

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Case No.: HBC 273 of 2017

**BETWEEN** : **JANIEA BI ALI** of 401 Waimanu Road, Suva, Businesswoman

**PLAINTIFF**

**AND** : **SAMUELA TAWAKE** of Hunts Place, Davuilevu Housing

**DEFENDANT**

**Counsel** : **Mr. J. Lanyon for the Plaintiff**  
**Mr. J. Vulakouvaki for the Defendant**

**Date of Hearing** : **16<sup>th</sup> November, 2017**

**Date of Judgment** : **22<sup>nd</sup> November, 2017**

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff filed summons seeking an extension of Caveat No 830433. The Plaintiff had entered in to a Sale and Purchase Agreement with the Defendant in regard to a land known as Lot 78 on R. 1692 in Sauniwaqa Subdivision Stage 1 comprised in Native Lease No 27068 (The Property). The area of the land is 4 acres 1 rood and 13 perches. The Plaintiff is the buyer and the Defendant is the present lessee (vendor) of the said land. There are certain conditions that the vendor has to fulfill under said agreement and the time period for settlement was 30 days from the execution of the Sale and Purchase Agreement or as agreed between the parties.

**ANALYSIS**

2. Under section 106 of the LTA, the instances under which a caveat can be lodged is stated and it states;

*"106. Any person -  
(a) claiming to be entitled or to be beneficially interested in any land subject to the provisions of this Act, or any estate or interest therein, by virtue of any unregistered agreement or other instrument or*

*transmission, or of any trust expressed or implied, or otherwise howsoever; or*

*(b) transferring any land subject to the provisions of this Act, or any estate or interest therein, to any other person to be held in trust, may at any time lodge with the Registrar a caveat in the prescribed form, forbidding the registration of any person as transferee or proprietor of, and of any instrument affecting, such estate or interest either absolutely or unless such instrument be expressed to be subject to the claim of the caveator as may be required in such caveat.” (emphasis added)*

3. Caveat 830433 is lodged against the Property in by virtue of the unregistered Sale and Purchase agreement executed on 19<sup>th</sup> March, 2015.
4. The Plaintiff is the purchaser and the Defendant is the vendor under Sale and Purchase agreement. It had following special conditions
  - a. “The vendor shall (as a condition precedent to this agreement) cause the (sic) TLTB to issue a 99 year lease over the property.
  - b. The Vendor shall be liable at his own costs and express to have the new lease issued for a minimum period 99 years.
  - c. The vendor shall be liable to pay any premium that is levied by the TLTB.
  - d. The Vendor shall at his own cost and expense, attend to and prepare a charge of zoning of the property to “residential”.”
5. According to the affidavit in support the Defendant had not fulfilled the conditions stated above but the Plaintiff did not consider such inaction as a breach of condition of the agreement to terminate and continued and desired to do things under Sale and Purchase Agreement.
6. The Defendant had not given any notice of termination of the said Sale and Purchase Agreement.
7. The Plaintiff state that she had settled the arrears to the Housing Authority regarding the house on the property. The Defendant denies this position, but at the hearing he admitted that there was a substantial arrears due to Housing Authority and also stated all the arrears

are now cleared. The Defendant was unable to state the source of funds for the settlement of the arrears of rent, or evidence to the effort that he paid the settlement of such arrears.

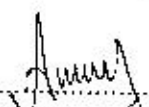
8. Disputed facts cannot be considered at this moment and this should be left to be determined at the hearing of the action for specific performance.
9. According to the Defendant the Sale and Purchase Agreement had come to an end as 30 days time had lapsed.
10. The Plaintiff state that the obligations of the Defendant vendor stated earlier in this judgment were not fulfilled and that was the cause of delay.
11. There is no evidence before me that the vendor had fulfilled the conditions stated in the Sale and Purchase Agreement.
12. Hence there is a serious question to be tried at the hearing.
13. Next issue is balance of convenience and whether it favours the Defendant. The Sale and Purchase Agreement was entered in 2015 and parties have not sought to terminate the same by giving notice of termination. Both parties have conducted themselves as the Sale and Purchase Agreement was in force. Time is not considered as an essence of the said contract. In the circumstances the balance of convenience lies with the Plaintiff to extend the caveat.

#### **FINAL ORDERS**

- a. The Caveat No 830433 is extended till final determination of the action for specific performance.
- b. No cost.

**Dated at Suva this 22<sup>nd</sup> day of November, 2017.**



  
Justice Deepthi Amaratunga  
High Court, Suva