

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO.: HBC 453 OF 2008**

**BETWEEN:**

**LAVENIA RADITORA**

***Plaintiff***

**AND:**

**ONISIMO NAIKOVU AND ESALA JAMES**

***1<sup>st</sup> Defendants***

**COMMISSIONER OF POLICE**

***2<sup>nd</sup> Defendant***

**ATTORNEY-GENERAL OF FIJI**

***3<sup>rd</sup> Defendant***

**Counsel: Mr. Maharaj & Ms. Maharaj for Plaintiff**  
**Mr. Vakaloloma for 1<sup>st</sup> Defendants**  
**Mr. Singh for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants**

**Date of Hearing: Friday 9<sup>th</sup> January, 2009**

**Date of Decision: Friday 6<sup>th</sup> February, 2009**

## **DECISION (2)**

[1] The 1<sup>st</sup> Defendants apply for stay of the proceedings herein pending the determination of a different Action, namely, Probate Action No. P46517. The Probate Action was initiated by the 1<sup>st</sup> Defendants after the Plaintiff had issued a Writ of Summons against them.

[2] At the hearing of the stay application, counsel for the 1<sup>st</sup> Defendants advised the Court that the Probation Action has been discontinued and instead, the 1<sup>st</sup> Defendants have filed a Writ of Summons against the Plaintiff.

- [3] The Plaintiff opposes the application for stay. Counsel for the Plaintiff submits the need for stay ceased to exist when the 1<sup>st</sup> Defendants discontinued the Probate Action upon which the motion for stay was made.
- [4] The proceedings herein commenced after a Writ of Summons was issued by the Plaintiff against the Defendants, in which the Plaintiff sought a number of reliefs.
- [5] On 13 January 2009, this Court granted the Plaintiff the reliefs that she sought against the 1<sup>st</sup> Defendants. The remaining reliefs are against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants only.
- [6] After discontinuing the Probate Action, the 1<sup>st</sup> Defendants have not made any attempt to amend the motion seeking stay. Nor has the 1<sup>st</sup> Defendants filed a Notice of Intention to Defend. Instead of filing a Notice of Intention to Defend, the 1<sup>st</sup> Defendants have filed a Notice of Motion for stay of the proceedings. I make no conclusions as to appropriateness of the procedure adopted by the 1<sup>st</sup> Defendants.
- [7] The High Court Rules 1998, Order 4 states:

Where two or more causes or matters are pending, then, if it appears to the Court-

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or

(c) that for some other reasons it is desirable to make an order under this rule,

the Court may order those causes or matters to be considered on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

[8] When a party to a civil action wants to rely on the outcome of a separate action for its defence, he or she carries the burden to satisfy the court that the outcome of one action will affect the outcome of the other. It does not mean that the causes of action have to be identical and the relief prayed to be same in the two separate matters. What the applicant for stay under O.4 has to satisfy is that the basis for the action he or she has commenced is essentially the same as the action initiated by the other party. In this regard, I have been advised by counsel for the 1<sup>st</sup> Defendants that their action is only against the Plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are not joined as a party.

[9] In this case after the 1<sup>st</sup> Defendants had discontinued the Probate Action upon which the application for stay was premised, leave should have been sought by the 1<sup>st</sup> Defendants to amend the application for stay to include the new action, that is, the Writ of Summons filed by them against the Plaintiff. As the matter stands now, no leave was sought and no amendment was made to the motion for stay. I am not satisfied there exists another action having essentially the same basis as the proceedings before me to justify the grant of stay.

[10] For these reasons, the application for stay by the 1<sup>st</sup> Defendants is refused. Costs of this application are to be assessed after the conclusion of the substantive matter.

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**Daniel Goundar**  
**JUDGE**

**At Suva**  
**Friday 6<sup>th</sup> February, 2009**

**Solicitors:**

MC Lawyers, Suva for the Plaintiff

Vakaloloma and Associates, Suva for the 1<sup>st</sup> Defendants

Office of the Attorney-General, Suva for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant