

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 14 OF 2015

BETWEEN : NAINASO I RA HOLDING LIMITED a limited liability company having its registered office at 33 Raojibhai Patel Street, Suva, P. O. Box 4132, Samabula Post Office, Suva.

PLAINTIFF

AND : RAJNEEL KARAN SINGH of Samuel K. Ram Lawyers, 2nd Floor, Kamel Building, Kings Road, Ba Town, Legal Clerk.

1ST DEFENDANT

AND : SAMUEL K RAM trading as SAMUEL K RAM LAWYERS, a legal practice, duly established under the Legal Practitioners Decree, and having its registered office at 2nd Floor, Kamel Building, Kings Road, Ba. P. O. Box 3318, Ba.

2ND DEFENDANT

AND : MATAQALI NAINASO HOLDINGS LIMITED, a duly incorporated private company having its registered office at 2nd Floor, Kamel Building, Kings Road, Ba, P.O. Box 3318, Ba.

3RD DEFENDANT

AND : YASAWA PROJECTS COMPANY LIMITED, a duly incorporated private company having its registered office at 2nd Floor, Kamel Building, Kings Road, Ba. P. O. Box 3318, Ba.

4TH DEFENDANT

AND : CAPITAL GROUP INVESTMENT (FIJI) LIMITED, a duly incorporated private company having its registered office is at Suva, P. O. Box 15859.

5TH DEFENDANT

AND : ANWAR KHAN, of Drasa, Lautoka, P. O. Box 5490, Lautoka,
Businessman.

6TH DEFENDANT

AND : KELEVI NABA, of Drasa, Lautoka. Retired.

7TH DEFENDANT

AND : PATIMIO BACAIVALU, of Drasa, Lautoka. Company Director.

8TH DEFENDANT

AND : WAISEA RATUBUSA, of Vatuwaqa, Suva, Pharmacist.

9TH DEFENDANT

Appearances : Mr A. Rayawa for the plaintiff/respondent
: Mr S. Krishna for the second defendant/applicant
: Ms S. Ravai for the third to the ninth defendants
Date of Hearing : 04 October 2018
Date of Ruling : 04 October 2018

R U L I N G

[On Preliminary Issue]

[01] On 28 August 2018, the Court delivered a ruling restraining Mr S. K. Ram, a legal practitioner who is also the second defendant from appearing for the first defendant, who is legal clerk for the second defendant (*"the order"*).

[02] The first defendant through the same solicitor, who was restrained by the order from appearing and defending the first defendant in the same proceedings, has filed an application for leave to appeal the order (*"the application"*). The application, which is supported by an affidavit of Rajneel Karan Singh, the first defendant sworn on 18 September 2018, has been filed on 18 September 2018.

[03] The application came up for hearing before me today (4 October 2018) when Mr Rayawa of counsel for the plaintiff raised 2 preliminary issues:

1. The application for leave to appeal is out of time. There is no application to extend the time.
2. Mr Ram, has filed on behalf of the first defendant an application despite the Court order. Mr Ram cannot appear or file any documents in Court on first defendant's behalf. Mr Rayawa specifically submits that Mr Ram is in contempt.

[04] The applicant intends to appeal an interlocutory order delivered by this court on 28 August 2018. An appeal is available against that order with the leave of the court. Such leave may be granted by the Judge (of the High Court) or the Court of Appeal (see section 12 (2) (f) of the Court of Appeal Act ('CAA')). The Court of Appeal Rule ('CAR'), Rule 26 (3), says: 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.

[05] An appeal from an interlocutory order must be filed within 21 days from the date on which the order of the court below was pronounced (see 16 (a) of the CAR. The court made its interlocutory ruling on 28 August 2018. The applicant has filed his application for leave to appeal on 18 September 2018, which is well outside of 21 days. 21 days expired on 10 September 2018. Mr Rayawa contends that there is no application to extend the time to appeal the interlocutory order. I agree. There is no application for leave (to appeal) out of time.

[06] The second objection is that Mr Ram could not have filed this application on behalf of the first defendant and that he has filed it despite the court order. By its interlocutory ruling pronounced on 28 August 2018, the court has issued a restraining order against Mr Ram, solicitor for the first defendant from appearing and defending the first defendant in the same proceedings. The effect of that order is that Mr Ram cannot appear and defend the first defendant from the date of the order. The court order is operative from the date of its pronouncement, and there is no stay order. Mr Ram has filed the present application on behalf of the first defendant against the court order.

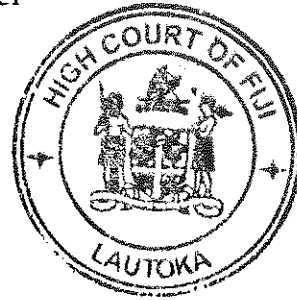
[07] I would, therefore, uphold the preliminary objections raised by the plaintiff. Accordingly, I dismiss and strike out the application with costs of \$500.00 payable to the plaintiff by the first defendant within 21 days.

The outcome

1. Preliminary objection upheld.
2. Application for leave to appeal refused.
3. First defendant shall pay the summarily assessed costs of \$500.00 to the plaintiff within 21 days.

M.H. Mohamed Ajmeer
4/10/18

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
4 October 2018

Solicitors:

For the plaintiff/respondent: M/s. Rayawa Law, Barristers & Solicitors

For the first defendant/applicant: M/s. Krishna & Co., Barristers & Solicitors

For the second defendant: M/s. Krishna & Co., Barristers & Solicitors

For the third – ninth defendants: M/s. Fa & Company, Barristers & Solicitors