

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA

Action No. HBC 138 of 2015

IN THE MATTER of the
LAND TRANSFER ACT

AND

IN THE MATTER of the
application for Extension of
CAVEAT NO. 346936 under
the **LAND TRANSFER ACT**

BETWEEN : **SHYLIN SHEETAL ROSHAN** also known as **SHYLIN SHEETAL PRASAD** and **NITIN ROSHAN** both of Ba, Bank Officer and Technical Officer respectively.

PLAINTIFFS

A N D : **KALARA KURUKANAWA** of Yalalevu, Ba, Market Vendor

FIRST DEFENDANT

A N D : **REGISTRAR OF TITLES**

SECOND DEFENDANT

Appearance : Mr S.K. Ram for Plaintiff
Ms M Lee for 2nd Defendant

Date of Hearing : 4th May 2016

Date of Ruling : 4th May 2016

R U L I N G

1. This is an application filed by the 2nd defendant pursuant to Order 18 rule 18 of the High Court Rules ('HCR'), which provides so far as material:

'18.-(1) The Court may at any stage of the proceedings order to be struck out or amended any pleadings or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence as the case may be; or

(b) ... or

(c) ... or

(d) ... ;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

(3) ...'

2. The parties did not file affidavit as the second defendant relies on ground (1) (a).
3. The plaintiff opposes the application.
4. Ms Lee appearing for the second defendant submits that the claim discloses no reasonable cause of action as against the second defendant. As such, the second defendant should be removed from the proceedings.
5. On the other hand, Mr Ram, counsel for the plaintiff submits the application is misconceived as there was no claim or pleading against the second defendant. There is no pleading to strike so far as the second defendant is concerned. He goes on and submits that the second defendant is joined as a party because section 16 (2) of the Land Transfer Act requires an applicant to join the Registrar of Titles as a party to the proceedings if the applicant is seeking extension of caveat. He further submits that the second defendant ought to have made an application pursuant to Order 15 Rule 6 (2) (a) of HCR.

6. I have carefully considered the application, pleadings and submissions advanced in court by both counsel.
7. The statement of claim discloses no reasonable cause of action as against the second defendant. It is crystal clear upon plain reading of the claim.
8. The plaintiff made interlocutory applications for extension of caveat and injunction against the first defendant.
9. At the interlocutory hearing stage the plaintiff only proceeded with the application for injunction and abandoned the application for extension of caveat as the caveat had been removed.
10. The applicant in an application for extension of caveat must join the Registrar of Titles as a party (See, section 16 (2), Land Transfer Act).
11. The application for extension of caveat has been abandoned. Therefore the Registrar of Titles (the second defendant) has ceased to be a necessary party.
12. The court has discretion under O. 15, r. 6 (2) (a) of HCR to order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper party or necessary party.
13. Under rule 6 (2) (a) the court may act on application or of its own motion.
14. I now proceed to act under rule 6 (2) (a) of HCR. The second defendant has ceased to be a necessary party by reason of abandonment of the application for extension of caveat. I would therefore make order the second defendant to cease to be a necessary party to the proceedings. Accordingly the second defendant is to be removed from the proceedings. I make no order as to costs.

Final outcome

- (a) The second defendant ceased to be a necessary party.
- (b) The second defendant is to be removed from the proceedings.
- (c) No order as to costs.



M H Mohamed Ajmeer
4/5/16

.....
M H Mohamed Ajmeer

JUDGE

At Lautoka

4th May 2016

Solicitors:

For plaintiff: Samuel K Ram, Barrister & Solicitor.

For second defendant: Attorney General's Chambers, Lautoka.