

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 121 of 2015

IN THE MATTER of an application for sale of land and enforcement
of judgment against Land under Section 104 of the
Land Transfer Act Cap 131 in the Laws of Fiji.

BETWEEN

LAMI TOWN COUNCIL a statutory body duly incorporated under the
provisions of the Local Government Act and having its head office at
59, Marine Drive, Lami, Fiji.

PLAINTIFF

AND

ILITIA LEITABU AND LUSIANA LEITABU of Taciruva, Suva,
Auditor and Teacher respectively.

FIRST DEFENDANT

AND

FIJI NATIONAL PROVIDENT FUND a statutory body duly incorporated under the provisions of the Fiji National Provident Fund Act / Decree and having its registered office at 33 Ellery Street, Suva, Fiji.

SECOND DEFENDANT

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
A.C.N. 0055357522 of Bank House, Victoria Parade, Suva, Fiji.

THIRD DEFENDANT

Counsel : Ms. S. Nayacalevu for Plaintiff
Ms. L. Macedru for 1st Defendant

Date of Hearing : 25th July, 2016

Date of Judgment : 30th August, 2016

JUDGMENT

[1] The plaintiff filed this originating summons on 17th March 2015 seeking the following orders:

- (a) An order for the sale of NL 26290 being Lot 44 Delainavesi Subdivision situated in the Tikina of Suva in the province of Rewa.

- (b) A call is made in the Fiji Sun by the plaintiff or its solicitors on its behalf.
- (c) Tenders to be closed 4 (four) weeks from the date of advertisement for the call for tenders.
- (d) The plaintiff or its solicitors on its behalf be at liberty to accept the highest tender received.
- (e) The monies received from sale to be applied as follows:-
 - (i) Firstly to satisfy the Charge on the property by the Fiji National Provident Fund (Charge Number 711813)
 - (ii) Secondly to satisfy the Mortgage on the property obtained by the Australia and New Zealand Banking Group (Mortgage Number 596879)
 - (iii) Thirdly to satisfy the Charge on the property by the Fiji National Provident Fund (Charge Number 956880)
 - (iv) Fourthly to satisfy judgment obtained by the plaintiff in the Magistrate Court of Fiji at Suva in Civil Action No. 96 of 2009.
 - (v) Fifthly to satisfy the expenses incurred by the plaintiff in this action and costs of this action.
 - (vi) Any balance to the 1st defendants or the Chief Registrar who shall hold the funds on behalf of the 1st defendants in an interest bearing account.

[2] In this matter the hearing was concluded on the 25th July, 2016 and at the request of the parties they were granted time till 15th August, 2016 to file written submissions and the judgment was fixed for 30th August, 2016 but none of them filed submissions.

[3] The plaintiff's case is that the first named defendants have neglected to pay arrears of municipal rate and statutory interest of 11% from 1980 to 2009 despite reminders sent every year. The plaintiff filed action bearing No. 96 of 2009 in the

Magistrate's Court to recover the amount due as municipal rates and the court entered judgment against the first named defendants for a sum of \$21,000.03.

[4] In the affidavit in response filed on behalf of the 2nd defendant, the Fiji National Provident Fund it is stated that the 2nd defendant joins issue with the plaintiff and if the court orders the sale of the property in question a sum of \$30,730.00 be paid to the Fund as having first charge over the said property.

[5] The 1st named defendants deny that they are the registered proprietors of the property which is the subject matter of these proceedings. But the Native Lease No. 26290 which has been tendered along with the affidavit in support clearly shows that the 1st named defendants are the lessees of this property.

[6] While denying that they failed to pay the arrears of municipal rates and the statutory interests for a period from 1980 to 2009 despite the reminders sent, the 1st named defendants say that the offer letter sent by the TLTB there was no reference to arrears of municipal rates. Recovery of rates is a matter for the respective Town Council and not for the TLTB. Merely because the TLTB did not mention in its letter anything about the arrears of municipal rates does not exonerate these defendants from their liability to pay rates to the plaintiff.

[7] As admitted by the 1st named defendants the plaintiff's cause of action in this case is based on the Ruling of the learned Magistrate dated 03rd April, 2014 wherein the court entered judgment by default in a sum of \$21,011.03.

[8] The 1st named defendants aver in their affidavit in response that they have instructed their solicitor to stay and set aside the default judgment entered by the Magistrate's Court since their former solicitor Mr. Vakaloloma had failed to attend court and his failure to advise them of the status of the proceedings.

[9] However, there are no materials on record which shows that the 1st named defendants have at least filed necessary papers to have the default judgment entered against them by the learned Magistrate, set aside.

[10] The plaintiff along with its affidavit in support tendered the documents relating to the mortgage of the property to the 3rd defendant and the charging orders in favour of the 2nd defendant.

[11] I am therefore of the view that the plaintiff is entitled to the orders sought in the originating summons. Accordingly I make the following order.

ORDER

All orders sought in the Originating Summons dated 17th March, 2015, which are referred to in paragraph [1] of this judgment are granted.




Lyone Seneviratne

JUDGE

30th August, 2016.