

IN THE HIGH COURT OF FIJI

(WESTERN DIVISION) AT LAUTOKA

CIVIL ACTION NO. 103 of 2014

BETWEEN : **RAJ DATT** of Navakai, Nadi, Fiji, Retired.

PLAINTIFF

AND : **SUNIL DATT** of Navakai Nadi, Fiji Supervisor in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji, Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** father's name Angu Prasad of Navakai, Nadi, Domestic Duties.

1ST DEFENDANT

AND : **RAM DATT** of Navakai Nadi, Fiji Carpenter in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji, Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** father's name Angu Prasad of Navakai, Nadi, Domestic Duties.

2ND DEFENDANT

AND : **ANIL DATT** of Navakai Nadi, Fiji Driver in his personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji, Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** father's name Angu Prasad of Navakai, Nadi, Domestic Duties.

3rd DEFENDANT

AND : **MANJULA WATI** of Navakai Nadi, Fiji, Domestic Duties in her personal capacity and as one of the Administrator of the **ESTATE OF RUDRA DATT** father's name Badal of Navakai, Nadi, Fiji, Cultivator and as one of the Executor and Trustee in the **ESTATE OF SHEELA** father's name Angu Prasad of Navakai, Nadi, Domestic Duties.

4TH DEFENDANT

AND : **DIRECTOR OF LANDS**

5TH DEFENDANT

Appearances

Plaintiff in person

No appearance for 1st defendant

2nd - 4th defendants in person

Mrs Lee for 5th defendant

Date of Hearing: 11 May 2015

Date of Order: 11 May 2015

INTERLOCUTORY ORDER

- [1] This is an ex parte notice of motion dated and filed 5 May 2015 by the plaintiff in person ('the application') seeking inter alia a stay order on Notice of removal of Caveat No.812569 dated 28/04/2015 and on the 1st, 2nd, 3rd, 4th, and 5th and Registrar of Title form removing the caveat No.812569 (sic) or any other caveat or carrying out any dealings regarding the lease No. CL 10093, CL 17392, CL 17070. The application is supported by an affidavit sworn by the plaintiff.
- [2] The application, without specifying any Order, states that it has been filed in pursuance of the High Court Rules 1988 ('the HCR') and the inherent jurisdiction of this court.
- [3] Since the plaintiff had asked for certain injunctive relief the application was converted into inter partes application. The application was accordingly served on the defendants but all the defendants appeared at hearing except for 1st defendant.
- [4] Although the application states that it has been filed pursuant to the HCR, in fact it appears that the plaintiff has filed the application under Section 110 (3) of the Land Transfer Act ('the LTA'). It is obvious from the fact that he seeks extension of time in relation to the caveat he had

lodged on the property in question. Failure to state in the application the proper section may be visited as an irregularity. The court may cure such irregularity under O.2 of the HCR. I do so in this case. I will now treat that Notice of Motion as an application filed under s. 110 (3) of the LTA

- [5] The plaintiff had lodged a caveat under No.755964C against any dealing with the land known as Solawaru & Enamanu & Nubu or Vakai Lot 3 on SO 4425 registered in Crown Lease No.14796.
- [6] The 1st defendant has made an application to the Registrar of Title for the removal of that caveat. As a result, the Registrar of Tiles acting under s.110 (1) of the LTA has served a notice of removal of caveat on the plaintiff informing that after lapse of 21 days from the date of service of this notice the said caveat will be removed, unless an order from the High Court to the contrary has been served upon him (the Registrar of Titles).
- [7] The court has treated the application as the one filed pursuant to s.110 (3) of the LTA which provides as follows:

'(3) The caveator may either before or after receiving notice from the Registrar apply by summons to the court for an order to extend the time beyond the twenty-one days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the court, upon proof that the caveatee has been duly served and upon such evidence as the court may require, may make such order in the premises either ex parte or otherwise as the court thinks fit.'

- [8] Under s.110 (3) the court may order ex parte extending the time beyond 21-days mentioned in such notice considering the urgency of the matter. However, the 1st defendant (caveatee) has been served with the application seeking extension of time but he is not present or unrepresented in court today.

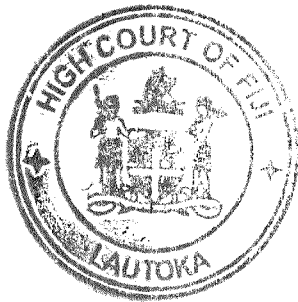
[9] The plaintiff had obtained an ex parte judgment against the 1st – 4th defendants. Subsequently, 1st defendant had filed an application to set aside that judgment. That application is waiting for the ruling.

[10] In his statement of claim the plaintiff inter alia claims against the defendants a declaration that transfer of leases issued to the defendants be null and void.

[11] I therefore consider the application, the supporting affidavit and the submissions made in court and accordingly extend the time mentioned in the noticed dated 28 April 2015 issued by the Registrar of Titles (No.812569) until further order of the court. This order is to be sealed and served on first Defendant and the Registrar of Titles forthwith.

Final outcome

- i. There will be an order extending the time mentioned in the notice of removal of caveat dated 28 April 2015 and issued by the Registrar of Titles under No. 812569.
- ii. The extension is granted until further order of the court.
- iii. This order is to be sealed and served on the 1st defendant and the Registrar of Titles forthwith.



MH Mohamed Ajmeer

MH Mohamed Ajmeer

Judge

At Lautoka

11.5.15