

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

**CIVIL JURISDICTION**

**CIVIL ACTION NO.: 63 OF 2011**

**BETWEEN** : **ATUNAIISA RAVOUVOU** of Nasau, Nadi, Farmer

**PLAINTIFF**

**AND** : **ABBAS KHAN** f/n Sabir Khan of Vancouver, Canada, Truck  
Operator

**DEFENDANT**

**Appearances:**

Mr Rabo Matebalavu for Plaintiff  
Mr Roopesh Singh for Defendant

**RULING**

**Introduction**

1. When this matter was taken up for hearing on 15<sup>th</sup> May, 2015, the Learned Counsel for the Defendant raised a preliminary issue the question whether this action should be struck out on the basis that the agreement which the Plaintiff has mounted this action is enforceable in the light of Section 4 of the Subdivision of Land Act.
2. Counsel for both parties sought a ruling on the said preliminary issue on the written submissions to be filed. Both parties filed their written submissions with leave of the Court thereafter.

3. Referring to Section 3 and 4 of the Subdivision of Land Act the Learned Defence Counsel argues that the requirements as stipulated in Section 4 of the Subdivision of Land Act is a statutory requirement and a contract which does not comply with statute or that offends statute is unenforceable.
4. He has cited ***Kanniappa Reddy & Anor v Rajend Kumar, FIJI COURT OF APPEAL CIVIL APPEAL NO. 0011 OF 2011*** and page 450, paragraph 1009 of Cheshire and Fifoot's "*Law of Contracts*" 6<sup>th</sup> Edition in support of his argument.
5. He also contends that the claim is an equitable relief which is clearly prohibited neither can a claim for damages be maintained.

#### **Analysis and Determination**

6. Let me now refer to the relevant provisions of the "Subdivision of Land Act" Cap 140. Section 2 of the Act states that the provisions of the Act shall apply only to the part or whole of any such area or areas as the Minister may from time to time by order in the Gazette define and specifically describe therein, and shall apply to all land in any area or areas so defined and described except: -
  - (a) Crown land which is not the subject of a registered lease;
  - (b) Land included within the boundaries of any city or town to which the Local Government Act applies; and
  - (c) Land included in any Native reserve constituted under the Native Land Trust Act.
7. In Section 4 it is stated as follows :

*"Notwithstanding the provisions of any other Law for the time being in force no land to which this Act applies shall be subdivided without the prior approval of the Director to be obtained in the manner hereinafter prescribed". Provided that it shall be lawful to subdivide such land without such approval if:-*

- (a) No part of the land is situated in any town or within three miles of the boundaries of a town; and
- (b) The land is subdivided in such a manner that no lot is less than five acres in area.

8. "Director" is defined in Section 3 of the act as follows:

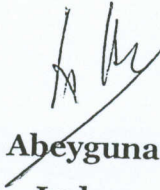
*"Director" means the Director of Town and Country Planning for the time being appointed under the provision of Section 3 of the Town Planning Act.*

- 9. In summarising the above provisions of the Subdivision of Land Act, I find that there are certain limitations on the applicability of the Act. According to Section 2 the provisions of the Act applies to areas that the Minister may from time to time define by order published in the Gazette except land included within the boundaries of a city or town to which the Local Government Act applies.
- 10. Section 4 of the Act provides that no land to which this Act applies shall be subdivided without the prior approval of the Director.
- 11. Provisio to Section 4 states that it shall be lawful to subdivide such land without the approval of the Director if no part of the land is situated in any town or within three miles of the boundaries of a town and the land is subdivided in such a manner that no Lot is less than five acres in area.
- 12. To determine whether the land in dispute is subject to the provisions in the Subdivision of Land Act there should be evidence to establish that the land is within an area defined by the Minister and that the land is not included within the boundaries of any city or town to which the Local Government Act applies. It is also necessary to establish that subdivision of the land requires the consent of the Director as provided in Section 4 of the Act.

13. In *Kanniappa Reddy's* case the Court has said "Admittedly, the land in dispute is subject to the provisions in the Subdivision of Land Act ". Accordingly, the Court has determined that the prior approval of the Director of Town and Country Planning is necessary to effect a transfer of a subdivided portion of the said land. In this matter no agreed fact is recorded to say that the land in dispute is subject to the provision in the Subdivision of Land Act nor there is any evidence adduced to prove the same.
14. For the reasons set out above I find that it is not possible for me to ascertain whether the land in dispute is subject to the provisions of the Subdivision of Land Act. As such I am of the view that the issue of any breach of statute should be determined on evidence at trial and not on a preliminary issue.
15. No costs.



At Lautoka  
17 July 2015

  
Lal S. Abeygunaratne  
Judge