

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**WESTERN DIVISION**

**HBC 36 of 2013.**

**BETWEEN** : **HABIBUL RAHIMAN** formerly of Vitogo, Lautoka but now of  
Australia.

**PLAINTIFF**

**AND** : **MOHAMMED FEROUZ** of Vitogo, Lautoka.

**DEFENDANT**

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**R U L I N G**

1. The plaintiff and the defendant had entered into a sale and purchase agreement for the sale by the plaintiff to the defendant of a certain piece of former Crown Agricultural lease that has now reverted to native ownership and converted to a native lease and now administered by the iTLTB. By writ issued at the Lautoka High Court on 07 March 2013, the plaintiff seeks a declaration that the said agreement is void *ab initio* for non-compliance with section 13 of the Crown Lands Act and/or section 12 of the Native Lands Trust Act. Section 13 of the Crown Lands Act stipulates that:

*Protected leases*

**13.-(1)** Whenever in any lease under this Act there has been inserted the following clause:-

*"This lease is a protected lease under the provisions of the Crown Lands Act"*

(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.

(2) On the death of the lessee of any protected lease his executors or administrators may, subject to the consent of the Director of Lands as above provided, assign such lease.

(3) Any lessee aggrieved by the refusal of the Director of Lands to give any consent required by this section may appeal to the Minister within fourteen days after being notified of such refusal. Every such appeal shall be in writing and shall be lodged with the Director of Lands.

(4) Any consent required by this section may be given in writing by any officer or officers, either solely or jointly, authorised in that behalf by the Director of Lands by notice published in the Gazette. The provisions of subsection (3) shall apply to the refusal of any such officer or officers to give any such consent.

*(Inserted by 21 of 1959, s. 2)*

(5) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee.

2. Section 12 of the Native Lands Trust Act stipulates as follows:

*Consent of Board required to any dealings with lease*

12. -(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void:

Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before 29 September 1948 to mortgage such lease.

(2) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee.

3. But what is actually before me now is the plaintiff's application under Order 29 of the High Court Rules 1988 for an interim mandatory injunction against the defendant to evict the defendant from the land which is the subject of their sale and purchase agreement. After considering the submissions of counsel, I refuse to grant the orders sought. My reasons follows:

- (i) An order for possession cannot be granted upon interlocutory application (**Pati v Kamal [1987] FJSC 16; [1987] 33 FLR 165 (27 March 1987)** citing **Manchester Corporation v Conolly & Ors**).
- (ii) A mandatory injunction is rarely granted. It is only granted where the plaintiff shows a very strong probability upon the facts that grave damage will accrue to him in the future. It's a jurisdiction that is exercised sparingly with caution (**Pati v Kamal** (supra)).
- (iii) Injunctions are a discretionary equitable remedy. As such, they are subject to the usual equitable bars. If the applicant does not come to court with "clean hands", he will not succeed in his application. In this case, the plaintiff is relying on his own failure to obtain the Director of Lands consent to escape his contract with the defendant. While he may look poised to eventually win his case on the application of the relevant legal principles, I am not prepared to allow him to invoke the equitable jurisdiction of this court to obtain this equitable remedy, in the circumstances of this case.

Accordingly, I dismiss the application. The matter is adjourned to 15 October 2013 for mention. Costs to the defendant in the sum of \$250-00 (two hundred and fifty dollars only).

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Anare Tuilevuka  
**JUDGE**  
24 September 2013.