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IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 200 of 2021

IN THE MATTER of Land Transfer Act Cap 131  
and under Section 169 of the Land Transfer Act  
Cap 131.

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BETWEEN: SNEH PREETIKA SINGH of Lot 3, Tuirara Subdivision, Makoi, Fiji, Domestic Duties.

PLAINTIFF

AND: ROSHNI DEVI of Lot 3, Tuirara Subdivision, Makoi, Fiji, Domestic Duties.

DEFENDANT

BEFORE: Hon. Justice Vishwa Datt Sharma

COUNSEL: Mr. Singh S for the Plaintiff  
Mr Rattan S. for the Defendant.

DATE OF DECISION: Wednesday 01<sup>st</sup> February 2023 @ 9.30 am.

JUDGMENT

*[Originating Summons seeking Order for Vacant Possession pursuant to Section 169 of the Land Transfer Act 131]*

**A. Introduction**

1. The Plaintiff filed an Originating Summons and sought for the following orders:
  - i) An order that Land Transfer Act, the Defendants to show Cause why an Order for immediate Vacant Possession of the Land comprised in ***Native Lease No. 22029 being Tuirara Subdivision Lot 350 as shown Lot 3 on S.O 1853*** of which the Plaintiff is the registered owner, should not be made upon the grounds set forth in the Affidavit of Sneh Preetika Singh sworn and filed herein.
2. The Defendant filed its Affidavit in Opposition.
3. Simultaneously, the Plaintiff filed its Affidavit in Reply.
4. Both Parties argued the matter orally and furnished Court with written Submission.

**C. Plaintiff's Position**

5. The Plaintiff as the registered owner of the property contravened in ***Native Lease No. 22029 being Tuirara Subdivision Lot 350 as shown Lot 3 on S.O 1853***.
6. The Defendant is the Plaintiffs Sister-in-law and has been residing on the property with the Plaintiff's brother who was now a deceased, having passed away in March 2011.
7. The Plaintiff has served notice on Defendant, not the termination of the Defendant's temporary license to reside on the said property, and requested that the Defendant vacate the property.
8. The Defendant has refused to vacate and insisted on residing on the property until she is compensated for her alleged Expenditure and claims to the said property.
9. The Plaintiff submitted that "there is a Question of whether one can claim equity against a Native Lease in breach of section 12 of the I-Taukei Land Trust Board [ILTB] Act and referred Court to the Case of ***"Turuva v Qauqau [2015] FJHC 853, HBC 115.2015 (5 November 2015), and Indar Prasad and Bidya Wati v Pusup Chand (2002) 1 FLR 164 and Chalmers v Paradoe (1963) 1 W.L.R. 687.***
10. The Defendant has not been able to Show Cause and Cannot Show Cause by raising equities in Breach of Section 12 of the ILTB Act.
11. The Plaintiff submitted that the Court is also not required to "test whether the equities raised by the Defendant are correct or not, the Land involved is protected by Section 12 of the ILTB Lease.

**D. The Defendants Contention**

12. The Defendant claims as per her Affidavit in Opposition at paragraph 16 to 30 inclusive:

- a. That herself and her late husband, Babu, financially contributed to the construction of the dwelling on the said property. That these contributions were only made due to the representation made by Padma to the Defendant and Babu, in that the property would be gifted to whoever was able to complete the construction of the dwelling property.
  - b. That the Defendant and her husband, Babu made contributions to the maintenance of her family and her as claimed by the Defendant her "investment" of financial resources into the subject property and maintenance of Padma.
  - c. That the Defendant is entitled to equitable relief by way available though the operations of a Promissory Estoppel from the supposed representations made by Padma and in light of the "acts" that she and her husband supposedly made in light of these representations.
13. The Defendant has further claimed that Padma did not have any financial resources in the maintenance of the property, which has been proven otherwise as Padma was involved in the retailing of tobacco products.
14. Hence the Defendant raises a defence of Promissory and Property Estoppel accordingly.

**E. Analysis and Determination**

15. The Plaintiff is seeking for an order for immediate Vacant Possession against the Defendant of the Land comprised in *Native Lease No. 22029 being Tuirara Subdivision Lot 350 as shown on S.O 1853*.
16. The Defendant has opposed the application and refuses to give Vacant Possession of the same and raises the Defense of Promissory and Proprietary Estoppel.
17. The Defendant insists on residing on the said property until the Defendant is compensated for her alleged claims to the said property.
18. A *Section 169 application* is a summary procedure for possession which enable various categories of persons to call upon a person in possession of a property to show cause why he or she should not give up possession. One such category, specified in paragraph (a) of the section is '*the last registered proprietor of the land*'. (*The Plaintiff falls under this category*).
19. Pursuant to *Section 172 of the Act*, the onus is on the Defendant to show cause why she is refusing to give up possession to the Plaintiff and why an order for possession should not be made against the Defendant.
20. I have borne in mind the fact that the Plaintiff is the registered owner of the property comprised in *Native Lease No. 22029 being Tuirara Subdivision Lot 350 as shown on SO 1853*.

21. Pursuant to **section 172 of the Land Transfer Act Cap 1971**, the Defendant needs to satisfy this Court on evidence that she has a right to possession. (Case of *Muthusami v Nausori Town Council F.C.A. 23/86* refers).
22. There is no need to prove conclusively a right to possession and it is sufficient for the Defendant to prove that there is **some tangible evidence** establishing the existence of a right or of an **arguable defence**. (Case No. 152 of 1987– *Morris Hedstrom Ltd v Liaquat Ali* refers).
23. The Defendant's contention is "*whether the Defendant has a right to continue the occupation of the said property in question?*"
24. The Defendant in her **Affidavit in Opposition** claims that the Defendant and her late husband, Babu, financially contributed to the construction of the dwelling of the said property. That these contributions were only made due to the representations made by the Defendant's mother in law, Padma, to the Defendant and her husband, Babu, in that the property would be granted to whoever was able to complete the construction of the said dwelling property.
25. The Defendant further stated that she and her late husband Babu made contributions and therefore the Defendant is entitled to equitable relief by way available through the operations of a Promissory Estoppel from the supposed representations made by her mother in law, Padma, and in light of the acts that the Defendant and her husband, Babu, supposedly made in light of their representations.
26. However, the Plaintiff maintained that there were no representations made as claimed by the Defendant in her Affidavit in Opposition.
27. Reference is made to **Section 12 of the Native Land Trust Act** which provides as follows:

*"12. - (1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void:*

*Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before 29 September 1948 to mortgage such lease."*
28. There is a question of whether one can claim equity against a Native Lease in breach of **Section 12 of the ILTB Act**. A short useful summary is cited in the case of *Turuva v Qauqau* [2015] FJHC 853; HBC 115.2015 (5 November 2015):

*"The alleged verbal consent granted to the Defendant by the previous tenants/lessees of the Native Land to occupy and cultivate Native Land is implicitly prohibited by Section 12 of the Native Land Trust Act since it lacked the consent of the Native Land Trust Board.*

*The doctrine of estoppel cannot be invoked to render valid a transaction which the legislature has enacted to be invalid. [Chand v Prakash, 2011, FJHC 640, HB169. 2010]"*

*Gates J (as then was) considered somewhat a similar situation in "Indar Prasad and BidyaWati v Pusup*

*Chand*" (2001) 1 FLR 164 and said;

"Section 13 of the State Lands Act would appear to be a complete bar to any equitable estoppel arising in the Defendant's favour."

"Estoppel against a statute" is discussed as follows in Halsburys Laws of England, 4th Edition, Volume 16, at paragraph 1515,

"The doctrine of estoppel cannot be invoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted is to be invalid, or to give the court a jurisdiction which is denied to it by statute, or to oust the court's statutory jurisdiction under an enactment which precludes the parties contracting out of its provisions. Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of the duty cannot be estopped or prevented from exercising his statutory powers. A petitioner in a divorce suit cannot obtain relief simply because the respondent is estopped from denying the charges, as the court has a statutory duty to inquire into the truth of a petition.

In *Chalmers v Paradoe* (1963) 1W.L.R. 687 the court held:

"The friendly arrangement entered into between the respondent and the appellant amounted to granting the appellant permission to treat a certain portion of the land comprised in the lease as if the appellant were in fact the lessee. Under this arrangement the respondent gave the appellant possession of part of the land. He granted to the appellant permission to enjoy exclusive occupation of that portion of the land, and to erect such buildings thereon as he wished. Such an arrangement could we think be considered an alienation, as was argued in *Kuppan v Unni*. Whether or not it was an alienation it can, we think, hardly be contended that it did not amount to a dealing in land with the meaning of section 12. It is true that the 'friendly arrangement' did no amount to a formal sublease of a portion of the land or to a formal transfer of the lessee's interest in part of the land comprised in the lease. The least possible legal effect which in our opinion could be given to this arrangement would be to describe it as a licence to occupy coupled with possession, granted by the lessee to the appellant. In our opinion, the granting of such a licence and possession constitutes a dealing with the land so as to come within the provisions of section 12, Ca. 104. The consent of the Native Land Trust Board was admittedly not obtained prior to this dealing, which thus becomes unlawful and acquires all the attributes of illegality. An equitable charge cannot be brought into being by an unlawful transaction and the appellant's claim to such a charge must therefore fail."

29. Bearing above in mind and the alleged claims for the contributions made by the Defendant and her late husband, Babu, I find in any event, there is no beneficial interest accorded to the Defendant herein.
30. It would be another matter that the Defendant alleges representations made to her by the Plaintiff's mother Padma, and not by the Plaintiff personally.
31. The Defendant cannot claim equity against the Native Lease in breach of **Section 12 of the TLTB Act** in absence of any consent obtained from the TLTB. The Defendant should be aware of the fact and the Law that any dealing of the Native Lease is inalienable until prior consent is obtained in terms of the TLTB Act from the Native Land Trust Board.
32. For the aforesaid Rationale, I find that the Plaintiff is the registered owner of the property comprised compressed in Native Lease no. 22029 being Tuirara Subdivision Lot 350 as shown on SO 1853.
33. The Defendant's alleged claim for her financial contribution towards the said property and the representations made by the Plaintiffs mother, Padma and not the Plaintiff hereby would not entitle the Defendant to any equitable relief by way of available through the operations of a Promissory Estoppel

from the supposed representatives made by the Defendant's mother in law, Padma and in light of the acts that the Defendant and her late husband, Babu supposedly made in light of their representations.

**F. In Conclusion**

34. Taking into consideration the written and oral submissions made to the court coupled with the affidavits files by the parties to this proceedings, I have no alternative but to accede to the Plaintiffs Originating Summons seeking for an order for Vacant Possession accordingly.
35. For obvious reasons, I am hesitant to grant an order for an immediate vacant possession order as was sought by the Plaintiff herein.
36. The Defendant should be granted a reasonable timeframe of 30 days to relocate.

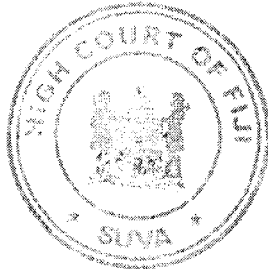
**G. Costs**

37. There will be no order for any costs made at the discretion of this court.

**ORDERS**

- i. The Defendant to deliver vacant possession of the land comprised in *Native Lease No. 22029 being Tuirara Subdivision Lot 350 as shown on S.O 1853* in the Republic of Fiji Islands, to the Plaintiff.
- ii. The Execution of this order for Vacant Possession is stayed for a period of 30 days to allow the Defendant to relocate.
- iii. There will be no order as to Costs at the discretion of this Court.

Dated at Suva this 01<sup>st</sup> Day of February, 2023.



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Vishwa Datt Sharma  
JUDGE

CC: SHELVIN SINGH LAWYERS, SUVA  
CAPITAL LEGAL