

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION

HBC 04 of 2022

BETWEEN : RAJENDRA KUMAR

APPLICANT

AND : URMILA DEVI and ANAL NAIDU

1<sup>ST</sup> RESPONDENT

AND : RAKESH NARAYAN

2<sup>ND</sup> RESPONDENT

AND : THE REGISTRAR OF TITLES

3<sup>RD</sup> RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. R. Dayal for the applicant  
Ms. P. Mataika for the third respondent  
No appearance for the first and second respondents

Date of Hearing : 19 August 2022

Date of Decision : 27 April 2023

# DECISION

*REGISTRATION OF TITLE                      Application seeking release of certificate of title or issue of new certificate – Power of Registrar of Titles to dispense with production of duplicate grant or other instrument – Section 26, Land Transfer Act 1971*

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1. The plaintiff filed an originating summons seeking the following orders:-
  - a) “The original Certificate of Title Vol. 53 Folio 5222 be released by the 2<sup>nd</sup> Respondent so that the transfer of property in favor of the Applicant can be completed.
  - b) Alternatively, the Registrar of Titles (ROT) be ordered to issue a new Certificate of Title Vol 53 Folio 5222 and transfer of the property in favor of the Applicant be registered”.
2. In his supporting affidavit, Mr. Rajendra Kumar stated that the first named respondents were the registered owners of the property in CT Folio No. 5222 Vol. 53 known as Yagara Mila Mila (part of) lot 12 on DP No. 134 situated in the district of Vuna and the island of Taveuni consisting of 5 acres and 10 perches. He stated that the first named respondents transferred an undivided half share from the entirety of the property to the second respondent. He averred that upon the transfer of that property, the second respondent uplifted the certificate of title in respect of the entire land from the office of the registrar of titles.
3. The applicant said that the first named respondents entered into an agreement with the applicant to transfer from the property in CT Folio No. 5222 a plot consisting of 4400 square meters. He said that all steps to transfer the property has been completed, and that the registrar of titles requires the instrument to the entire property to complete the transfer and register title in his name. He stated that the second respondent is refusing to release the relevant instrument to the applicant’s solicitors to complete registration of the aforesaid transfer.
4. The second respondent filed an affidavit, but did not oppose the reliefs sought by the applicant. The affidavit stated that the relevant certificate of title is in his possession, and that he would abide by the court’s order.
5. The third respondent, the registrar of titles, filed an affidavit opposing the application. The registrar confirmed that the first respondent was the registered

owner of the aforesaid property and had transferred an undivided half share to the second respondent on 11 July 2016. The affidavit stated that after the transfer to the second respondent was registered, the relevant certificate of title was released by her office to Paradise Agencies on 29 September 2016, since they were the agency that had lodged the transfer documents for registration.

6. The third respondent said that it is a requirement to provide the duplicate title in order for a transfer to be registered unless an application for dispensation is made to the registrar pursuant to section 26 of the Land Transfer Act 1971. Such a dispensation could be made, it was averred, if the office of the registrar of titles is satisfied with the application. In this case, the third respondent pointed out, an application was not made to the office of the registrar for dispensation of the instrument.
7. The applicant replied the affidavits filed by the second and third respondents. The first respondent did not file an affidavit.
8. At the hearing, submissions were made on behalf of the applicant and the third respondent. The first and second respondents were not represented.
9. The applicant submitted that he was unable to register the property purchased by him with the registrar of titles. He submitted that the agent handling the transfer from the first respondent to the second respondent had uplifted instruments kept for both respondents, and that the instruments were in the custody of the second respondent. Reiterating what was stated in his supporting affidavit, he submitted that registration of title in his name was not possible due to the second respondent's refusal to part with the instrument to the entirety of the property.
10. The applicant is asking court to direct the second respondent to temporarily release the relevant certificate of title to complete registration of title. The applicant undertook to return the instrument to the second respondent after registration of the transfer is completed. In the alternative, he wants the registrar of titles to be ordered to issue a new certificate of title and to cause registration of the subject property.

11. The third respondent submitted that registration without the instrument was possible if an application is made in terms of section 26 of the Land Transfer Act, and that this had not been done in respect of the applicant's transfer. Such an application, the third respondent submitted, should be made by the vendor – the first respondent. The applicant conceded that an application was not made to the registrar in terms of section 26 of the Land Transfer Act. A further objection by the third respondent is that there are disputes in the facts stated by the parties. As such, it was submitted, an originating summons is not the appropriate mode to resolve the present controversy.
12. When a memorial of any title is entered in the register of titles, the registrar of titles is required to endorse on each duplicate grant, certificate of title or other instrument affected by the memorial except where the registrar dispenses with the production of such instrument. When the registrar so endorses in terms of section 25 of the Land Transfer Act by certifying the time of endorsement, stating his name and signing with the placement of his seal, the registrar's certification will be received as conclusive evidence of the due registration of the instrument in all courts.
13. Section 18 of the Act provides *inter alia* that every duplicate instrument of title duly authenticated under the hand and seal of the registrar shall be received in all courts as evidence of the particulars contained in or endorsed upon such instrument and of such particulars being entered in the register. Section 15 of the Act provides that the proprietor of any land is entitled to the issue of a certificate of title in respect of any land. The applicant states that he purchased the land for a consideration of \$11,000.00. Given the importance and consequences of registration, the applicant's anxiety in not being able to register the transfer in his name is understandable.
14. Section 26 of the Land Transfer Act refers to the power of the registrar of titles to dispense with the production of the duplicate grant or other instrument. The section provides:

*“The Registrar may dispense with the production of the duplicate of any grant, certificate of title or other instrument for the purpose of endorsing the memorial required by the provisions of section 25 to be endorsed thereon and, upon the registration of any instrument affecting the*

*same, the Registrar shall state in the memorial entered in the register in respect thereof that no endorsement of such memorial has been made on the duplicate grant, certificate of title or other instrument, and the dealing effected thereby shall thereupon be as valid and effectual as if such memorial had been so entered, provided that, before registering such instrument, the Registrar shall require the party presenting the same for a registration to make a declaration that such grant, certificate of title or other instrument has not been deposited by way of a lien or as security for any loan or other liability, and shall give at least 14 days' notice in the Gazette and in one newspaper published and circulating in Fiji of his or her intention to register such dealing".*

15. The applicant is not without a remedy. The statute permits the registrar of titles to dispense with the production of the duplicate of any grant, certificate of title or other instrument for the purpose of endorsing the memorial required by the provisions of section 25. This course is available to the applicant in obtaining title registration. In the premises, it is not necessary at this stage to grant the reliefs sought by the applicant.

**ORDER**

- A. The applicant's originating summons filed on 20 January 2022 is dismissed.
- B. The parties will bear their own costs.

Delivered at **Suva** on this 27<sup>th</sup> day of **April 2023**.



*M. Javed Mansoor*

M. Javed Mansoor  
Judge