

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

135 2021
CIVIL ACTION NO.: HBC 321 of 2016

IN THE MATTER of an application
pursuant to Section 169 of the Land
Transfer Act, for an Order for immediate
vacant possession.

BETWEEN : NAIRS TRANSPORT COMPANY PTE LIMITED
PLAINTIFF

AND : RADESHMA GOUNDAR AND OTHER
OCCUPANTS
DEFENDANTS

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. N. Sharma & Ms Ahmed [Nilesh Sharma Lawyers]
DEFENDANTS : Mr. G. O'Driscoll [O'Driscoll & Co]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 18 March 2022

RULING

Application

1. The Defendant is seeking orders that the Plaintiff's application dated 05th July 2021 be either stayed or dismissed until the determination of other High Court files being:
 - (i) Suva High Court Probate File HPP 40 of 2020;
 - (ii) Suva High Court Companies Action HBE 38 of 2021;
 - (iii) Suva High Court Companies Action HBE 39 of 2021.

2. During the hearing of the Defendant's application, I had also raised the issue if the Plaintiff can rely on the Approval of Notice of Lease and bring proceedings under Section 169 of the Land Transfer Act.

Both counsels were heard on this issue as well.

Substantive Claim

3. The Plaintiff had initiated proceedings under Section 169 of the Land Transfer Act asking the named Defendant and other occupants to show cause why they should not give vacant possession of the property on the Approval of Notice Lease as Bal, Lot 81 – Wainibuku (pt of) RI679, Naitasiri.
4. The Plaintiff claims to be registered proprietor of the land based on an Approval Notice of Lease from the Department of Lands and Survey.

Background of the other proceedings with the High Court

Suva High Court Probate Action HPP 40 of 2020

5. The Plaintiff company is subject to the proceeding in HPP 40 of 2020 where the Defendant's husband claims to be a shareholder of the company by virtue of a Will of the Defendant's father-in-law.
6. Furthermore, in HPP 40 of 2020, Ritesh Rishi Nair a director of the Plaintiff company has surrendered the grant made in his favour to the registry.
7. The Defendant's contention is that since the Will pursuant to which Ritesh obtained a grant, is subject to a court proceeding, any alteration of the company records of the Plaintiff by Ritesh Rishi Nair is unlawful and illegal.
8. The orders sought in the said proceeding are for revocation of a grant No. 65701 in favor of Ritesh Rishi Nair for the Estate of Kunjan Nair and orders that a Will dated 19th March 2020 be declared as the last will of Kunjan Nair.

9. It is by virtue of the Will dated 07th May 2015 that Ritesh Rishi Nair obtained grant 65701 and pursuant to said Will he received 60% share of the deceased's real and personal estate.
10. The remaining 40% share was not distributed equally amongst Nilesh Rishi Nair [Radeshma's husband] and Satesh Sachin Nair.
11. According to the Defendants, until the probate matter is disposed of Ritesh Rishi Nair cannot act as executor for the estate of Kunjan Nair.

Suva High Court Civil Action HBC 364 of 2017

12. There is also Civil Action No. 364 of 2017, where there is dispute amongst the shareholders of the Plaintiff company.

Suva High Court Companies Action HBE 38 of 2021

13. Suva High Court Company Case HBE 38 of 2021 is an application where declarations are sought that Ritesh Rishi Nair is not the sole shareholder of the company Nair's Transport Company Pte Limited (the plaintiff in the current proceedings) and also amongst other orders one of the orders sought are for his removal as a director.

Determination

Section 169 of the Land Transfer Act

14. **Section 169** of the Act allows following *"persons to summon any person in possession of land to appear before a Judge in chambers to show cause why the person summoned should not give up possession:*

- (a) *The last registered proprietor of the land;*
- (b) *A lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;*

(c) *A lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.*

15. As mentioned earlier the Plaintiff relies on an Approval of Notice of Lease claiming to be the last registered proprietor pursuant to Section 169 of the Land Transfer Act.

Approval of Notice of Lease

16. *“Registered proprietor”* is defined in Section 2(1) of the Land Transfer Act as *“the registered proprietor of land, or of any estate or interest therein”*.

17. The term *“registered”* when used *“with reference to a document or title to any immovable property means registered under the provisions of any written law for the time being applicable to the registration of such document or title”* - Section 7 of the Interpretation Act.

18. Section 21 of the Land Transfer Act reads:

(1) *Every instrument of title shall be deemed and taken to be registered under the provision and for the purposes of this Act as soon as the same has been signed by the Registrar and marked with a serial number in the register, and every instrument purporting to transfer or in any way to affect land subject to the provisions of this Act, or any estate or interest therein, shall be deemed to be so registered as soon as a memorial thereof as herein described has been entered in the register upon the folium constituted by each existing instrument of title affected by such dealing”*.

19. The term *“instrument”* is defined as *“including every document registered or capable of registration under this Act or in respect of which any memorial is by this Act directed, required, or in the Register Book, or endorsed on any registration instrument”*.

20. And as per the interpretation section of the Land Transfer Act "*instrument of title*" includes "*a certificate of title, state grant, lease, sublease, mortgage, or other encumbrances as the case may be*".

21. Pursuant to Section 18 of the Land Transfer Act:

"Every duplicate instrument of title duly authenticated under the hand seal of the Registrar shall be received in all courts as evidence of the particulars contained in or endorsed upon such instrument".

Form of Lease for State Lands

22. Section 12 of the State Lands Act talks about "*Form of Lease, Registration and Fees*" and reads as follows:

(1) *All leases of State land shall be in such form and subject to such conditions and covenants as may be prescribed, and such leases shall be recorded in a register to be kept by the Registrar of Titles entitled "Register of State leases" and it shall be lawful for the Director of Lands to charge and collect in respect of the preparation of any lease or for any matter in connection therewith such fees as may be prescribed.*

(2) *When a lease made under the provisions of this Act has been registered, it shall be subject to the provision of the Land Transfer Act 1971, so far as the same are not inconsistent with this Act in the same manner as if such lease had been made under that Act and shall be dealt with in a like manner as a lease so made.*

Requirements under State Lands (Leases and Licences) Regulations 1980

23. Pursuant to regulation 4 a person desiring to lease state land has to lodge on application "*in the appropriate form*" with the Director of Lands.

24. Pursuant to regulation 5 the application can be approved or refused and any lease which is approved is subject to condition and covenants prescribed in the regulation.
25. Pursuant to regulation 25 "*all leases under this regulation shall be in Form 1 in the schedule 1 or as near thereto as circumstances permit*".
26. Pursuant to regulation 26 (1) upon approval by the Director, the Applicant is notified in writing of such approval advising him/her of the terms and conditions of granting the lease.

Sub-regulation (2) requires an acceptance in writing by the Applicant of the terms and condition in the notification of approval, and there after an approval notice of lease is issued to the Applicant.

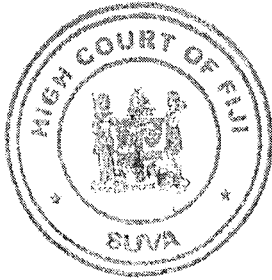
Pursuant to sub-regulation (3) the Applicant only occupies the land upon executing the approval notice and paying all sums due.

27. Pursuant to regulation 27, once a survey is completed, "*a lease embodying the approved terms and condition is prepared and thereafter the Applicant is advised for execution of the same*".
28. Regulation 28 requires lease to be signed by lessee and thereafter the Director as lessor and upon execution the original is registered by the Registrar of Titles with duplicate to the lessee.
29. The Plaintiff's Solicitor relied on the case of **Laisiasa Qera v Abdul Munaf, a Labasa High Court Civil Action HBC 37 of 2010** where an instrument of tenancy by the than Native Land Trust Board was held to be capable of registration under Land Transfer Act.
30. Regulation 5 of the iTaukei Land Trust (Leases and Licences) Regulation 1984 requires lease to be in form set out in Schedule 2 of the Regulation.

31. In the given case, the said document was said to contain the date of registration, the book and folio number [reference is made to paragraph 31 of the Ruling].
32. In the current proceeding, this is not the case.
33. Here, the plaintiff has annexed only a copy of the approval notice of lease. It does not contain any date of registration; the book and folio number.
34. This is not a duplicate copy "*authenticated under the hand of the Registrar*" as required under Section 18 and 21 of the Land Transfer Act.
35. When asked if the Plaintiff could produce a certified true copy under the hands of Registrar of Titles of the said Lease, the Plaintiff's Solicitor stated they did not have one as the lease is still pending.
36. Upon perusal of the requirement of the State Lands (Leases and Licences) Regulation 1980, I do not find that the "Approval Notice of Lease" is capable of registration under the Land Transfer Act.
37. The Plaintiff has only produced a copy of the Approval Notice of lease a document which is incapable of registration and with there being no certified true copy by the Registrar of Title of the said instrument, I cannot accept the said document as evidence.
38. Unless the Plaintiff can produce in court a certified true copy of the lease by the Registrar of Title of the said lease, I do not find the Plaintiff has locus to bring proceeding under Section 169 of the Land Transfer Act.
39. It would be only proper that the Director of Land brings proceedings under section 169 of the Land Transfer Act.
40. Hence, I find the Plaintiff has no locus to bring the proceedings pursuant to Section 169 of the Land Transfer Act.

ORDERS

41. Accordingly, the Plaintiff's application dated 05th July 2021 is dismissed with cost in favour of the Defendant summarily assessed at \$1,000 and to be paid within 14 days from to-date.




.....
Vandhana Lal [Ms]
Acting Master
At Suva.

TO:

1. **Suva High Court Civil Action No. HBC 135 of 2021;**
2. **Nilesh Sharma Lawyers, Solicitors for the Plaintiff;**
3. **O'Driscoll & Co, Solicitors for the Defendant.**