

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 223 of 2016

IN THE MATTER of an application
under Section 169 of Part XXIV of
Land Transfer Act, Cap 131 for an
Order for immediate vacant
possession.

BETWEEN: DEBORAH ANNE PILLAY of 9/51 Tidewater Way, Ascot, Western Australia.

PLAINTIFF

AND: MEREONI TAMAKI BULIVOU of Taunovo, Pacific Harbour, Deuba, Domestic Duties.

1ST DEFENDANT

AND: JOSUA VOSAKI of Taunovo, Pacific Harbour, Deuba.

2ND DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSELS: Ms. Ulamila Fa - for the Plaintiff
Mr. Lanian - for the 1ST Defendant
Non Appearance - of the 2ND Defendant

DATE OF RULING: 03rd April, 2017

RULING

*(Inter-Parte Notice of Motion seeking Injunctive Relief and Restraining Orders
pursuant to Order 8 (2) (1) of the High Court Rules, 1988)*

INTRODUCTION

1. This is the Plaintiff's Interlocutory Inter-Parte Notice of Motion seeking the following orders-
 - (i) *The 1st and 2nd Defendants by themselves and/or their agents or servants be restrained from interfering with authorised personnel of the Plaintiff attending to their duties at the main house at Lot 2 on DP 4881 being CT 24116 until the final determination of Civil Action No. 223 of 2016 being the Section 169 application currently before this Court;*
 - (ii) *The 1st and 2nd Defendants by themselves and/or workers of the Plaintiff at the premises at Lot 5 on DP 2585, CT 11836 until the final determination of Civil Action No. 223 of 2016, the Section 169 Application currently before this Court.*
2. *The Navua Police to assist in this matter.*
3. In the alternative, an early hearing date for Civil Action No. 223 of 2016.
4. This application is made in support of the grounds set forth in the Affidavit in Support deposed by Sala Kunatuba.

THE LAW

5. The Plaintiff has made his application pursuant to *Order 8 (2) (1) of the High Court Rules, 1988* which stipulates as follows-

Notice of motion (O.8, r.2)

2.-(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceedings in the ordinary way would or might entail irreparable or serious mischief may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

ANALYSIS AND DETERMINATION

6. It was agreed between both Counsels that the Interlocutory Application was of urgency and should take precedence of hearing over the impending Substantive Section 169 application.
7. The Interlocutory Application was argued and heard on 28th March, 2017 with both parties furnishing their written submissions to Court in the matter.

8. Before any determination could be made in terms of the Injunctive relief and the restraining Orders sought on the Plaintiff's Inter-Parte Motion, it would be prudent for this Court to First determine if the Plaintiff, has any 'Locus Standi' and or 'Jurisdiction' to file and commence proceedings against the Defendants.
9. When the Plaintiff's Counsel was asked to explain whether the Plaintiff had the 'Locus Standi' and 'Jurisdiction' to file and commence proceedings, she answered in the affirmative supporting the issue as follows-
 - (a) In 1995, Plaintiff's husband, Naveen Chandra Pillay purchased two (2) Lots of land, Certificate of Title No. 24115, being Lot 1 on DP 4881 and Certificate of Title No. 24116 being Lot 2 on DP 4881. (Reference made to Plaintiff's affidavit at paragraph 6).
 - (b) In 1989, Plaintiff's late husband with two others, purchased Certificate of Title No. 11836 being Lot 5 on DP 2585. (Reference made to paragraph 7 of Plaintiff's affidavit).
 - (c) On 17th February, 2011 the Plaintiff's husband, Naveen Chandra Pillay, passed away and the Plaintiff was appointed as the Executrix and Trustee in terms of his WILL.
 - (d) The Supreme Court of Western, Australia, granted a "Probate Grant" to the Plaintiff on 21st March, 2012. (Annexure DAP 5 at paragraph 9 refers in the Plaintiff's affidavit).
 - (e) Re-Seal grant application is impending issuance with the Principle Probate Registry in Suva since the caveat in place is obstructing and re-seal grant be issued.
10. In response, the Defence Counsel submitted that in light of no Re-Seal Grant issued to the Plaintiff, the Plaintiff did not have the Locus Standi and jurisdiction in this case.
11. Upon the perusal of the Affidavit evidence, Annexures and, both oral and written submission, the subject properties under contention in the current proceedings before this Court are comprised and described in Certificate of Title No. 24115, Lot 2 on DP 4881 AND Certificate of Title 11836, Lot 5 on DP 2585.
12. Certificate of Title Nos. 24115 and 24116 currently remains under the proprietorship of Naveen Chandra Pillay (The Deceased husband of the Plaintiff).
13. The Plaintiff [Deborah Anne Pillay] was granted with a "Probate Grant" in the Deceased Husband's [Naveen Chandra Pillay] Estate in Western Australia. As far as this Court is concerned, this Grant will allow the Plaintiff to administer and transfer the properties and assets existing in the Australian Jurisdiction only in terms of the Deceased's WILL. This Probate Grant does not give the Locus Standi and the Jurisdiction to the Plaintiff to exercise within the Fijian Jurisdiction until the

Plaintiff is able to file a Re-Seal application and obtain a Re-Seal Grant under her name accordingly.

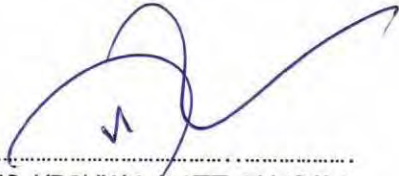
14. In the absence of Plaintiff having obtained a Re-Seal Grant in the Fijian Court, she will not be able to exercise her administration rights over the Deceased Husband's properties and assets within the Fiji Jurisdiction, including the properties which are the subject matter of the current proceedings before this Court.
15. Therefore, for the aforesaid rational, the Plaintiff does not have any 'Locus Standi' nor "Jurisdiction" in the present matter before this Court. The Plaintiff did not have any 'Locus Standi' nor "Jurisdiction" to even file and commence this proceedings.
16. In Conclusion, I have no other alternative but to make the following final Orders-

FINAL ORDERS

- A. The Plaintiff's Inter-Parte Notice of Motion seeking Injunctive Relief and Restraining orders is Dismissed.
- B. The Plaintiff is ordered to pay costs to both Defendants summarily assessed at \$750 and the same to be paid within 14 days.
- C. This Court will now proceed to hear and determine the Section 169 application as earlier scheduled.

Dated at SUVA this 03rd day of APRIL, 2017




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MR VISHWA DATT SHARMA
Master of High Court, Suva

cc: Law Solutions, Suva
M. A. Khan Esq., Suva