

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 405 OF 2008

BETWEEN : **TOM WYNYARD**

FIRST PLAINTIFF

AND : **GULF PACIFIC (FIJI) LIMITED**

SECOND PLAINTIFF

AND : **THE TRUSTEES FOR THE COLONY OF FIJI OF THE
METHODIST CHURCH IN FIJI**

FIRST DEFENDANTS

AND : **MCF HOLDING TRUST**

SECOND DEFENDANT

Counsel : **Mr. P. Knight for the Plaintiffs**
Mr. S. Valenitabua for the Defendants

Date of Hearing : **20th June, 2016**

Date of Judgment : **21st June, 2016**

JUDGMENT

INTRODUCTION

1. This is a summons filed by the Plaintiff after the dismissal of the action after hearing of evidence. The decision to dismiss is now in appeal to the Court of Appeal. There is no order as to the costs, while dismissing the action and there was no application for execution of the said dismissal as there was nothing to execute. But the Plaintiff had filed the summons seeking stay of execution in terms of Order 45 rule 10 of the High Court Rules of 1988.

ANALYSIS

2. Final Orders of this case delivered on 31st March, 2016, is as follows;
 1. *The statement of claim is dismissed and struck off*
 2. *No costs.*
3. The summons filed by the Plaintiff and issued on 24th June, 2016 sought two orders and at the outset of the hearing of the summons the counsel for the Plaintiff withdrew the order 2 contained in the said summons seeking restraining order. The remaining order of the said summons reads;

*'That there be a stay of execution of the judgment delivered by the
On 31st March, 2016 until final determination of the appeal filed by the
Plaintiffs in the Fiji Court of Appeal No ABU 45 of 2016'*
4. As pointed out there is no application for execution of the judgment made on 31st March, 2016.
5. In ***Prasad vs Republic*** 2000 (2) FLR 115 Justice Gates (as his lordship then was) held that even a 'declaratory order' cannot be stayed. The court had only declared pre-existed position, with that 'appendage of any coercive decree'. So, in a dismissal of action without any order as to costs, only pronounces that the claim is not proved.
6. The Plaintiff had made this application in terms of Order 45 rule 10 of the High Court Rules of 1988 which reads as follows

'Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.' (emphasis added)
7. For the stay of execution the Plaintiff has to satisfy some 'ground of matters which have occurred since the date of judgment' and there are no such matters stated in the short 4 paragraph affidavit in support of this summons. So this application needs to be dismissed

for failure to conform with the requirements of Order 47 rule 10 of the High Court Rules of 1988.

8. Even if I am wrong, the application for stay of execution will not arise when there is no execution and on that ground the issue of stay will not arise.
9. In terms of the *Prasad vs Republic* (supra) even a declaratory judgment could not be stayed or execution of the said judgment could not be granted as there was no need of any execution since the court had given an authoritative declaration as to a 'relief' claimed. It was held that doing so 'does not make laws or create rights'. So dismissal of claim only 'pronounced upon rights which already been in existence'. (See *Prasad* (supra)). So in a case that is dismissed without costs, there cannot be a stay of execution.

FINAL ORDERS

- a. The Application for stay of judgment is refused.
- b. The summons for stay is dismissed and struck off.
- c. The cost of this application is summarily assessed at \$500 to be paid by the Plaintiff.

Dated at Suva this 21st day of June, 2016



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Deepthi Amaratunga
Justice Deepthi Amaratunga
High Court, Suva