

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 284 of 2019

Miteli Kovanavakatawa Baleinasau Tuqiri

Plaintiff

v

Tevita Bukarau

First defendant

Abu Bakar Ansari

Second defendant

The Registrar of Titles

Third Defendant

Attorney General of Fiji

Fourth defendant

The plaintiff in person

Counsel: Mr V. Faktaufon for the first defendant

Mr A. Naco for the second defendant

Ms S. Taukei for the third and fourth defendants

Date of hearing :13th May,2020

Date of Judgment: 25th June,2020

Ruling

1. This is an application by the first defendant to strike out the plaintiff's inter partes summons.
2. The plaintiff, in its inter partes summons seeks :

That the Plaintiff's Caveat No. 865383 registered with the land known as Lot 6 on DP 9829 being Crown Lease No. 810398 remain on the said lease until the case is heard.
3. The plaintiff, in his supporting affidavit states that he was the "initial proprietor" of State Lease No. 810398. He entered into a Sale and Purchase Agreement with the first defendant, his lawyer to sell the lease for \$20,000.00. He was only paid \$11,963.00 by the first defendant, who failed to follow his instructions. He is still owed \$8037.00. He lodged Caveat No. 865383, which was registered on the lease on 20 August, 2018.
4. The first defendant moves to strike out the plaintiff's summons on the ground that the plaintiff has no locus standi to sue the first defendant and that his summons is scandalous, frivolous, vexatious and an abuse of process of Court.
5. The first defendant, in his affidavit in support of the striking out application states that he was solicitor for the second defendant for the transfer of the lease from the plaintiff to the second defendant. There is no nexus in the legal relationship between him, (as solicitor of the second defendant) and the plaintiff to give him sufficient standing to bring these proceedings.

6. The affidavit in support continues to state that on 9th May, 2019, an application was made to lodge a caveat as provided in the certified copy of the lease title. After 21 days to show cause had expired, the caveat was revoked by the third defendant on 26th July, 2019. This Court is functus. The plaintiff has not fully disclosed the memorial page and persisted with this action knowing that the caveat was already revoked by third defendant.

7. The plaintiff, in his affidavit in opposition states that the first defendant forced and threatened him to sign the agreement. There is sufficient nexus of legal relationship between himself and the first and second defendants. He became aware of the application for removal of the caveat by a phone call from the third defendant one week prior to his date of response to same. If he had received the full 21 days' notice of application for removal of caveat by the caveatee, then he could have exercised his right under section 110(3) of the Land Transfer Act prior to the caveat being removed. He will be further subject to more inconvenient and difficulty by the operation of Section 112 of the Land Transfer Act, which does not permit the third defendant to receive a second caveat except by order of Court.

The determination

8. Mr Faktaufon, counsel for the first defendant submitted that the plaintiff has no interest in the lease to institute legal proceedings. He has no locus standi to sue the first defendant. The land has been sold.

9. Mr Naco, counsel for the second defendant submitted that the application for the caveat has no legal basis, as the sale from the plaintiff to the second defendant is concluded.

10. Ms Taukei, counsel for the third and fourth defendants submitted that the caveat has been revoked. The plaintiff cannot maintain this action.

11. The plaintiff seeks that caveat registered on the lease remain. But the caveat has been already removed and he has no interest in the land to file a caveat. The land has been sold by him to the second defendant.

12. Section 106 of the Land Transfer Act provides that:

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.*

13. In *Cambridge Credit(Fiji) Ltd v W.F.G.Ltd*, FLR 182 at pgs 184 to 185 the Court of Appeal stated:

The respondent must however, bring itself within the provisions of Section 106 and in order to do this must satisfy the Court that the following are fulfilled:

- 1) *That it is a person claiming to be entitled to or to be beneficially interested in any land, estate or interest under the Act; and*
- 2) *That it is so claiming by virtue of any unregistered agreement or other instrument or transmission, or any trust expressed or implied or otherwise howsoever....*

Section 106 of the Fiji Act is designed to protect unregistered instruments in land. For instance an agreement for sale and purchase, an unregistered mortgage, an agreement to give a mortgage or an option to purchase land are just a few examples of unregistered instruments which are capable of being protected by the lodging of a caveat.

14. In my view, the plaintiff's summons is an abuse of process of Court and is struck out.

15. *Orders*

- a. The plaintiff's inter partes summons is struck out.
- b. I make no order as to costs.



A.L.B. Brito-Mutunayagam

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JUDGE

25th June, 2020