

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Civil Jurisdiction
Action No. 114 of 1980

Between

KHAIRUL NISHA d/o Changa Mia &
MOHAMMED ALIM KHAN & MOHAMMED
AQIL KHAN

Plaintiffs

- and -

BA MEAT COMPANY

Defendant

Mr. Mohammed
Mr. Chand

Counsel for the Plaintiffs
Counsel for the Defendant

R U L I N G

This is an application for a stay of execution pending an appeal to the Fiji Court of Appeal, by the defendant in the original action.

The plaintiff had commenced the proceedings by issuing a summons for vacant possession of premises occupied by the defendant, under section 169 of the Land Transfer Act. The defendant opposed the application, but after hearing argument Williams J. made the requested order for possession on 16/5/80. No time was given for the defendant to vacate.

On 20/6/80 on application made by the plaintiff this court gave the plaintiff leave to issue a writ of possession. Apparently on the same day (not 19/6/80 as stated in counsel for the defendant's affidavit of 23/6/80) the defendant filed a motion of appeal to the Fiji Court of Appeal in Suva. Notice of this was apparently given to the plaintiff's solicitors in Suva on 23/6/80, though not to the local solicitors. The defendant/^{has}now moved the court for a stay of execution pending the outcome of the appeal, and for an order that security for costs of the defendant be dispensed with. The two counsel in this action seem to have entered into an affidavit war, making accusations, counter-accusations and denials which are really of no assistance to the court. The defendant has not put forward any reasons for the request for a stay of execution, though from the bar counsel for the defendant has argued that unless a stay is granted the defendant's appeal even if successful would be made nugatory.

The Court of Appeal Rules quite clearly provide that a stay of execution will not be granted pending an appeal unless the court of the lower court so provide. The position must be exactly the same as under English law. I have been referred to a number of English cases. The Ratata (1897) P. 132, and the Annot Lyle (1888) P. 115. (Admiralty cases, but where the principles applicable were stated to be exactly the same as in other types of cases), and Baker v Lavery (1885) 14 QBD 769, and from these cases it is clear that a stay of execution will only be granted in cases where failure to grant it could result in the appellant's appeal, even if successful, being rendered nugatory.

Such was the case in Wilson v Church (1879) 12 Ch.D 458 a case to which I was referred by the defendant. There is no evidence before me to suggest that such is the case here. If the defendant's appeal is successful the plaintiff will obviously have to give possession back to the defendant, or compensate him.

The application is therefore refused with costs, to be taxed if not agreed.

With regard to costs of the appeal, the defendant should deposit with the Registrar the sum of \$200 cash as security for costs and costs of preparation of the record.

LAUTOKA,
4th July, 1980

(sgd.) G. O. L. Dyke
JUDGE