

IN THE COURT OF APPEAL
FIJI ISLANDS AT SUVA

[Misc. Action No. 03 of 2010]

BETWEEN : **LUKE RAVULA MARA and Ten Others**
(Applicants/Appellants)

AND : **JIMS ENTERPRISES LIMITED**
(Respondent)

COUNSEL : **S. VALENITABUA for the Appellants**
: **G. ODRISCOLL for the Respondent**

DATE OF
HEARING and
SUBMISSIONS : **26th February 2010**

DATE OF RULING : **28th June 2010**

RULING ON APPLICATION
FOR LEAVE TO APPEAL OUT OF TIME
AND STAY OF EXECUTION

- [1] The applicants are what are known in Fiji as squatters, that is persons who are illegally occupying land. They have been continuously living on and occupying land known as Naivitavaya Settlement with their families for periods ranging from 42 to 7 years. They constitute a group of blood-relatives who have occupied this land since 1967, well before the Laucala Beach Estate was developed and when the land was literally an island. Due to the development of the Laucala Beach Estate and the movement of soil by machines their land became adjoined to the main land and was included in the Laucala Beach Estate development by surveyors.
- [2] They claim an equitable right to be on the settlement well before the development of the estate in about 1982 and well before the current respondent purchased the land in Certificate of Title 19755.
- [3] They claim that the respondent and its predecessors in title knew that they were occupying the settlement but, despite this, purchased the land contained in Certificate of Title 14761 and 19755. They allege and claim to believe that there was wilful blindness and voluntary ignorance on the part of the respondent and its predecessors in title which they say they have been advised by their lawyer, is tantamount to fraud.
- [4] Over the years they have built good dwelling houses on the settlement, a large church building which they still use for church services as do nearby residents of Laucala Beach Estate. There was no electricity or piped water when they first occupied the land in about 1967. Today electricity and piped water are connected to the land by the Fiji Electricity Authority and Public Works Department. They pay for their electricity or water supplies. No predecessor in title has ever attempted to remove the applicants and their families from the settlement. They say, that to be evicted would mean dismantling their good dwelling houses thus causing instant ruin to themselves.
- [5] Their application for a stay of execution and extension of time in which to appeal follows a hearing before Madam Justice Anjala Wati in the High Court on the 4th of December 2009. An Order giving effect to the judgment was sealed by the High Court on 4th January 2010.
- [6] The applicants admit that the time for appealing the judgment expired on or about the 25th of January 2010. Their application for leave to appeal out of time was filed on the 3rd of February 2010.

- [7] They give as reasons for the delay in applying to this Court the fact that no written judgment was made available to their lawyer until the 3rd of February 2010.
- [8] They claim that this was a breach of the Court of Appeal Rules which stipulate 42 days for filing a Notice of Appeal. The rule does not say, and I would have thought this was self-evident, that a Judge of the High Court must deliver a written judgment within 42 days of the hearing concluding. I therefore reject this submission.
- [9] The applicants submitted to the Court below and now to this Court that the respondent has been guilty of fraud constituted by wilful blindness and voluntary ignorance.
- [10] I find this an extraordinary submission for which there is no basis in law. No authority has been cited and I am certain there is none, except perhaps that mentioned by Lord Atkin in a different context in Liversidge v. Sir John Anderson (1942) A.C. 206 at p.245. As Lord Atkin said there is only one authority which might justify such an assertion and that is "Through the Looking-Glass" – Lewis Carroll (1872).
- [11] In her judgment Wati, J relied to a large extent on the judgment of Jitoko, J in the High Court in Civil Action no. HBC 106/04 Jims Enterprise Limited v. Mara and Another delivered on the 28th of March 2008. In my view the judge was right in so doing as both that case and the instant are almost identical on the facts.
- [12] It is trite law that the fact that a tenant carries out improvements on land without the consent of his or her landlord does not give him a right to continue in the occupation of the land if the landlord is otherwise lawfully entitled to it.
- [13] In this case the respondent was a bonafide purchase for value so that no allegation of fraud can be supported against it.
- [14] The learned trial judge said in paragraph 38 of her judgment delivered on the 5th of February 2009 that: "there is enough evidence that there were previous actions to remove the defendants from the property. Orders for vacant possession were granted as well. This should have been enough to warn the defendants that they are treated as illegal occupants and not wanted on the property. To stay on the property despite knowing the intention of the registered proprietors and then blaming the owners for letting them stay cannot assist the defendants. If they honestly believe that they had a right to apply for a vesting order, then why did they remain inactive for so long?"

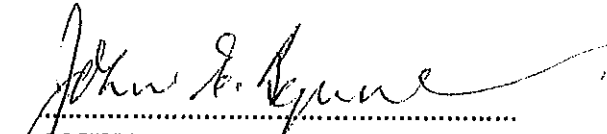
[15] The defendants (now applicants) have not given a satisfactory answer to that question.

[16] I am satisfied that this application for leave to appeal and stay is vexatious and frivolous and consequently I dismiss it under Section 35 of the Court of Appeal Act.

I order that the applicants pay the Respondent costs which I fix at \$2,000.00.

Dated at Suva this 28th day of June 2010.




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JOHN E. BYRNE, Acting President
Fiji Court of Appeal