

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 50 OF 2016

BETWEEN: FIJI PUBLIC SERVICE ASSOCIATION

Appellant/Plaintiff

AND: BUREITA NABONG, TESIRIA, PECELI NIULACA, PETER PICKERING, ILAITITA RACAKAU, ELENOA GAUNAVOU, EREA MEAAG, ALLEN STEVE, JONI VAKAMINO, BOB, MINUTE, PAULA, TERAHA TAKE, PIO NABONG

Respondents/Defendants

CORAM: The Hon. Mr. Justice David Alfred

COUNSEL: Mr. R. Singh for the Appellant/Plaintiff

Mr. H. Robinson for the Respondents/Defendants

Date of Hearing: 10 November, 2017

Date of Judgment: 10 November, 2017

JUDGMENT

1. This is not an Extempore Judgment. This is an Appeal by the Appellant against the judgment (decision) of the Acting Master delivered on 24 July 2017 whereby she dismissed the Appellant's application for vacant possession and ordered it to pay \$750 as costs summarily assessed to the Defendants.
2. In its Notice of Appeal, the Appellant put forward the following grounds of appeal:

- (i) The Master erred in fact and/or in law in:
 - (a) Dismissing the application brought pursuant to Order 113 of the High Court Rules when the Appellant is the registered proprietor of the 21 properties - concerned (properties) since 15 March 2013.
 - (b) Contradicting herself by saying the Appellant has a right to bring these proceedings as the last registered proprietor of the properties and then later saying it has no superior title.
 - (c) Wrongly relying on the judgment of Coventry J in Civil Action No. 127 of 1994 when that judgment had nothing to do with the Estate of Vijay Parmanandan and the Appellant who is the successor in title, as they were not parties in the aforesaid action.
 - (d) Not taking into consideration that Coventry J did not make any orders in respect of the properties.
 - (e) Taking into consideration Nunnink's Affidavit when it had no relevance to the instant proceedings and Coventry J had made no reference of fraud against Parmanandan.
 - (f) Holding the executrix of Parmanandan's estate and the Appellant's representative had known the properties were obtained by fraud when there was no such allegation nor finding in the aforesaid civil action.
 - (g) Not applying the principle of indefeasibility of title when there had been no challenge by the Respondents or anyone else to their registration.
 - (h) Holding there was a triable issue.
 - (i) Not holding that the Respondents had failed to lodge a caveat if they were claiming any interest in the properties.

3. The Appellant's Counsel submitted that under Order 113 of the High Court Rules there were 2 tests viz:

- (i) That the Plaintiff is the registered proprietor of the properties and
- (ii) That then the Defendants/trespassers had to show they had permission or licence from the owner to be on the land. Coventry J's judgment had no relation to this case. There was no allegation of fraud against the previous owner, Vijay Parmanandan. All the 21 properties were transferred by his executrix to the Appellant. There is no allegation of fraud against the

Appellant. The Appellant is not bound by the judgment of Coventry J because it was not a party. Counsel asked for the Appeal to be allowed.

4. Counsel for the Respondents then submitted. He said the issue, in an Order 113 of the High Court Rules application, is whether the Appellant is the registered proprietor. He agreed that no caveat had been lodged. He agreed there was no allegation of fraud against the Appellant. The Master held the Appellant had knowledge of the prior fraud in obtaining the titles. The Master was justified in relying on the judgment of Coventry J although it had nothing to do with the estate of Parmanandan. There was an issue regarding the superiority of the Appellant's title. Counsel concluded by saying the Master was right and the appeal should be dismissed.
5. The Appellant's counsel in his reply said that Coventry J never said anything of fraud against Parmanandan nor the Appellant. The Appellant was justified in bringing these summary proceedings.
6. At the conclusion of the arguments I said I would take time for consideration and would deliver my decision later in the day. Having done so and after perusing the law and the authorities, I now deliver my judgment.
7. The nub of this appeal is whether the Appellant has satisfied the Court that the Respondents are occupying the land (properties) of which it claims possession, without its licence or consent or that of its predecessor in title. At the outset I opine the Appellant has correctly brought these proceedings by originating summons.
8. Trawling through the evidence provided to the Master below and to me here I have been unable to discern any cogent or even credible evidence that the Respondents can assert any right to remain on the properties or to challenge the Appellant's right to require the Respondents to depart from its properties.
9. If I may so say with respect there is no such thing, in the Tariens system of land registration, as a superior title, which is alluded to by the Master in paras 27 and 32 of the Decision. It is trite law that it is title by registration and not registration of title. Here the Appellant's title to the 21 properties cannot be challenged under ss 38, 39 or 40 of the Land Transfer Act. Only if fraud had been established can the proprietor's title be challenged under s. 39 – sub s(1). Here I find there has not been shown to me

any evidence of fraud on the part of the Appellant or its immediate predecessor in title (Parmanandan/his estate). Reference to extraneous situations or affidavits, in other and unrelated proceedings are not evidence of fraud. They are merely red herrings which I am constrained to disregard.

10. What, however, I shall say is I am fortified in my decision by the judgment of the Chief Justice, Gates J as he then was, in **Rajendra Prasad v. Wali Mohammed: Civil Action No. HBC 272 of 1999L**, where he said at para [16] that the evidence there “falls a good way short of a standard requiring the court’s further investigation.”
11. I find that this is the same situation here. Further there is no evidence to entitle the Respondents to allege that there are triable issues here which require a full trial.
12. In the result I find and I so hold the Respondents have failed to show any consent or licence whatsoever has ever been given to them at all. I am satisfied that I shall have to upset the decision of the Master and allow this Appeal.
13. In fine I make the following Orders:
 - (1) The judgment of the Master dated 24 July 2017 is hereby set aside.
 - (2) The Originating Summons filed on 30 August 2016 is hereby allowed and the Respondents are ordered to give vacant possession of the lands, comprised in and described by the 21 Certificates of Title stated therein, on or by 10 December 2017.
 - (3) The Respondents and the Appellant are to bear their own costs throughout these proceedings, both here and below.

Delivered this 10th day of November 2017 at Labasa.



**DAVID ALFRED
JUDGE
HIGH COURT OF FIJI**