

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No : HPP 99 OF 2021

BETWEEN

SERA DAVID LANYON also known as **SERA TING** as the Administratrix in the estate of **DAVID EDWARD LANYON** also known as **DAVID LANYON** of Yalalevu, Ba, for and on behalf of the other registered proprietors of Certificate of Title No.8140

PLAINTIFF

AND

JOSUA NELLANYON as the Administrator in the estate of **JOHN EDWARD LANYON** also known as **JOHN LANYON** of Vatudamu, Salt Lake, Savusavu, Vanualevu.

DEFENDANT

Counsel : Plaintiff in Person
Ms. S. Narayan (Legal Aid) for Defendant
Date of Hearing : 23rd May 2023
Judgment delivery : 20th July 2023

JUDGMENT

- [1] The Plaintiff filed this inter-parte Originating Summons to seek following order from the Court.
1. That the Registrar of Titles be directed to proceed with the registration of partial transfer documents issued in relation to the sub-division of CT No.8140 into ten new Certificates of Title to the rightful beneficiaries without the signature of the Defendant under the provision of section 168 of the Land transfer Act.
- [2] Though the Plaintiff appeared in person at the hearing, filing of the Originating Summons and subsequent affidavits were prepared by Mr. Epeli Vula, Legal Practitioner of Vula Lawyers. Mr. Vula could not appear at the arguments stage due to the expiry of his Practicing Certificate.
- [3] The Plaintiff relies on Order 5 Rule 3 of the **High Court Rules 1988** and section 168 of the **Land Transfer Act 1971** to pursue this action.
- [4] That brings me to another issue. The caption of the summons states that the action has been filed in the general civil jurisdiction of the Court. However at the time of allocation of the action number the case was assigned a probate action number. It appears that the High Court Civil Registry has overlooked this point. The Plaintiff has not sought any orders under **Succession, Probate and Administration Act 1970**.
- [5] Be that as it may, I will now move on with further consideration of this action. Plaintiff is the Administratrix in the estate of David Edward Lanyon who had been one of the registered proprietors of the land comprised in Certificate of Title 8140. The other registered proprietors are Benjamin Samuel Lanyon, Ereameang, Fiji Public Trustee Corporation Limited and the Defendant Joshua Nei Lanyon.

- [6] Plaintiff's grandfather had gifted this land to his children then as donees and joint tenants of their respective shares. It has been facilitated by an agreement made on 12th November 1959.
- [7] Subsequently the beneficiaries in 1986 mutually agreed to partition, subdivide and distribute the land according to their respective shares in conformity with the initial 1959 agreement. Several decades later the Plaintiff now states that this has been carried out and the subdivision plan was approved by the Director of Town and Country Planning in August 2020.
- [8] The Plaintiff states that on behalf of her share and the other beneficiaries, she has prepared the Partial Transfer Documents to complete the process of transfer. All registered proprietors of the land have signed the transfer documents except for the Defendant.
- [9] The Plaintiff states that this has caused the beneficiaries of the land not to have new titles under their names.
- [10] The Defendant does not have a disagreement to the overall facts stated by the Plaintiff. However he states that the subdivision agreement was made on the condition that they were given access road from the property to the main road. He states at present the subdivision has caused some beneficiaries with no road access and they will have to travel by boat to the main road as the land borders a river and a creek. Further he states that some other beneficiaries are unaware that their trustees have signed the partial transfer documents.
- [11] The Defendant takes up a valid argument through his affidavit evidence. He states that the Plaintiff has no 'previous order' or a 'judgment' by a Court to bring this action under section 168 of the Land Transfer Act 1971.
- [12] It would be appropriate at this stage to consider legislative requirements in section 168. It states;

Power of court to direct Registrar

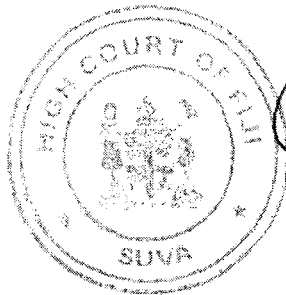

168. In any proceedings respecting any land subject to the provisions of this Act, or any estate or interest therein, or in respect of any transaction relating thereto, or in respect of any instrument, memorial or other entry or endorsement affecting any such land, estate or interest, the court may by decree or order direct the Registrar to cancel, correct, substitute or issue any instrument of title or make any memorial or entry in the register

or any endorsement or otherwise to do such acts as may be necessary to give effect to the judgment or decree or order of such court.

- [13] In **Sharma v Prasad** [2020] HBC 47 of 2019 Hon. Justice Amaratunga discussed the scope of section 168. It was held that “the scope of Section 168 of Land Transfer Act 1971 is wide and it allows a court to make any ancillary orders to give effect to a judgment or orders of the court...So when there is pending proceeding or concluded proceeding where additional orders are needed to give directions to Registrar Section 168 of Land Transfer Act 1971 can be invoked. This provision is meant to give effect to judgment or orders as human ingenuity can take various forms in order to delay or frustrate fruits of a judgment”.
- [14] Section 168 of the Land Transfer Act comes under Part 24 of the Act where the heading states ‘Special Jurisdiction of the High Court’. It does not appear as general jurisdiction entrusted upon courts by the legislature. The main prerequisite for the Court to consider whether to issue a directive order to the Registrar of Titles, is that there must be a prior judgment, decree or an order by the Court. The purpose of such directive would be to give effect to the said judgment, decree or the order.
- [15] The Plaintiff was not successful in her attempt to establish that there is an existing judgment, decree or an order by the Court relating this action.
- [16] Fate of this action can be decided on this fact alone.
- [17] Two additional points I would like to note prior to conclusion. Firstly, the affidavit in support provide names of three individuals and Fiji Public Trustee Corporation as registered proprietors of the land in question. The Plaintiff states that she has initiated this action on behalf of her siblings. However the Plaintiff has not provided any evidential proof for their consent in her affidavit.
- [18] Secondly I am unable to comprehend the reason Plaintiff possessed to initiate this action in Suva High Court jurisdiction. Order 4 Rule 1 of the High Court Rules states that proceedings must ordinarily be commenced in the High Court Registry located in the division in which the cause of action arises. It appears that the subject land and the Defendant fall within the jurisdiction of Labasa High Court Registry. The Registrar of Titles was not a party to the action. It was unfortunate that both parties were not able to assist me on this point at the hearing.
- [19] For the reasons aforementioned the Plaintiff’s Originating Summons lacks merit.

ORDERS

1. Originating Summons hereby dismissed.
2. Parties to bear cost.

 
Yohan Liyanage
JUDGE

At Suva on 20th July 2023