

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

Civil Action No. HBC 363 of 2014

**BETWEEN :** FIJI NATIONAL PROVIDENT FUND a statutory body established under the Fiji National Provident Fund Act (Cap 219) and continued by the FNPF Decree (2011) and having its registered office at Provident Plaza 2, 33 Ellery Street, Suva.

**PLAINTIFF**

**EX-PARTE :** UDAY SEN deceased.

**DEFENDANT**

**BEFORE:** Master Vishwa Datt Sharma

**COUNSELS:** Ms. Macedru for the Plaintiff.  
Defendant deceased.

**Date of Hearing:** 16<sup>th</sup> February, 2015

**Date of Ruling:** 29<sup>th</sup> May, 2015 (11.30 am.)

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff filed a Notice of Motion on 30<sup>th</sup> December, 2014 together with an Affidavit in Support and sought for the following orders:

- (a) *That the caveat number 228294 registered on 20<sup>th</sup> September, 1985 by the Defendant Uday Sen over Certificate of Title No. 20246 on DP 4317 for land known as "Vakabalea" (part of) containing an area of four acres three roods and eighteen perches in the District of Serua and Island of Viti Levu be removed and or cancelled forthwith.*
- (b) *That the costs of this application be costs in the cause.*

### **BACKGROUND OF CASE**

2. The Defendant was leasing the abovementioned property from the proprietor, Mr. Ram Rup.
3. On 20<sup>th</sup> September, 1985, the Defendant registered a caveat No. 228294 on the abovementioned property with the Titles Office.
4. That Mr. Ram Rup is now a deceased but appointed his sons Ajit Prasad and Ranjit Prasad as Executors and Trustees of his Will.
5. By transmission of death, the property was registered in the abovementioned children's name.
6. As a result of the High Court decision in a related civil case no. 88 of 2008, because the Solicitor representing the Plaintiff's and the Plaintiff's failed to make any appearance on 24<sup>th</sup> March, 2010 the Court made the orders including that the property in question be sold by "Tender" and the proceeds of sale are to be shared amongst the beneficiaries of Ram Rup accordingly.
7. After carrying out the Tender process, the successful bidder was Mahendra Sen, the deceased's son.

## THE LAW

8. *Section 109 of the Land Transfer Act Cap 131 states as follows-*

- (1) *Upon the receipt of any caveat, the Registrar shall give notice thereof to the person against whose application to be registered as proprietor of, or, as the case may be, to the registered proprietor against whose title to deal with, the land, estate or interest, the caveat has been lodged.*
- (2) *Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may, by summons, call upon the caveator to attend before the court to show cause why the caveat should not be removed, and the court on proof of service of the summons on the caveator or upon the person on whose behalf the caveat has been lodged and upon such evidence as the court may require, may make such order in the premises, either ex parte or otherwise as to the court seems just, and, where any question of right or title requires to be determined, the proceedings shall be followed as nearly as may be in conformity with the rules of court in relation to civil causes.*

### Removal of caveat

*Section 110 states as follows-*

- (1) *Except in the case of a caveat lodged by the Registrar the caveatee or his agent may make application in writing to the Registrar to remove the caveat, and thereupon the Registrar shall give twenty-one days' notice in writing to the caveator requiring that the caveat be withdrawn and, after the lapse of twenty-one days from the date*

*of the service of such notice at the address mentioned in the caveat, the Registrar shall remove the caveat from the register by entering a memorandum that the same is discharged unless he has been previously served with an order of the court extending the time as herein provided.*

- (2) Every such application shall contain an address in Fiji at which notices and proceedings may be served.*
- (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.*

*Caveat may be withdrawn*

*Section 111 states as follows*

*Any caveat may be withdrawn by the caveator or by his agent under a written authority, and either as to the whole or any part of the land affected, or the consent of the caveator may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator.*

---

## ANALYSIS and DETERMINATION

9. The Defendant registered the caveat on the lease property wherein Ram Rup was the proprietor but now is a deceased.
10. To date that caveat very much exists on the said property and was never removed by the deceased.
11. This action is by the Fiji National Provident Fund (FNPF) instituted against Uday Sen who has taken his demise some time ago.
12. Through transmission by death, his two children became the proprietors of the said property.
13. The High Court made certain orders in a civil case No. 88 of 2008 which would have resulted in the sale of the deceased property and the proceeds of sale would have been distributed in terms of the deceased Will.
14. The property was advertised and invited for the tenders and as a result the tender of the said property was awarded to the deceased's son , Mahendra Sen.
15. The Plaintiff is unable to complete the tender process and is now faced with the difficulty to transfer the said property to the successful bidder, Mahendra Sen because the caveat registered by the deceased's father Uday Sen on the said property in question still remains intact.
16. The question before this court are as follows-
  - (i) *How can the Plaintiff remove the caveat filed by the deceased Uday Sen?*

- (ii) *Can the Plaintiff, Fiji National Provident Fund (FNPF) file this action against the Defendant who in fact has taken demise?*
- (iii) *Any defendant named as a party in civil proceedings needs to be served with the appropriate application or petition. How can Fiji National Provident Fund (FNPF) serve a deceased? There is always two or further defendants in a civil case and all needs to be served in terms of the set down law.*
- (iv) *Should Fiji National Provident Fund (FNPF) file an alternative action in terms of the existing law to overcome this difficulty?*
- (v) *Since the High Court in HBC 88 of 2008 made orders on the said property in question to be tendered and found a bidder Mahendra Sen the son of the deceased that Fiji National Provident Fund (FNPF) should further file and serve an appropriate application to overcome this hurdle?*
17. The High Court made specific orders (a) to (i) inclusive on 24<sup>th</sup> March, 2010 in HBC No. 88 of 2008 and was self-explanatory.
18. I have noted at order (d) that a very specific order was granted by the court which read as follows and was never brought to the attention of this court at the hearing of the present hearing by the Plaintiff. It was the Court itself which thought fit and proper to instigate in the matter and made aware of this order at (d)-
- “ That Ajit Prasad, the defendant in that case, herein do execute all the necessary transfer documents with the Co- Trustee, Ranjit Prasad the Plaintiff herein, for the purpose of completion of the transfer formalities to the successful tenderer of “ the Vakabalea Property” forthwith and without any delay whatsoever’*
19. That the Plaintiff, Fiji National Provident Fund (FNPF) is aware of the orders made by the High Court in case No. HBC 88 of 2008. The Plaintiff has awarded the tender in terms of the court order to Mahendra Sen who is the Defendant’s son. It is for the Plaintiff to find out what needs to be done next in its correct perspective in terms of the law to remove the

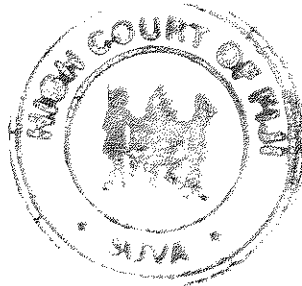
existing caveat registered by the Defendant who has now taken his demise.

20. I find that a correct application has not been made in terms of the law and therefore I will now proceed to Dismiss the Plaintiff's application accordingly.

### FINAL ORDERS

21. Following is the final order of this court

- (i) The Plaintiff's application seeking an order for the removable and or the cancellation of the caveat registered by the Defendant on the property described as CT 20246 on DP 4317 is hereby dismissed accordingly.



.....  
VISHWA DATT SHARMA  
Master of High Court, Suva  
Friday 29<sup>th</sup> May, 2015.

CC. Fiji National Provident Fund.