

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 021/2010

BETWEEN: CHIEF REGISTRAR

Applicant

**A N D: VIPUL MISHRA
MEHBOOB RAZA
MUHAMMAD SHAMSUD-DEAN SAHU KHAN
SAHU KHAN & SAHU KHAN**

**1st Respondent
2nd Respondent
3rd Respondent
4th Respondent**

**Applicant : Ms V. Lidise
1st Respondent : Mr S K Ram
2nd Respondent : No Appearance
3rd Respondent : No Appearance**

**Date of Hearing : 6th December 2011
Date of Judgment : 6th December 2011**

EXTEMPORE RULING ON SUMMONS FOR STAY

1. The 1st Respondent Vipul Mishra brings before the Commission a summons for a stay of the order for suspension of his practicing certificate, contained in the orders made by the Commission on the 4th of May 2011.
2. A further order is sought in the summons that the date given to the 1st Respondent of the 31st December 2011 to remove the mortgage of the Reserve Bank of Fiji from Crown Lease No. 16375 be extended until determination of High Court Action No. 189 of 2011.
3. In support of the motion Mr Mishra has filed an affidavit sworn on the 23rd November 2011.
4. A further affidavit of Priya Preetika Lal sworn on the 5th of December 2011 is also relied on by the 1st Respondent.

5. No evidence has been filed on behalf of the Chief Registrar.
6. In his affidavit Mr Mishra says that it has been difficult to communicate with Ambika Nand, the vendor of the subject land to Sashi Kiran Pratap and the person who mortgaged the property initially to British American Insurance Limited now the Reserve Bank of Fiji.
7. He further says that in addition to the difficulty in contacting or obtaining instructions from Ambika Nand that Ambika Nand has had difficulty in obtaining some necessary documents from his former solicitors Sahu Khan and Sahu Khan.
8. This it is submitted is the reason that the Writ of Summons annexure "A" to the affidavit was not filed prior to the 23rd November 2011.
9. The Writ of Summons has as plaintiff Ambika Nand, The Reserve Bank of Fiji as 1st Defendant and The Registrar of Titles as 2nd Defendant.
10. It seeks various orders including a declaration that the recording of the mortgage on State/Crown Lease No. 16375 is irregular and not in compliance with Section 60 of the Land Transfer Act. An order that the Memorial No's relating to the Defendant's mortgage be removed from the State/Crown Lease No. 16375 and that the mortgage under State/Crown Lease No. 16375 be removed.
11. Whilst an order is sought for an injunction restraining the 1st Defendant from enforcing the mortgage until these proceedings are determined no interlocutory relief has been sought in that regard.
12. Whilst there is no evidence before me to this effect I am informed by counsel for Mr Mishra that Mr Mishra is currently in India for medical treatment and that he will be returning to Fiji in early January.
13. The Commission next sits on the 23rd January 2012.
14. It is of concern that whilst proceedings have been commenced in the High Court it may be some considerable time before those proceedings are finally resolved and that in the interim there is no protection for Sashi Kiran Pratap should the Reserve Bank of Fiji seek to enforce its rights pursuant to the mortgage.

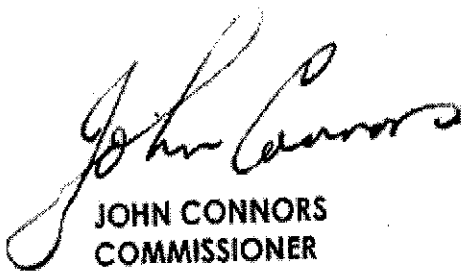
15. Annexure "D" the affidavit of Mr Mishra of the 23rd November 2011 is a form of Guarantee for Performance which is executed by him.
16. Whilst the Guarantee recites that it shall be the security for the whole money secured it is not supported by any bank guarantee or security deposit.
17. There is also no evidence before me that the Reserve Bank of Fiji is accepting of the guarantee.
18. It is submitted on behalf of the Chief Registrar that the orders sought should not be granted and that the 1st Respondent's practicing certificate should be cancelled in accordance with the orders of the 4th May 2011 should compliance be not forthcoming.
19. It is further submitted on behalf of the Chief Registrar that the discretion then should rest with the Chief Registrar to re-issue the practicing certificate when the Chief Registrar is satisfied there has been compliance.
20. Whilst I am conscious of the discretion given to the Chief Registrar under the Legal Practitioners Decree with respect to practising certificates I think that it is inappropriate when the issue is the enforcement of an order of the Commission.
21. I also find it somewhat disconcerting that submissions of the nature are made by the Chief Registrar with respect to this matter when there are other matters where the orders of the Commission apparently have not been complied with and practitioners have continued to be issued with practicing certificates.
22. In the circumstance therefore I think it is appropriate that there be some little time given to enable the 1st Respondent to better put in place appropriate protections for the benefit of Sashi Kiran Pratap pending the determination of the High Court proceedings or the finality of any rights of appeal.

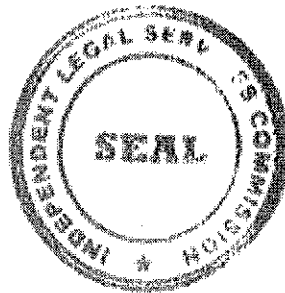
ORDERS

1. I Grant order 2 of the Summons until the 24th of January 2012.
2. The 1st Respondent shall on or before the 24th of January 2012;
 - a. Seek an injunction as sought in order (g) of annexure "A" to the affidavit of Vipul Manojdutt Mishra of the 23rd of November 2011.

b. Furnish to the Reserve Bank of Fiji a guarantee supported by a bank guarantee or security deposit in a sum sufficient to cover the mortgage debt (including interest) enabling the Reserve Bank of Fiji to recover from the guarantor without further action.

3. I adjourn the summons to 10.00am on the 24th January 2012.


JOHN CONNORS
COMMISSIONER



6 DECEMBER 2011