

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

**CIVIL CASE NO.: HBC 351 of 2007**

**BETWEEN** : **RAJ KUARI** father's name Ram Prasad of 11-13 Luke Street, Otahuhu,  
Auckland.

**PLAINTIFF**

**AND** : **JAI NARAYAN** father's name Gyan Datt and **GYAN WATI** father's name  
Kissun Lal both of Kabisi, Sigatoka, Farmer.

**DEFENDANTS**

**Appearances:**

Mr J. Sharma for Plaintiff

Ms. Naidu for Defendant

**J U D G M E N T**

1.0 **Introduction**

1.1 By Amended Statement of Claim filed on 14<sup>th</sup> October, 2008 the Plaintiff sought the following reliefs against the Defendants in this matter;

- a) That there be a declaration that the Sale and Purchase Agreement dated 2<sup>nd</sup> June, 1994 is now null and void and of no effect.
- b) That the Defendants be ordered to pay the sum of \$22,257.00 being half of the income received from sugar cane income under sugar cane Contract No. 131/11079.
- c) An Order that the Defendants give to the Plaintiff, vacant possession of the land comprised in Crown Leases No. 15417 containing an area of 7,7143 ha on Lot 8 N1957.
- d) Damages for breach of contract.

e) Costs on Client/Solicitor indemnity basis.

- 1.2 In his Statement of Claim Plaintiff states that he is the sole Executrix and Trustee in the Estate of Kissun Lal pursuant to Probate Grant No. 40149 and that the said estate is mainly comprised of Crown Lease No. 15417 together with sugar cane contract no. 131/11079.
- 1.3 It is stated further that on or about 2<sup>nd</sup> June, 1994 the said deceased entered into a Sale and Purchase Agreement with 1<sup>st</sup> named Defendant for the Sale and Purchase of the said land for the consideration sum of \$50,000.00.
- 1.4 Furthermore the following facts are stated in the Amended Statement of Claim;
  - 1.41 That at the time of execution of the said Agreement the said land was under debt with the Fiji Development Bank in the sum of \$20,000.00 and that the Defendants paid the sum of \$20000.00 to the said Bank.
  - 1.42 It was agreed between the parties that a sum of \$4000.00 instalments were to be paid by the 1<sup>st</sup> Defendant to the said deceased to clear off the balance payment and the balance sum of \$30000.00 was to be cleared by 30<sup>th</sup> December, 2005 failing which interest to be charged on the balance amount.
  - 1.43 That the said deceased also executed a Power of Attorney in favour of the second-named Defendant who in return has received and kept for the benefit of the Defendants the total sum of \$4451400 from sugar cane income paid under the said contract, but the Defendants are not entitled to the whole of cane proceeds; and the Plaintiff is entitled to at least 50% of the said cane proceeds.
  - 1.44 That in any event the Sale and Purchase Agreement has not been consented to by the Director of Lands, it being the responsibility of the 1<sup>st</sup> Defendant to obtain the same.
  - 1.45 That the 1<sup>st</sup> Defendant has failed to pay the balance purchase price for the purchase of the said land.
  - 1.46 That pursuant to the Agreement, the Defendants had taken possession of the said land sometime in June, 2004. Their occupation of the land is without the consent of the Director of Lands.

- 1.47 That the Defendants have failed to obtain the consent of the Director of Lands and have wrongfully failed to complete the said purchase in accordance with the said agreement in any event within a reasonable time.
- 1.48 That by letter dated 3<sup>rd</sup> April, 2006 the Defendants were required to complete the said purchase of the said land but they have failed to complete the same despite being served with the letter dated 3<sup>rd</sup> April, 2006.
- 1.49 The Plaintiff is now entitled to rescind the said agreement and also entitled to forfeit the sum of \$20,000.00 deposit paid.
- 1.4.10 That the Sale and Purchase Agreement between the Plaintiff and the 1<sup>st</sup> Defendant was not consented to by the Director of Lands and was and is therefore illegal and unenforceable.

2.0 **Statement of Defence and Counter Claim**

- 2.1 In their Statement of Defence and Counter Claim the Defendants states inter alia that;
- 2.1.1 Since the Plaintiffs' husband Kissun Lal died the Plaintiff refused to execute the transfer or accept any monies from the Defendants as payment for balance purchase price of the Crown Lease and told them that she will sell the land to someone else.
- 2.1.2 The Defendants admit that no consent was obtained as the Plaintiff is the 1<sup>st</sup> Defendant's mother in law and the Defendants had trusted her and late Kissun Lal. The Defendants have the balance purchase price ready for payment to the Plaintiff.
- 2.1.3 That the 1<sup>st</sup> Defendant is married to the daughter of Kissun Lal the deceased and the Plaintiff.
- 2.1.4 That at the time of the 1<sup>st</sup> Defendants' marriage with the Plaintiff's daughter, it was agreed by the Plaintiff and her late husband that they will sell their property to the Defendants as love and affection of the parents towards their daughter and son in law.
- 2.15 That since Kissun Lal died the Plaintiff has increased the sale price to \$70,000.00 which too the Defendants have agreed to pay.
- 2.16 That since the 1<sup>st</sup> Defendant entered into Sale and Purchase Agreement with the deceased

Kissun Lal the 1<sup>st</sup> Defendant was working on the farm with his family and also stayed on the said farm since twelve years with the consent of the Plaintiff and her late husband.

2.17 That since the Sale and Purchase Agreement all cane monies received were monies from the Defendants labour as the Defendant had cultivated the land which was agreed by Kissun Lal.

2.18 The Defendants pray inter alia that the;

(a) Specific performance of the Sale and Purchase Agreement between the Plaintiffs deceased husband and the 1<sup>st</sup> Defendant.

(b) An Order that the Plaintiff transfer Crown Lease No. 15417 together with the sugar cane contract no. 131/11079 to the 1<sup>st</sup> Defendant in exchange of the balance payment of \$50,000.00.

(c) Damages for breach of contract in lieu of or in addition to specific performance.

(d) Costs.

### 3.0 **Trial**

3.1 When this matter was taken up for Trial on 24<sup>th</sup> February, 2015 both parties agreed on the issues to be determined by Court on oral and written submissions to be made by the learned Counsels without calling evidence. They filed the Agreed Facts and Issues accordingly and the Learned Counsel for both parties made Oral submissions on the Issues to be determined by Court. They also filed written submission with the leave of Court.

### 4.0 **The Agreed Facts and Issues**

4.1 The Agreed Facts and issues filed were as follows:

#### **A. The parties agree that:**

- (1) There was no consent by the Director of Lands & Survey General to the Sale & Purchase Agreement dated 2<sup>nd</sup> June, 1994 and the said Agreement is therefore illegal and void due to non-compliance with Section 13 of the Crown Lands Act.
- (2) The parties agree that the Defendants came onto Crown Lease No. 15417 pursuant to the Sale and Purchase Agreement.
- (3) The Defendants have not cultivated the said Lease since 2009.

**B. Issues to be determined;**

- (1) Whether the Defendants can remain on the said Crown Lease or do they have to vacate the lease.
- (2) Whether the Defendants can rely upon the Agricultural Landlord and Tenant Act (ALTA)?
- (3) Which party is to pay other's costs?

5.0 **Analysis and Determination**

- 5.1. The parties have agreed that the Sale and Purchase Agreement dated 2<sup>nd</sup> June, 1994 is illegal and void due to the non-compliance with Section 13 of the Crown Lands Act. They have also agreed that the Defendants came into Crown Lease No. 15417 pursuant to the said Sale and Purchase Agreement.
- 5.2 In this matter the deceased Kissun Lal is the lessee of a Crown Land pursuant to a Lease protected under the provisions of the Crown Lands Act. Section 13(1) of the said Act provides that it shall not be lawful for the lessee to alienate or deal with the land comprised in the lease or any part thereof whether by sale, transfer or sublease or in any other manner whatsoever without the written consent of the Director of Lands first had and obtained.
- 5.3 In *Ram Kali v Saten [1978] FJSC 104; Action 193 of 1977 (22 March 1978)* Justice R.G. Kermode held ;

*"The onus is on the Defendant by virtue of the provisions of Part XXIV of the Land Transfer Act to show cause why he should not deliver up*

*possession of the land to the Plaintiff. He relies solely on an alleged agreement which is an illegal agreement. I hold that he has not shown cause why an order should not be made in favour of the Plaintiff.”*

*If the hearing of this action in open Court has in any way altered the procedure provided in Part XXIV of the Land Transfer Act where the burden is on the Defendants to show cause I would still hold that the Plaintiff has established her case and the Defendant has no defence to her claim for possession. She is entitled to an order for immediate possession.”*

- 5.4 In *Khan v Prasad [1996] FJHC 85 Hbc 0480j.96S(23 December 1996)* where the consent of the Director of Lands was not obtained to letting a flat out on rent Justice Pathik said;

*“There is no evidence of any consent having been obtained either by the Plaintiff or Defendant. This dealing therefore is null and void and the Defendant’s occupation of the flat is therefore unlawful, null and void. The Defendant cannot in the circumstances be regarded as a lawful tenant of the Plaintiff’s (vide CHALMERS v PARDOE (1963) 3 AER 552; JAI KISSUN SINGH v SUMINTRA (1970) 16 FLR 165 FCA; PHALAD v SUKH RAJ (Civ. App. 43 /78 F.C.A.).*

- 5.5 It is clear from the above mentioned authorities that the Defendants in this matter cannot justify their possession of the Crown land as they have admitted that the Sale and Purchase Agreement on which they came into possession is illegal and void due to the non-compliance of Section 13 of the Crown Lands Act.
- 5.6 Let me now consider the next issue in this matter; whether the Defendants can rely upon the Agricultural Landlord and Tenant Act (ALTA).
- 5.7 While this action was pending in this Court the Defendants filed an Agricultural Tribunal Reference (being reference no. W/D 08/13) on the 29<sup>th</sup> of August, 2013 seeking a declaration of Tenancy. This Agricultural Reference has been adjourned sine die by the Agricultural Tribunal by its Interlocutory Decision of 14<sup>th</sup> October, 2014 pending the determination of this action.
- 5.8 The Crown Lease No. 15417 is an Agricultural lease and Clause 25 of the Lease states that;

*“25. This contract is subject to the provisions of Agricultural Landlord and Tenant Act and may only be determined whether during its currency or at the end of its terms in accordance with such provisions. All disputes and differences whatsoever arising out of this contract for the decision of which the Act makes provisions shall be decided in accordance with such provisions.”*

Therefore there is no doubt that the provisions of ALTA applies to the Agricultural Holding Leased out to the Plaintiffs of this matter.

5.9 In their written submissions filed the Defendants contends that they are tenants of the Plaintiff within the meaning of Section 2 of ALTA because they are deriving their title from and through the Plaintiff under Section 4 and 5 of ALTA.

5.10 The criteria for determining whether a tenancy exists is set out in Section 4 of ALTA which provides that:

*“4(1) Where a person is in occupation of and is cultivating an agricultural holding and such occupation has continued before or after 29 December 1967 for a period of not less than 3 years and the landlord has taken no steps to evict him, the onus is shall be on the landlord to prove that such occupation was without his consent and if the landlord fails to satisfy such onus of proof, tenancy shall be presumed to exist under the provisions of this Act.”*

5.11 The Defendants application to the Agricultural Tribunal is made pursuant to Section 5 of ALTA which provides that:

*“5(1) A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration the tenancy shall be deemed to have commenced when the tenant first occupied the land.”*

5.12 The Defendants application before the Agricultural Tribunal raises the issue whether or not the Plaintiff can rely on the provision of the Crown Lands Act or Land Transfer Act to evict the Defendants. The Defendants contends that power to declare tenancy is vested in the Tribunal

and not the Court. They submit the case of *Re Azmat Ali [1986] FJCA8; 32 FLR 30 (23 July 1986)* in support of their argument.

5.13 In Fiji Court of Appeal in *Azmat Ali* states that:

*“A person seeking a declaration of tenancy under ALTA, however, has no contract and therefore no right so arising. His right to tenancy is created not by any agreement but under section 4 of ALTA by Parliament itself, the ultimate repository of all power. The Tribunal is the machinery to give effect to that right.”*

5.14 Further in the said case Court of Appeal stated that;

*“It is true that a person who is occupying and cultivating land under an unlawful agreement may nevertheless qualify for a declaration of tenancy if he satisfies the requirements of Section 4 but he would then be applying under Section 5, and not under the agreement, whose contents would be mere evidence to establish those requirements. In such circumstances Section 18(2) and (3) would appear to have little relevance as it would be pointless to have declared null and void an agreement under which no claim is or can be made.*

*For instance, where an agreement to lease native land made in contravention of Section 12 of the Native Land Trust Act which is void by statute is declared void under Section 18(2) of ALTA, no compensation, assignment or relief of any other kind is possible if the period of occupation is less than three years. The right to relief arises from entitlement to a declaration of tenancy under Section 4, not under the agreement which being void can confer no rights. Its only relevance as we have said, would be evidentiary to show if the requirements of Section 4 have been satisfied”.*

5.15 In the matter before the Tribunal the Defendants are applying under Section 5 of ALTA for a declaration of Tenancy and they are not relying on the illegal Agreement of 2 June 1994. I agree with the argument of the Learned Counsel for the Defendants that this Court has no jurisdiction to declare Tenancy of an Agricultural land. The power to determine the existence of right under Section 4 of ALTA is vested in the Agricultural Tribunal. Whether the



Defendants do not have the benefit of ALTA as they seized cultivation of the land in 2009 is an issue which should be considered by the Tribunal and not by this Court. Whether the Defendants are trying to shelter behind the ALTA knowing that they will be unsuccessful in this matter is also an issue to be answered by the Tribunal. This action does not prevent the Defendants going before the Tribunal seeking relief under ALTA.

5.16 In the light of the above findings I hold that the Defendants cannot remain on the Crown Lease No. 15417 on the illegal Agreement, but they can rely on the provisions of ALTA and remain on the Crown Lease till the Tribunal adjudicates the application for Tenancy made by the Defendants.

5.17 The Interlocutory Decision of the Tribunal refers to the Orders made by this Court regarding cultivation of the land. It is stated in the said Interlocutory Decision as follows:

*“In any event, the High Court which is a Superior Court has already granted valid order regarding cultivation, the issue is before that Court, therefore the matter is sub judice. In my view, this Tribunal is precluded from a fair adjudication of the application given the said High Court Order. Section 62(4) in my view is applicable. Section 19 gives this Tribunal the power to regulate its own proceedings. Furthermore, Section 22(1), (j) gives this Tribunal power to exercise any power or duty.*

*In my view, it would be just and fair to all the parties for me to exercise my discretionary power under Section 62(4) by adjourning the current application sine die until the High Court makes a determination in Kuari v Narayan HBC 351 of 2007. No order as to cost.”*

5.18 As mentioned in the said Decision, the Tribunal is of the view that it is precluded from fair adjudication of the application due to the Orders made by this Court.

5.19 Section 60 of ALTA provides that:

*“Except as in this Act expressly provided, nothing contained in this Act shall affect prejudicially any power, right or remedy of a landlord or tenant or other person, vested in or exercisable by him by virtue of the provisions of any Act or by or under or in respect of any contract of tenancy or other contract.”*

5.20 In dealing with Section 60 of ALTA the Supreme Court in *Singh v Speakman [2003] FJSC 7; CBV 0002V.1998S (17 April 2003)* stated that:

*“We consider that the effect of ss 8 and 60 of ALTA is not to exclude the lease from the provisions of ALTA. Indeed if the sections had this effect, all contract of tenancy that are registered under LTA would be excluded from ALTA and quite clearly that would be contrary to the intention of ALTA. As the Court of Appeal observed in Soma Raju v Bhajan Lal [1976] 22 FLR 163 at 176, ALTA is a special Act dealing with rights in agricultural land. LTA is a general Act dealing with the registration of interests in land and priorities conferred by registration and does not displace the special provisions of ALTA in its application to agricultural land. In that case, the Court held that the contract of tenancy under ALTA was a creature of statute and could only be determined in the manner provided by ALTA”.*


5.21 In the light of the above authority it is clear that the Plaintiff in this action cannot evict the Defendants who have sought relief under ALTA as the contract of Tenancy under ALTA was a creature of statute and could only be determined in the manner provided by ALTA.

5.22 Therefore I am of the view that the Tribunal is not precluded from adjudicating the application before them as this Court lacks jurisdiction in regard to the said application. By this judgment the matter before this Court will be terminated and it will not be sub judice thereafter for the Tribunal to go ahead with the adjudication of the application before them. Moreover the Orders made by this Court dated 1<sup>st</sup> April, 2010 are Orders made with consent and not Orders made after a hearing. Therefore the said Orders can be in place till the Tribunal makes a decision under the ALTA.

6.0 As to costs of this matter I find that the Defendants have lodged their application at the Tribunal on 29<sup>th</sup> April, 2013, nearly six years after the institution of these proceedings and nearly 3 years after the above mentioned consent orders were entered. The Defendants delay in lodging the application at the Tribunal and later admitting that the Sale and Purchase Agreement is null and void has prevented the Plaintiff from getting vacant possession of the property by this action. I am of the view that the said conduct of the Defendants warrants a costs order against them in favour of the Plaintiff.

- 7.0 Accordingly I hold that;
- 7.1 The Defendants cannot remain on the Crown Lease pursuant to the illegal Sale and Purchase Agreement dated 2<sup>nd</sup> June, 1994.
- 7.2 The Defendants can rely upon the Agricultural Landlord and Tenant Act and remain on the Crown Lease till the Defendants application is adjudicated by the Agricultural Tribunal.
- 7.3 The Defendants to pay the Plaintiff costs summarily assessed in a sum of \$1000.00 within 30 days of this Judgment.



  
Lal S. Abeygunaratne  
JUDGE

At Lautoka  
30 April 2015