
JUDGMENT

- [1] The plaintiff instituted these proceedings by Originating Summons which was later amended, seeking the following reliefs:
- A. That the defendant give immediate vacant possession to the plaintiff of the premises at Lot 2 Isa Lei Road, Lami comprised and described in Native lease No. 16044 being Lots 2 and 3 Matamakita Subdivision which the plaintiff is the registered proprietor of which the defendant now occupied; and
 - B. That the costs of this application be paid by the defendant to the plaintiff.
- [2] The Memorandum of Lease in respect of the Native Lease No. 16044 has been tendered by the plaintiff according to which, the plaintiff is the current lessee subject to a mortgage in favour of Bank of Baroda. The plaintiff's position is that it bought this property from a company called Rosewood Limited on 03rd August, 2015 with a loan of \$143,000.00 from Bank of Baroda and since then it has made payments of \$24,640.00 to the bank. The plaintiff has also averred in the statement of defence that the defendant was never a lessee of this property nor does she have a registered interest in the title or lease.
- [3] Opposing the application of the plaintiff the defendant states that she has no knowledge whether the plaintiff purchased this property from Rosewood Limited since no sale and purchase agreement or Transfer is annexed to the affidavit. The defendant is also a share holder of Rosewood Limited. It is her position that at no stage the company passed a resolution to sell this property. The other shareholders of Rosewood Limited are Kenneth Roberts and Benjamin Roberts. Kenneth Roberts and the defendant are husband and wife. The defendant averred further that the Court of appeal has declared that this property was matrimonial property and that the defendant was entitled to half-share of the property.
- [4] This application was made by the plaintiff under section 169 of the Land Transfer Act which provides as follows:

The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-

- (a) the last registered proprietor of the land;
- (b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;
- (c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.

- [5] Section 172 of the Land Transfer Act provides for the grounds for dismissal of the summons filed under section 169.

Section 172 - If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit;

Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled;

Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.

- [6] From the averments in the affidavit it is clear that the defendant opposes the application of the plaintiff on two grounds namely;

- (1) Pursuant to the decision of the Court of Appeal in case No. ABU0040 of 2007 the property which is the subject matter of these proceedings is matrimonial property and she is entitled to 50% of it.

- (2) There had been no resolution passed by Rosewood Limited before disposing of this property.

[7] The Court of Appeal in appeal No. ABU 40 of 2007 has made the following orders:

1. The appeal is dismissed
2. In accordance with Rule 22 of the Court of appeal Rules, the Respondent's share of the matrimonial property is determined to be:
 - A. \$12,000.00 in respect of the car;
 - B. \$100,000.00 in respect of the 100,000 shareholding in Mokosoi;
 - C. \$65,000.00 in respect of a half-share in the (former) matrimonial home, the Isa Lei Drive property.
3. The total amount of \$177,000.00 is to be paid to the Respondent by the Appellant within 48 days of these orders.
4. Costs to the Respondent in the amount of \$10,000, to be paid within 14 days of these Orders.

[8] The Court of Appeal in its order has referred to the property as "(former) matrimonial property" and has awarded \$65,000.00 in lieu of her share of the property. The defendant is therefore, not entitled to say that she is still entitled to a half-share of the property. Therefore, the first ground relied on by the defendant to show that she is still entitled to occupy the property must necessarily fail.

[9] The plaintiff has tendered various documents in support of its claim but for reasons best known to the plaintiff it has not tendered the resolution passed by the company authorizing the sale. The application for consent to assign has been signed on behalf of Rosewood Limited two people under the common seal as Director and Director/Secretary. A company cannot dispose of its properties by the directors without first having a resolution passed approving the sale. Therefore, the question arises here whether the plaintiff has a legal right over the property to file this application.

[10] The procedure followed in determining an application under section 169 of the Land Transfer Act is summary in nature. An application made under section 169 of the

Land Transfer Act is decided on affidavit evidence and other materials tendered along with the affidavits of the respective parties. Therefore, the party who seeks an order for ejection must come to court with clean hands and full facts.

[11] It appears from the affidavit in support the plaintiff has come to court as the last registered proprietor of the property in question but from the materials available on record it appears that the directors who signed the document did not have the authority to effect the transfer. There is also no evidence that the second signatory to the transfer was in fact a director of Rosewood Limited.

[12] For the reasons aforesaid the court makes the following orders:

1. The order sought by the plaintiff in the originating summons filed on 07th October, 2016 is refused.
2. The plaintiff is ordered to pay the defendant \$1000.00 as costs (summarily assessed) of this action.



27th October, 2017


Lyone Seneviratne

JUDGE