the Plaintiff and the Defendant in Family File No. 22/NAV0017 wherein the Court ordered that the Plaintiff be entitled to fifty percent of the property described in Title No 33269 "Tokotoko" (part of) Lot 16 on Deposited Plan No. 8162 (the property) and that the property be sold to the highest bidder.
- iii. On 8 January 2025, the Court further ordered that the Plaintiff vacate the property within one month to enable the appointed Real Estate Agent to commence the sale process and allow prospective bidders to conduct inspections.
- iv. The said order was to facilitate the bidders to inspect the property without disturbance and obstruction.
- v. The Plaintiff thereafter further filed an application by way of Forms 12 and 23 in the Magistrate's Court seeking a stay order of 8 January 2025, whilst she filed a Form 9 Variation application.
- vi. The Navua Family Court, after hearing the parties, dismissed the Plaintiff's Form 12 and 23 for stay on the 12th of March 2025.

10. The Defendant submits that the Rule relied on in this application is not applicable to the current application.

11. The application is not an interpleader application nor are the orders sought by the Plaintiff one relating to such an application.

12. The application filed by the Plaintiff is frivolous and is an abuse of Court processes and should be dismissed in its entirety.

13. The Plaintiff has already filed for a stay of execution in the Navua Magistrate's Court (Form 12 and 23) and her stay application was dismissed on 12 March 2025. She cannot now file new proceedings in the High Court seeking the very relief that the Magistrate's Court has already refused.

14. The Defendant cites the authority of Farood vs Nisha [2024] FJHC 86; HBC 113 of 2017 (13 February 2024), where the High Court stated as follows: -

“(24) The Court record shows that on 19th March 2023, the Applicant/ Defendant, Maimun Nisha filed an Originating Summons and sought for an order for stay of execution for the Writ of Possession.

(25) The application was already heard and determined by the Court on 20th June 2023 whereby this Court made an Order “that the stay of execution of the Writ of Possession” was dismissed.

(26) Yet again, the Applicant/Defendant comes to the Court with the second limb application seeking for stay of execution which cannot be re-litigated and allowed since the action has been concluded to its finality on Consent Orders in place.

(27) Accordingly, I proceed to dismiss the order sought for Interim Stay.”

15. The orders that are sought to be stayed are consent orders and the above judgment also dealt with it as follows: -

“(20) In *Halsbury 4th Ed. Vol. 26 P.286*, it provides that:

‘unless all the parties agree, a Consent Order, when entered; can only be set aside by a fresh action, an application cannot be made to the Court of first instance in the original action [HBC Civil Action no. 133 of 2017] to set aside the Judgment and/or order.’”

(21) The Applicant/ Defendant did not adhere to do as was required of him to do so procedurally as is also provided for hereinabove in *Halsbury 4th Ed. Vol.26 p.286* when he was suppose to file a fresh action accordingly.

(22) It is noted that a Consent Judgment/ Order is a final decision of the Court for all purposes. It can only be set side on the ground of fraud and/or mistake. The Applicant/ Defendant has failed to show that there are elements of fraud or mistake involved that led to the grant of the Consent Order/Judgment on 19th October 2022.

(23) For the aforesaid rational, I proceed to dismiss the Applicant/Defendant's application seeking for the setting side of the consent order entered into on 19th October 2022.”

16. The Defendant submits that the Plaintiff cannot bring these proceedings and seek orders which effectively seek for the consent orders to be set aside. The only proper way forward is to formally appeal the decision in the Family Division of the High Court. At this stage any appeal is out of time and in any event no appeal has been filed.
17. The reasons provided by the Plaintiff for remaining on the property are without substance and do not warrant the granting of relief by this Court. The Defendant submits that her continued presence in the property is a hinderance to the quick sale of the property.
18. With respect to the injunctive relief sought by the Plaintiff, the Defendant cites the leading authority of America Cyanamid vs Ethicon (1975) 2 WLR 316.
19. Applying the test set out in the above authority the Defendant submits as follows: -
- There is no serious question to be tried, she is seeking a remedy that has been dealt with already in the Court below.
 - There is no serious issue raised by the Plaintiff as to why stay should be granted.
 - The Plaintiff will not suffer irreparable harm as the orders for her to vacate the property are made for the sale of the matrimonial property and she can be given her share of the proceeds of sale.
 - The balance of convenience favours the Defendant as he has obtained lawful orders from the Court for vacant possession of the property which shall be offered for sale and the proceeds distributed between the parties.
 - The Defendant therefore prays that the application be refused with costs.

Analysis

20. At the hearing, the Court asked learned counsel for the Plaintiff “Tell me why I should entertain your application?” In answer counsel submitted that she was not contesting the declaration by the Court that she was entitled to 50% of the property. She was

merely asking for the order for vacant possession to be stayed to enable her to remain on the property while the sale of the property proceeds.

21. In the Family Court in Navua she initially sought a variation of this order. This was refused and she then sought a stay of the order for vacant possession. This was also refused, and instead of appealing in the Family Division of the High Court, she has instituted these proceedings in the High Court.
22. This application in the Court's view engages the principle of *res judicata* and this was discussed by the Supreme Court in Varani vs The Native Lands Commission & others [2022] FJSC 16; CBV 14 of 2018 (29 April 2022) as follows: -

“[40] The concept of *res judicata* is well known in both common Law and civil law jurisdictions, though in certain legal systems it is more popularly known as “claim preclusion”. Under Roman law, the principle was embodied in two legal maxims, *interest rei publicae ut sit finis litium*, meaning “it concerns the State that there be an end to law suits” and *nemo debet bis vexari pro una et eadem causa*, meaning “no man should be vexed twice over for the same cause”. As Halsbury's *Laws of England* explains, “the doctrine of *res judicata* is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation.”

[42] The recent decision of the English Supreme Court in *R (Coke-Wallis) v. Institute of Chartered Accountants in England and Wales* which involved two successive sets of disciplinary proceedings, provides an example of a cause of action estoppel. Lord Clarke of Stone-cum-Ebony J. (with whom Lord Phillips of Worth Matravers P, Lord Rodger of Earlsferry and Lord Collins of Mapesbury JJ agreed) outlined the requisites of *res judicata* in its application to the proceedings before administrative tribunals in the following manner:

“In para 1.02 Spencer Bower & Handley, *Res Judicata*, (4th ed.) makes it clear that *there are a number of constituent elements* in a case based on cause of action estoppel. They are: ‘(i) the *decision*, whether domestic or foreign, was *judicial in the relevant sense*; (ii) it was in fact *pronounced*; (iii) the tribunal had *jurisdiction* over the parties and the subject matter; (iv) the decision was— (a) *final*; (b) *on the merits*; (v) it *determined a question raised in the later litigation*; and (vi) the *parties are the same or their privies*, or the earlier decision was *in rem*.”

23. In this instance, the substantive Ruling by the Navua Family Magistrate's Court was in relation to the application for Declaration of Property Interest (section 160 of the


Family Law Act) and Alteration of Property interests (section 161 of the Family Law Act). The Family Court ruled on this substantive application and made a finding that each party was entitled to 50% share of the property.

24. After the substantive ruling, the Court then made consequential rulings for the Plaintiff to vacate the property to facilitate the quick sale of the property and for the proceeds to be shared as per the Court's substantive orders. These consequential orders were made after a full hearing.
25. The Plaintiff then filed a Variation application to enable her to remain on the property. When this application was refused, the Plaintiff sought a stay of the proceedings. These applications were refused in turn and instead of appealing that refusal, the Plaintiff has instituted this action in the High Court seeking the same remedy that has been refused in the Court below.
26. This is tantamount to an abuse of process, and the Plaintiff was warned at the outset of this, however she has persisted in maintaining this action.
27. I find that this current action is seeking the same orders that were refused in the Family Court in Navua. Instead of appealing that decision, she has sought the same remedies in this Court, not even in the Family Division of the High Court, where this action should have rightfully been lodged.
28. The current remedies sought have been adjudicated upon and to entertain it any further is an abuse of the Court process. That is where the matter ends and there is no need to consider any of the other legal principles that may be implicated by this application.
29. The Plaintiff was warned at the outset of the nature of the application and how it could not be sustained. Notwithstanding those warnings she has persisted in maintaining an action that is res judicata, putting the Defendant to further, unnecessary expenses.
30. I find that the Defendant is entitled to costs, summarily assessed at \$1, 000.

This is the order of the Court: -

- 1. The application for stay of the Order of the Navua Family Court dated 12 March 2025, ordering the Plaintiff to vacate her matrimonial home situated on the land more particularly described under Certificate of Title No. 33269 "Tokotoko" (Part of) Lot 16 on Deposited Plan No. 8162 containing an area of 4176 square metres (hereinafter referred to as the property) is refused.**
- 2. The Defendant is at liberty to execute the above orders.**
- 3. The Plaintiff will pay the Defendant the cost of these proceedings, summarily assessed at \$1, 000, one month to pay.**

There is a right of appeal



Mr. Justice U. Ratuveli
Puisne Judge



cc: - Vula Lawyers
- Shelvin Singh Lawyers