

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL NO. ABU 0024 OF 2013
(High Court HBC 20 of 2000)

BETWEEN : MAYA WATI
Appellant

AND : RAJENDRA KUMAR
Respondent

Coram : Chandra RJA

Counsel : Mr. I. V. Tuberi for the Appellant
Mr. A. Kohli and Mr. A. Nand for the Respondent

Date of Hearing : 4 August 2014

Date of Ruling : 24 November 2014

RULING

- [1] This is an application by the Appellant for enlargement of time to allow her to appeal against the decision of the High Court in Labasa which was delivered on the 4th day of November 2011.
- [2] The Respondent had instituted action against the Appellant in the High Court seeking specific performance of the agreement dated 11th of February 1993 as varied by agreement dated 14th July 1997 and a declaration that the Appellant was holding some 13.5 acres of the land contained in CT 26454 in trust for the Respondent.

- [3] After trial, the Court by its decision of 4th November 2011 ordered specific performance of the agreement, costs of survey and division to be met by both parties and the Appellant to pay the Respondent costs in a sum \$1,900.00.
- [4] On 24th of May 2013 the application for enlargement of time and stay of execution pending appeal had been filed by the Appellant.

Applicable law

- [5] The principles regarding applications for enlargement of time have been dealt with in several decisions and in **Native Land Trust Board v Ahmed Khan & Anor**. CBV 0002 of 2013 the following principles were laid down:
- (i) The length of the delay
 - (ii) The reason for the failure to file within time ;
 - (iii) Whether there is a ground of merit justifying the appellate court's consideration
 - (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
 - (v) If time is enlarged, will the Respondent be unfairly prejudiced.

The length of the delay and the reasons for the failure to file within time

- [6] The judgment appealed against was delivered on 4th November 2011 and the application seeking enlargement of time was made on 24th May 2013, a period of 1 year 9 months and 11 days.
- [7] The Appellant in her affidavit has stated that she was not present when the judgment was delivered and that her lawyer was present. That her lawyer informed her about the judgment and asked her to comply with the orders.

- [8] The Appellant had come to Suva on 15th February 2012 and instructed Mr. Rajendra Chaudhry.
- [9] Mr. Rajendra Chaudhry was suspended from practice on 5th of October 2012 and his law firm had been shut down.
- [10] The Appellant had managed to get the file from the Receiver appointed regarding the firm of Mr. RajendraChaudhry and filed her application by changing her Solicitors on 24th May 2013.
- [11] The reasons given by the Appellant for her failure to file within time are that she was not aware that she had to appeal within 42 days and that she was not told by her former Counsel till she met Mr. Rajendra Chaudhry whom she retained. But no steps had been taken to file an appeal till Mr. Chaudhry's office had been closed and thereafter she had retained her present lawyers who had filed the present application on 24th May 2013.
- [12] Although the submission had been made that the Appellant had always wanted to appeal and that she acted with promptitude despite the difficulties she had faced, the delay is too long and the reasons given for the delay are not acceptable.

Merits of the Appeal

- [13] The Appellant has set out the following grounds of appeal:

- “(1) That the Learned Trial Judge erred in law and/or in fact when he held that the evidence given by the witnesses at the trial which took place in May 2013, one year later, was not always consistent with the documentary material, was in conflict, inconsistent and contradictory.*
- (2) That the Learned Trial Judge erred in law and/or in fact when he considered that oral testimony of the*

parties generally to be unreliable and evidence to be based more on reconstruction.

- (3) *That the Learned Trial Judge erred in law and/or in fact when he regarded the evidence of the plaintiff as being more reliable and credible and his evidence was more consistent with the documentary material than that of the Defendant.*
- (4) *That the Learned Trial Judge erred in law and/or in fact when he held between February, 1993 and September, 1998 the Defendant did not ask the Plaintiff to leave the land nor did she attempt to exercise any right that may have accrued to her under the Agreement as varied.*
- (5) *That the Learned Trial Judge erred in law and/or in fact when he held that the Defendant did not make any payments between 14th July 1997 and September 1998.*
- (6) *That the Learned Trial Judge erred in law and/or in fact when he held that any right accrued to the Defendant between February 1995 and July 1997 was waived when she agreed to vary the first agreement and signed the second agreement.*
- (7) *That the Learned Trial Judge erred in law and/or in fact when he held that the money had been paid to the Bank by the Defendant since December, 1998 has arose out of different issues involving her dispute with Rang Naicker and does not in any way impact upon the Plaintiff's right to receive what he has paid for."*

[14] The grounds of appeal are based purely on facts which have been dealt with by the High Court Judge and are not likely to succeed.

Prejudice to the Respondent

[15] The action had been instituted in the year 2000 and the trial had been in June 2011 and the Judgment in the High Court was delivered on 4th November 2011.

[16] A considerable period of time had lapsed from the date of the judgment by the time the Appellant had filed this application and the Respondent has not been able to enjoy the fruits of the judgment which has caused prejudiced to him.

[17] In the above circumstances the application of the Applicant for enlargement of time is dismissed.

Application for Stay

[18] The Appellant has also sought a stay of execution pending the application for enlargement of time.

[19] In **Native Land Trust Board v. Shanti Lal and Others** Civil Appeal CBV0009/11 (17th, 20th January 2012) Chief Justice Gates cited his decision in **Stephen Patrick Ward v. Yogesh Chandra** CBV0010.10 (20th April 2011) and refused an application for stay.


[20] The basis of the granting of a stay as stated in Stephen Patrick's case was to see whether the Applicant's case is sufficiently exceptional to grant a stay.

[21] In the present case the Appellant's case does not come anywhere near such exceptional circumstances as there is no merit in the grounds of appeal.

[22] Therefore the application of the Appellant for a stay of execution of the judgment of the High Court is dismissed.

[23] The Appellant shall pay \$1000 as costs to the Respondent.




Hon. Mr. Justice Chandra
RESIDENT JUSTICE OF APPEAL