

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 1 OF 2017

BETWEEN : **NAAZLI ZARIYA SHARIFF** aka **NAZLI ZARIYA SHARIFF** of Lot 15 Kishore Kumar Road Laucala Beach Estate, Nasinu, Fiji, School Teacher/Beneficiary.

PLAINTIFF

AND : **SHAMINA BIBI** aka **SHAMIMMA BI** of Lot 7 Bountiful Estate, Vunisalato Road, Waqadra Namaka, Domestic Duties as Administratrix of the Estate of her late husband **SHAMIM SHARIFF** aka **SHAMIM** late of Waqadra, Nadi in the Republic of Fiji, Waiter, Deceased, Intestate.

FIRST DEFENDANT

Appearances : Ms S. Ravai for the plaintiff (o/i of Reddy & Nandan Lawyers)
No appearance for the first defendant
Date of Hearing : 22 October 2019
Date of Ruling : 22 October 2019

R U L I N G

[on enforcement of judgment]

[01] This is an application for enforcement of judgment.

[02] By her amended summons filed 16 October 2019, which is supported by an affidavit of the plaintiff (*'the application'*), the plaintiff seeks the following orders:

1. *That an Order be granted for the property Crown Lease No. 13667 being Lot 7 on SO 3505 situated at Lot 7 Bountiful Estate, Vunisalato Road, Waqadra, Namaka thereon be transferred to the plaintiff pursuant to the Terms of*

Settlement that was executed on the 27 September 2018, between the parties, subject to the consent of the Director of Lands.

2. *The Deputy Registrar shall execute any necessary memorandum of transfer and other incidental documents.*
3. *Any other relief as this Honourable Court may deem fit.*

[03] The application is made under Order 45, Rules, 5 and 7 of the High Court Rules 1988, as amended ('HCR').

[04] Rule 7 provides:

"Court may order act to be done at expense of disobedient party (O 45, R7)

7 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs". [Emphasis provided]

[05] The consent judgment sought to be enforced was made on 27 September 2018. The relevant part of the judgment reads:

1. *That the Plaintiff Naazli Zariya Shariff aka Nazil Zariya Shariff shall purchase the property being Crown Lease No. 13667 being Lot 7 on SO 3505 situated at Lot 7 Bountiful Estate, Vunisalato Road, Waqadra Namaka at the full agreed sum of \$310,000.00.*
2. *That the agreed sum of \$310,000.00 shall be equally divided into two shares, wherein the Plaintiff's share (as to one undivided half share) shall be \$155,000.00 and the Estate of Shamim Shariff also known as Shamim shall be \$155,000.00.*

3. *That the Plaintiff also being a beneficiary of the Estate of Shamim Shariff also known as Shamim shall be also entitled for her shares from the Estate in the sum of \$19,375.00.*
4. *That from the \$155,000.00 as the half undivided share of the estate of Shamim Shariff also known as Shamim of \$19,375.00 shall be deducted as the share of the plaintiff, Naazali Zariya Shariff also known as Nazli Zariya Shariff.*
5. *That the Plaintiff shall pay the total sum of \$135,625.00 to the Defendant Shamina Bibi also known as Shamimma Bi.*
6. *That the transfer process shall be completed within six weeks subject to the approval or consent from the Director of Lands.*
7. *That the Defendant's share in the sum of \$135,625.00 shall be paid into the Trust Account of her solicitors, Fazilat Shah Legal.*
- ...
15. *That the Defendant shall also execute the transfer documents and apply for Capital Gains Tax.*

...”

[06] The defendant was present in court with her lawyer when the judgment was pronounced on 27 September 2018. The judgment has been sealed on 11 October 2018.

[07] The sealed judgment says that the defendant shall execute the transfer documents and apply for Capital Gains Tax and the transfer process shall be completed within 6 weeks.

[08] It has been more than a year since the judgment was delivered in the nature of specific performance. The defendant has not complied with the judgment.

[09] The plaintiff on affidavit states that she is willing to do everything to comply with the judgment but the defendant is unwilling to execute the transfer documents.

- [10] Under Rule 7, the court may appoint some other person to do the act required to be done under the judgment if the judgment for specific performance is not complied with.
- [11] The defendant has disobeyed the judgment. Therefore, the plaintiff is entitled to enforce the judgment.
- [12] This application has been served on the defendant. The plaintiff has an affidavit of service of Mr Dipshal Singh of Lautoka, Legal Assistant in proof of service. I am satisfied that the application has been properly served on the defendant. Despite the service, the defendant had opted not to be present in court.
- [13] On the facts of the case, I am satisfied that the defendant has disobeyed the judgment. I would, therefore, acting under O 45, R 7, appoint the Deputy Registrar of this court to do the act required to be done under the judgment delivered on 27 September 2018. Accordingly, the Deputy Registrar shall do everything necessary to transfer the property to the plaintiff upon depositing the total sum of \$135,625.00 into court.

The result

The Deputy Registrar shall execute any necessary memorandum of transfer and other incidental documents to transfer the property Crown Lease No. 13667 being Lot 7 on SO 3505 situated at Lot 7 Bountiful Estate, Vunisalato Road, Waqadra Namaka to the plaintiff upon the plaintiff depositing the total sum of \$135,625.00 into court.

M.H. Mohamed Ajmeer
22/26/10/19
.....
M.H. Mohamed Ajmeer
JUDGE



At Lautoka
22 October 2019

Solicitors:

For the plaintiff: Reddy & Nandan Lawyers, Barristers & Solicitors