

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL/APPELLATE JURISDICTION

CIVIL ACTION NO: HBC 359 of 2015

BETWEEN : **THE TRUSTEES FOR ARYA PRATINIDHI SABHA OF FIJI** (a religious body registered under the Religious Bodies Registration Act Cap. 68 having its head office at Suva.)

(APPELLANT)
(ORIGINAL PLAINTIFF)

AND : **TRUSTEES OF BULA FIJI TOURISM EXCHANGE** (an incorporated trust under the Charitable Trust Act and having its registered office at 56, Grantham Road, Suva.)

(RESPONDENT)
(ORIGINAL DEFENDANT)

BEFORE : Justice Riyaz Hamza

COUNSEL : Mr. Vijay Maharaj for the Appellant

RULING

INTRODUCTION AND BACKGROUND

[1] The Appellant filed this Appeal by way of a Notice of Appeal, in terms of Order 59, Rule 12 of the High Court Rules 1988 (High Court Rules). The Appellant moves that the Judgment/Ruling delivered by Master Vishwa Sharma, on 4 July 2016, be wholly set aside.

[2] Thereafter, in terms of Order 59, Rule 17 (2) of the High Court Rules, the Appellant filed a Summons, seeking the following Orders:

1. That the Judgment/Ruling delivered on 4th day of July 2016 by Master Vishwa Datt Sharma wherein the Master made the following orders:-

- (i) That the Plaintiff's Summons for Summary Judgment filed pursuant to Order 14 of the High Court Rules is hereby dismissed.
- (ii) The Plaintiff's Writ of Summons and the Statement of Claim, including the amended Statement of Claim, is hereby dismissed since there was no consent granted to the Plaintiff by the Director of Lands and therefore the Plaintiff did not have any locus standii in law to commence the proceedings.
- (iii) There will be no Order as to costs at the discretion of the Court.

BE WHOLLY SET ASIDE

2. For an Order that service of the within appeal, filed on 15 July 2016, be dispensed with as the Respondent failed to file an acknowledgement of service and the appeal is otherwise from an undefended action.

3. That a hearing date be assigned for the hearing of the within appeal.

4. Such further and other orders or directions.

[3] Accordingly, this matter was fixed for hearing before me. During the hearing Counsel for the Appellant was heard. The Counsel also submitted that he is relying on the written submissions filed by him before the Master. I have had the benefit of perusing the said written submissions as well.

THE CHRONOLOGY OF EVENTS WHICH TRANSPIRED BEFORE THE MASTER

[4] The Appellant (Original Plaintiff) commenced proceedings by filing a Writ of Summons and the Statement of Claim, on 20 November 2015. Therein, it was stated as follows:

1. That the Plaintiff was at all material times the lessee of Approval Notice of Lease granted by Director of Lands for a term of 99 years with effect from 1 January 2007 with an area of 0.3239ha (subject to survey) situated at Samabula 3 Miles.
2. That the Respondent (Original Defendant) is in occupation of the said property pursuant to an assignment of lease which had expired on 31 July 2015.
3. That the Defendant continues to occupy the property to-date despite the expiry of the lease period.
4. That the agreed rental payable by the Defendant to the Plaintiff was in the sum of \$7155.55.
5. That the Defendant was in arrears of rental in the sum of \$14,312.75 as at 31 July 2015.
6. Accordingly, the Plaintiff was claiming the following reliefs:
 - (a) An Order for an immediate vacant possession of the property referred to in paragraph 1 hereabove;
 - (b) Rental arrears in the total sum of \$14,312.75 as at 31 July 2015;
 - (c) Mense Profit at the rate of \$7,155.55 per month from 1 August 2015 until the Defendant gives vacant possession;
 - (d) Costs;
 - (e) Interest pursuant to Law Reform Miscellaneous (Death & Interest Act);
 - (f) Such further and other relief this Honourable Court may grant in the circumstances of the case.

- [5] On 2 December 2015, an Amended Statement of Claim was filed, without leave of Court, pursuant to Order 20, Rules 1 and 3 of the High Court Rules.
- [6] On 3 December 2015, the Plaintiff filed a Summons for Summary Judgment under Order 14 of the High Court Rules. These Summons was supported by an Affidavit of Anaseini Yalorarawa, Senior Law Clerk attached to MC Lawyers, the Solicitors for the Plaintiff.
- [7] On 5 January 2016, the said Anaseini Yalorarawa, filed an Affidavit of Service wherein it was deposed that the Summons for Summary Judgment, Affidavit in Support, and Amended Statement of Claim, had been served on the Defendants on 23 December 2015.
- [8] On 26 February 2016, a Search for Acknowledge of Service or Statement of Defence, was filed by the Plaintiff. This was accompanied by a Praecipe seeking Judgment by Default against the Defendant.
- [9] The Judgment by Default, was signed and sealed by the Chief Registrar, on 2 March 2016. In the Judgment of Default it is stated as follows:

*"**NO** Acknowledgement of Service and or Statement of Defence having been filed by the Defendant herein, **IT IS THIS DAY ADJUDGED** that the Defendant do pay the Plaintiff damages and interests to be assessed."*

- [10] The Counsel for the Plaintiff filed Written Submissions, on 14 March 2016. The Written Submissions were in 'Support of Damages following entry of Judgment by Default of Acknowledgement of Service'.
- [11] In the said Written Submissions, it is stated that on 17 February 2016, the Plaintiff's Counsel wrote to the High Court Registry pointing out that the application for Summary Judgment was filed in error in the belief that the Defendant had already filed an Acknowledgment of Service (which turned out not to be the case). In the same letter, it was also pointed out that the Plaintiff is seeking Leave of the Court to amend the Summons under Order 14 to a Summons for Assessment of Damages.

[12] The matter was taken for Hearing before the Master on 31 May 2016. The Master made his Ruling on 4 July 2016. This is the Ruling that the Appellant is canvassing to be wholly set aside.

NOTICE AND GROUNDS OF APPEAL

[13] In the Notice and Grounds of Appeal filed by the Appellant, he sought the following Orders from this Court.

1. That the Judgment/Ruling delivered on 4th July 2016, by Master Vishwa Datt Sharma, wherein the Master made the following orders BE WHOLLY SET ASIDE:

- (i) The Plaintiff's Summons for Summary Judgment filed pursuant to Order 14 of the High Court Rules, 1988 is hereby dismissed.
- (ii) The Plaintiff's Writ of Summons and the Statement of Claim, including the amended Statement of Claim, is hereby dismissed since there was no consent granted to the Plaintiff by the Director of Lands and therefore the Plaintiff did not have any locus standii in law to commence the proceeding.
- (iii) There will be no Order as to costs at the Discretion of the Court.

2. **AND FOR AN ORDER** the Respondent do pay to the Appellant the cost of this appeal and for the High Court.

3. **AND FOR A FURTHER ORDER** that the reliefs and ORDERS sought by the Appellant (Original Plaintiff) in its Writ be granted pursuant to Order 55 Rule 7(5) of the High Court Rules.

AND FURTHER TAKE NOTICE that the grounds of appeal are as follows:-

1. THAT the Master of the High Court erred in law and in fact in dismissing the Plaintiff's Summons for Summary Judgment filed pursuant to Order 14 of the High Court Rules when:-

- a) The Appellant had sought an amendment to the Summons from Summary judgment to assessment of damages; and
 - b) No reason had been given by the Master why the amendment had not been granted bearing in mind no adverse consequences would ensue to the Defendant/Respondent who did not defend the action in any event.
2. Erred in law and in fact in dismissing the Appellant's original Writ and the amended Statement of Claim on the grounds that the Appellant had no locus standii in law to commence this proceeding in so doing the Master:-

- a) Failed to follow and/or failed to consider the principles enumerated in previous High Court decisions with similar facts on the same issue in, FIJI BIOMARINE LIMITED VS. SUVA CITY COUNCIL (CIVIL ACTION NO. 174 OF 1981) and SHANTI LAL VS. BOMBAY TRADING INVESTMENTS LIMITED (CIVIL ACTION NO. 119/1981).
- b) Failed to appreciate that the commencement of proceedings is not a dealing in land and does not require a prior consent of the Director of Lands in terms of Section 13 (1) of the State Lands Act.
- c) Erred in Law in holding that Appellant had no Locus Standii to commence the proceeding.
- d) The decision to strike out the Summons and the Writ was contrary to Order 2, Rule 1 of the High Court Rules.

3. The Master wrongly exercised his discretion in not awarding costs to the Plaintiff.

LEGAL PROVISIONS AND ANALYSIS

- [14] The Ruling made by the Master is as to “Whether the Court Record shows any Application for Assessment of Damages pursuant to Order 37 of the High Court Rules, 1988.”
- [15] In his Ruling the Master has stated that the Plaintiff’s Counsel had informed that the impending Application before this Court was a Summons for Assessment of Damages. He adds that this Court upon a thorough perusal of the Court file has been unsuccessful in locating any Summons filed by the Plaintiff seeking for the Assessment of Damages in this case. The Master continues that the Plaintiff’s Counsel had submitted to Court that he wrote a letter to the High Court Civil Registry, on 17 February 2016, pointing out that he would seek leave of this Court (which he now does), to amend the Summons under Order 14, to a Summons for Assessment of Damages.
- [16] However, in the circumstances the Master had decided to hear the Counsel instead, since he had filed Written Submissions, on 14 March 2016, moving that his Summons for Summary Judgement be amended to a Summons for Assessment of Damages.
- [17] Therefore, it is clear to me that the proceedings before the Master at the time, was as to whether the Summons for Summary Judgement could be amended to a Summons for Assessment of Damages.
- [18] Having considered the relevant law and the facts, and also the nature of the reliefs claimed for by Plaintiff, the Master has come a finding that there is no evidence of any application by Summons for Assessment of Damages filed by the Plaintiff. Therefore, he held that Court is unable to exceed to the Plaintiff’s oral application by Written Submissions to amend the Summons for Summary Judgement to that of a Summons for Assessment of Damages, since it would be wrong in law especially bearing in mind

the nature of the claims sought for by the Plaintiff in his Writ of Summons and Statement of Claim.

[19] I am inclined to agree with the above finding of the Master.

[20] However, the Master has also ruled as follows (I reproduce below paragraphs 14 and 15 of his Ruling):

"I now make reference to the Plaintiff Solicitor's correspondence addressed to the Senior Court Officer, Suva, dated 17 February 2016, wherein the writer admits at paragraphs 4 and 5 that he had applied for Director of Lands consent on 16 November 2015, but the consent was not granted until very recently on 12 February 2016.

The proceedings was commenced by a Writ of Summons and Statement of Claim on 20 November 2015, when the Plaintiff had the knowledge that he did not have the locus standi to do so because the Consent was yet to be granted in respect of the lease which is the subject matter of the proceedings.

That is the Plaintiff sought for vacant possession against the Defendant when the Plaintiff was in fact not issued with a consent as at the time of the filing of this proceedings. Even when the Plaintiff filed and served an amended Statement of Claim on 2 December 2015, still the Plaintiff was aware that the Director of Lands is yet to grant any consent as sought for.

I would rather move on since that is not the issue before this court for me to decide on. The issue that I have to decide is whether there is a Summons for Assessment of Damages against the Defendant as the Plaintiff Counsel claims herein?"

[21] Even though the Master stated that he would rather move on since the matter of consent from the Director of Lands was not the issue before Court, he has gone on to dismiss the Plaintiff's Writ of Summons and the Statement of Claim, including the amended Statement of Claim, on the basis that there was no consent granted to the

Plaintiff by the Director of Lands and therefore, that the Plaintiff did not have any locus standii in law to commence these proceedings.

- [22] In *Fiji Biomarine Ltd v Suva City Council* [1981] FJSC 69; Civil Action 174 of 1981 (17 August 1981); the Fiji Supreme Court held as follows:

"Mr. Knight for the plaintiff, while contending that the Director of Lands' consent to this action is not required, at the Court's suggestion sought and obtained such consent (Acting Director of Lands' letter dated 27.5.81).

Mr. Parmanandam for the Council, however, argues that the Director of Lands' consent should have been obtained before the plaintiff instituted its action against the Council.

There is no merit in that argument. Section 13(1) does not require the prior consent of the Director of Lands to institute an action but a Court cannot deal with a protected lease unless such consent is first obtained. The only way a Court can 'deal' with such a lease is by way of judgment or order. The Director of Lands' consent was produced to the Court before the hearing of this action commenced."

- [23] The Plaintiff has also referred to the case of *Shanti Lal v Bombay Trading Investments Ltd* (unreported); Supreme Court of Fiji (Western Division), At Lautoka; Civil Action No. 119/1981, where this principle was followed.
- [24] In *State v Director of Lands, ex parte Tuigasiale* [2016] FJHC 184; HBJ 16 of 2015 (21 March 2016); this Court followed the same view. On the issue of whether the consent of the Director of Lands should be obtained prior to filing of an action, I referred to the case of *Bolalailai v Narayan* [2007] FJHC 142; Fiji High Court Civil Action No. HBC 406 of 2004 (7 February 2007), where His Lordship Justice Jiten Singh, expressed the following view:

"Crown Lease 2057 is a protected lease under the provisions of the State Lands Act (Chapter 132). As such it cannot be dealt with by a Court without consent of the Director of Lands (in terms of Section 13 of the Act).....

*Mr. O'Driscoll (Counsel for the Plaintiffs) before commencement of evidence being taken stated that he accepts that these proceedings were filed on 14 September 2004, but consent to the proceedings was obtained on 1 November 2004. Ms. Chan (Counsel for the Defendant) submits that because consent to take proceedings was obtained after commencement of proceedings, the entire proceedings are null and void. She relies on an ex-tempore judgment in **Ratna Wati Sharma v Veer Mati & Another** – HBC 425 of 2003L. That case can be distinguished because in that case there was no evidence before the court that consent to commence proceedings had been obtained at any stage.*

In the present case there is consent albeit obtained after commencement of proceedings. The critical words in the section are "be dealt with by a court of law". Simply filing an action in a court is not a dealing in land. Actions can be discontinued at any time before any orders are made. Dealing with the land occurs if the orders or judgment of a court in some way affects some interest of the lessee in the land. The prior consent of the Director is confined to transferring, alienating, mortgaging, charging etc. It does not extend to filing of actions.

*There is nothing in this section which requires one to obtain the consent of the Director before an action is filed in court. Such consent can be obtained at any time before the land is 'dealt with' by the court. Dealing with occurs when an order is made or judgment is delivered. **Mohammed Rasul v Jeet Singh** – 10 FLR 16."*

- [25] His Lordship Justice William Calanchini, President of the Fiji Court of Appeal, in **Tuigasiale v Director of Lands** [2017] FJCA 45; ABU 0027 of 2016 (12 May 2017) held that:

“Under section 13 (of the State Lands Act) the written consent of the Director of Lands is required for any protected lease to be dealt with by any court of law or to be dealt with under the process of any court of law. As Hammett CJ noted in Rasul –v- Jeet Singh and Hazara Singh (1964) 10 Fiji LR 16 at page 17:

“It seems to me that the consent of the Director can therefore be obtained up to any time before the land is actually “dealt with” by the Court, which in my view is certainly not the case at any time before an order has been made by the Court or a judgment of the Court has been delivered. I can see no reason why a judgment of the Court dealing with the land could not properly be made “subject to the consent of the Director of Lands, with liberty to apply for further orders should that consent not be granted.””

- [26] From the above Judgments, it is abundantly clear that the consent of the Director of Lands can therefore be obtained up to any time before the land is actually “dealt with” by the Court. It is not a requirement to have such consent before the commencement of the proceedings.
- [27] In this case it is evident that the consent of the Director of Lands was granted on 12 February 2016.
- [28] Therefore, I am of the view that the Master erred in law when he held that the Plaintiff did not have any locus standii to commence these proceedings, on the basis that there was no consent granted to the Plaintiff by the Director of Lands at the time the proceedings were commenced. Further, the Master erred in law when he went on to dismiss the Plaintiff’s Writ of Summons and the Statement of Claim, including the amended Statement of Claim.
- [29] Accordingly, I make the following orders:

ORDERS

1. I set aside the Ruling made by the Master, on 4 July 2016, whereby he dismissed the Plaintiff's Writ of Summons and the Statement of Claim, including the amended Statement of Claim.
2. I make no order for cost.

Dated this 15th day of November 2017, at Suva.




Riyaz Hamza

JUDGE

HIGH COURT OF FIJI