

IN THE HIGH COURT OF FIJI
[WESTERN DIVISION] AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 170 OF 2016

BETWEEN : **ADIAMMA** formerly of Malolo, Nadi, but now of 61 Horokiwi
Road West, Newladden, Wellington, New Zealand.
PLAINTIFF/RESPONDENT

A N D : **KESHO DAYAL** of Malolo, Nadi.
DEFENDANT/APPLICANT

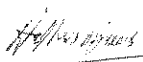
Appearances : Ms A. Chand for the defendant/applicant
Ms M. Vanua for the plaintiff/respondent
Date of Hearing: 13 July 2018
Date of Ruling : 13 July 2018

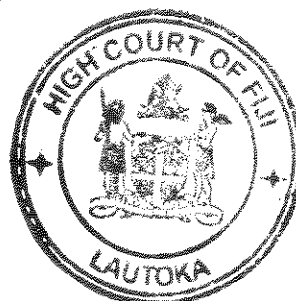
R U L I N G

[on stay pending appeal]

- [01] This is an application for stay pending appeal.
- [02] By his application filed 28 June 2018, accompanied by an affidavit in support, the defendant/applicant (*'the applicant'*) seeks a stay of execution of the judgments and orders pronounced and delivered on 4 October 2017, pending appeal.
- [03] Initially, the application was set down for hearing on 5 July 2018, when the matter was taken for hearing that day counsel Ms Naidu of counsel appearing for the applicant informed the court that the applicant could not serve the application on the respondent and asked for further time for service, and at the same time she made an application for vacation of the hearing and asked for a mention date to enable the applicant to serve the application on the respondent. Allowing the application, the court vacated the hearing and adjourned the matter for mention on 13 July 2018 (today).

- [04] Today, when the matter came up Ms Chand, counsel for the applicant confirms that the writ has been executed and they (*the respondent*) have given the time to remove the items from the property before 3pm today. She further informed the court that the applicant is not intending to prosecute the appeal.
- [05] Ms Vanua of counsel for the respondent on the other hand submits that there is no appeal pending in court as the appeal is deemed abandoned pursuant to O 59, R 17 of the High Court Rules 1988, as amended ('HCR').
- [06] The appellant shall, within 21 days of the filing of notice of appeal, file and serve a summons returnable before a Judge for directions and a date for the hearing of the appeal. If this Rule is not complied with, the appeal is deemed to have been abandoned (see O 59, R 17, HCR).
- [07] The applicant filed the notice of appeal on 17 October 2017. However, he did not file and serve a summons for direction and a date for the hearing of the appeal as required by R 17. As a result, by operation of the rule (R 17) his appeal is deemed abandoned.
- [08] The filing of notice of appeal, or an application for leave shall not operate as a stay of execution or of proceedings, or any step therein, unless the Court so directs (see O 59, R 16). The applicant has failed to obtain an interim stay pending determination of his appeal.
- [09] Currently, there has been no appeal on foot and the writ has been executed. The application for a stay pending appeal has become redundant. I would, therefore, strike out the application with no order as to costs.


.....
13/7/18
M.H. Mohamed Ajmeer
JUDGE



At Lautoka
13 July 2018

Solicitors:

For the applicant: M/s Siddiq Koya Lawyers, Barristers & Solicitors

For the respondent: M/s Young & Associates, Solicitors