

IN THE HIGH COURT OF FIJI AT SUVA

APPELLATE JURISDICTION

Civil Appeal HBC 170 of 2021

BETWEEN

ADRIENNE ALI of Government Quarters 85, Allardyce Road, Suva.

Legal Practitioner.

APPELLANT/DEFENDANT

AND

ATTORNEY GENERAL OF FIJI for and on behalf of the **MINISTRY OF ECONOMY** and **DIRECTOR OF LANDS** having its office at levels 4-9 Suvavou House, Victoria Parade, Suva.

RESPONDENT/PLAINTIFF

Counsel	:	Appellant in person Ms. S. Ali with Mr. Chauthan and Mr. Naidu for Respondent
Date of Hearing	:	22 nd March 2023
Date of Judgment	:	03 rd August 2023

JUDGMENT

- [1] This is an Appeal from the judgment delivered on 02nd August 2022 by the learned Acting Master of the High Court. The Respondent/Plaintiff (hereinafter referred to as the Respondent) had filed summary eviction proceedings against the Appellant/Defendant (hereinafter referred to as the Appellant) pursuant to Section 169 of the **Land Transfer Act 1971**.
- [2] The learned Acting Master has ruled that the Appellant did not have any cause to remain on the property in dispute as such an order for delivery of the vacant possession was made in favour of the Respondent.
- [3] The Appellant initially filed 11 grounds of appeal. At the hearing Appellant focused and argued on the following five grounds.
 - I. That Acting Master erred in law and in fact when she directed that the Appellant's affidavit in opposition was filed late and that the Appellant required the consent of the other party for a late filing.
 - II. The learned Acting Master further erred in law and fact when she held at paragraph 12 that the Respondent was entitled to bring the proceedings under section 169 of the Land Transfer Act because the premises are 'under the control' of the Director of Lands for and on behalf of the State and under the administration of the Ministry of Economy, as that does not constitute the test under section 169 (a), (b) or (c) of the Act.
 - III. The learned Acting Master erred in law and fact when she stated at paragraph 2 of the ruling that she had directed the Respondent to file said affidavit within 21 days, when in fact she had said 21 days to file the Affidavit in Opposition and thus the Appellant had 21 clear days in which to file her affidavit pursuant to Order 3, Rule 4 of the High Court Rules.
 - IV. The learned Acting Master further erred in law when she failed to acknowledge that the Plaintiff's own evidence, being Deposited Plain SO 1505 showed that the premises are comprised of two lots and that the Plaintiff had failed to describe the premises accurately.
 - V. The learned Acting Master erred in law when she permitted the Plaintiff to file its legal submissions on the date of the show cause hearing on 19th May 2022 but refused to permit the Defendant to do so as well thereby denying the Defendant natural justice.

- [4] The Appellant states that the learned Acting Master deprived her lawful entitlement to file her Affidavit in Opposition in accordance with the **High Court Rules 1988**. The Originating Summons supported by an Affidavit of Shiri Gounder was filed 27th August 2021. The same was served on the Appellant on 15th November 2021 and an acknowledgement of service dated 29th November 2021 was filed by her in Court.
- [5] When the case was first mentioned before the Acting Master on 30th November 2021 the counsel for the Appellant requested 21 days from Court to file their opposition. The court transcript provided by the Appellant reflects that the learned Acting Master has clarified from the Appellant's counsel whether there had been any objections to the service of the documents on them by the Respondent and none has been raised.
- [6] Thereafter learned Acting Master very clearly directed the Appellant who was the Defendant in the original action "Defendant file and serve Opposition in 21 days. 14 days thereafter plaintiff to respond. Plaintiff's written submission in 21 days thereafter. Defendant's written submission in 21 days thereafter. Hearing on 19th May at 9.30am".
- [7] The matter was called on 19th May 2022 for the substantive hearing of the application for vacant possession. The Appellant appeared in person and informed Court that she is ready for the hearing. When the Court raised a query whether she has filed any Opposition, the Appellant admitted that she tried to file on 22nd December and was refused as she was out of time.
- [8] The Appellant's position is that the Court did not state that the Opposition to be filed 'within' 21 days. Therefore the Appellant should have been allowed to file the Opposition on the 22nd December.
- [9] The Appellant submits that Order 3 Rule 2 (4) of the High Court Rules 1988 applies in the circumstances and 21 clear days must intervene between the dates of the order and the date on which the act is to be done and therefore learned Acting Master's refusal was wrong in law.
- [10] I am unable to agree with the stance taken up by the Appellant. Order 28 Rule 2 (4) provides the procedure and the timeframe for a Defendant in an Originating Summons who has acknowledged the service and wishes to adduce affidavit evidence. Accordingly a defendant must attend to the filing of affidavit evidence within 28 days. The provisions at Order 28 Rule 2 (4) would apply subject to any directions by the Court to the contrary. The Rule is sufficiently clear that the filing of evidence by a Defendant to be done 'within' 28 days and not afterwards. Therefore in my view the appropriate sub-rule applicable to the Appellant's case for computation of time under Order 3 rule 2 would be Order 3 Rule

2 (3) and not Rule 2(4). It states 'where the act is required to be done within or not less than a specific period before a specific date, the period ends immediately before that date. The learned Acting Master's direction was 'Defendant file and serve opposition in 21 days'. When the Court stated 'in 21 days' the Appellant should have filed her Opposition within 21 days in view of the procedural intention in Order 28 Rule 2(4). However she has failed to comply with the same. When the matter was taken up by the Master for hearing, technically there was no evidence in opposing the Originating Summons of the Respondent.

- [11] Hon. Justice Mansoor in **Vakarsaqoli v Prasad** [2019] FJHC 1015; Appeal 322.2018 (23 October 2019) stated "Section 169 of the Land Transfer Act provides for expeditious relief to registered proprietors of land. The Master is not even obliged to grant an adjournment for a defendant to show-cause when the matter comes up for the first time. The Applicant ought to have shown some right to possession which would preclude the granting of an order for possession under Section 169. The Master, however, has been indulgent and granted time to the Applicant to file affidavits opposing the Application. The object of the legislation in these cases is to speedily dispose such matters by way of summary disposal. The Applicant's tardiness in complying with the Master's direction to file the Affidavit in Opposition frustrates that objective of the enactment. In fact, the record reveals that no affidavits were filed opposing the Respondent's application for ejection of the Applicant. That lends itself to the possibility that the Applicant had no reasonable cause to show when called upon by the Master".
- [12] Hence this Court rules that there is no merits in the grounds appeal raised by the Appellant based on her failure to file the Affidavit in Opposition.
- [13] Another ground the Appellant argued during this appeal is that there was misunderstanding of the premises which had been the subject matter of the proceedings and therefore the description given by the Respondent was not sufficient under section 170 of the Land Transfer Act.
- [14] The Appellant states that there is no title to the land in question that provides a legal description of the land, its exact location (District or Island) and size (square metres or acreage) and there is no recorded legal description of the land. Plan SO 1505 was not reproduced in its entirety in the Affidavit in Support of the Originating Summons and thus as evidence, it is defective in nature.
- [15] Section 170 of the Land Transfer Act requires the summons to contain a description of the land where the Plaintiff seek eviction. The Act does not specify the meaning of

'description of the land'. In my view the legislature intended an unambiguous approach to the procedure under section 169 of the Act. Therefore the requirement under section 170 would be not to create any misunderstanding for the person summoned before the Court. There is no minimum requirement for a description, a reasonable description of the premises is sufficient for the person summoned to engage showing a cause during the hearing of the summons.

- [16] In *Wati v Vinod* [2000] 1 FLR 263 (20 October 2000) Hon. Justice Prakash stated "the Act itself does not specify what a description of the land entails. What is adequate or full description? What is a sufficient description? The purpose is clearly for the parties to be informed as to what land the application relates to. This is clear from the supporting affidavit. The statute does not clearly specify what "a description" requires. In *Vallabh Das Premiji v. Vinod Lal, Nanki and Koki* (Civil Appeal 70 of 1974) the Court of Appeal had accepted a description as in the present summons as sufficient".
- [17] The Affidavit in Support by the Respondent describes the premises as 'the government quarters 85 located at Allardyce Road, Domain, Suva. The government quarters is situated on State Land without title, and more particularly described as Lot 16 SO 1505 that is under the control of the Director of Lands for and on behalf of the State. A confirmation to that effect from the Director of Lands is annexed hereto and marked as SG-1'.
- [18] Having considered the summons and the Affidavit in Support of the original action I am satisfied that the description as required in section 170 has been sufficiently given by the Respondent. The learned Acting Master has discussed this in paragraphs 14-17 of her judgment. Therefore this ground of appeal lacks merit.
- [19] The Appellant submits to this Court that the learned Acting Master applied an incorrect test under section 169 of the Act when she stated in her judgment that the 'premises subject to the proceeding is under the control of Director of Lands for and on behalf of the State and the Plaintiff is entitled to bring the proceedings under section 169'.
- [20] Section 169 of the Act sets out the ground upon which the section may be invoked and states that last registered proprietor of the land or a lessor with the power to re-enter where the lessee or tenant is in arrear for such period as provided in the lease or a lessor against a lessee or tenant where legal notice to quit has been given or the term of the lease has expired could initiate an action.
- [21] The Respondent's position is that the action has been instituted by the Attorney General on behalf of the Ministry of Economy and Director of Lands. Section 29 of the **State Lands**

Act 1945 states that all actions, suits and proceedings respecting State land or respecting any lease may be commenced, prosecuted and carried on in the name and the title of the Attorney General.

- [22] It is necessary to consider the affidavit evidence presented to the learned Acting Master by the Respondent in this action. The affidavit of the Acting Permanent Secretary for Ministry of Economy explains that the administration of the government quarters as part of government assets was assigned to his ministry through ministerial assignment legal notices published in the Government Gazette. He states that the subject government quarters is situated on a state land which is under the control of the Director of Lands on behalf of the State. Further the Acting Permanent Secretary provided a letter issued by the Director of Lands confirming the above position.
- [23] Paragraph 6 onwards the affidavit of the Acting Permanent Secretary states that the Appellant has been occupying the subject government quarters as a tenant. The initial tenancy agreement dated 15th June 2014 was for two years and following expiry the Appellant continued to occupy the premises under same terms and conditions. Later the rental payments were defaulted by the Appellant and notices to vacate were issued by the Respondent. Despite the issuance of the notices the Appellant continued to occupy the premises refusing to vacate and deliver the possession of the government quarters.
- [24] I am of the view that the procedure which Court needs to follow for an order of possession is in section 171 of the Land Transfer Act. On the day appointed for hearing, if the person summoned does not appear, firstly the Court needs to confirm that the person summoned had been duly served. Thereafter Court needs to be satisfied on proof of title by the proprietor or lessor, and if any consent is necessary, proof of such consent. Upon satisfaction of the proof the Court may order immediate possession in favour of the Plaintiff.
- [25] In the present case the learned Acting Master at paragraph 7 clearly identified two different roles played by the Respondent. The Director of Lands holds the State Land, in other words becomes the proprietor and the Ministry of Economy administers the tenancy as the lessor. This could be a rare situation that a party becomes eligible under two limbs of the categories of persons expressed in section 169. However not so rare when the State becomes a party as there are many administrative roles performed under different ministries and departments yet all of them are represented by the Attorney General.
- [26] It is also important to note that the only proof presented at the Master's Court was by the Respondent. The Appellant's failure to file Affidavit in Opposition leaves Respondent's application uncontested. Any oral submissions made by the Appellant would not be

considered as evidence. Having considered the judgment and the reasons discussed by the learned Acting Master I am of the view that her decision on Plaintiff's eligibility to bring the proceedings under section 169 of the Act was correct. Hence Appellant's this ground of appeal must fail.

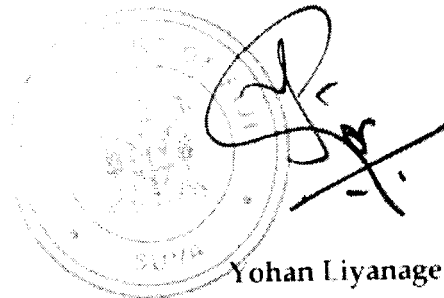
- [27] The Appellant submitted to this Court that she was not permitted to file written submissions on the date of show cause hearing. However the Acting Master allowed Respondent's written submission. Appellant states that the Acting Master was bias and in favour of the Respondent most likely because they represent the State.
- [28] The Court notes the directions of the learned Acting Master on 30th November 2021. That is for the Defendant file and serve opposition in 21 days. 14 days thereafter plaintiff to respond. Plaintiff's written submission in 21 days thereafter. Defendant's written submission in 21 days thereafter.
- [29] At the conclusion of the proceedings on the date of the hearing the Appellant had asked whether the Court requires her to file written submission. And the learned Master declined this as the matter was called for the hearing. Then the Appellant raised that the Respondent too did not file the written submissions in accordance with the Master's directions on 30th November.
- [30] Did the learned Acting Master act in favour of the Respondent as stated by the Appellant? Firstly the procedural requirement in a case initiated by way of Originating Summons is for the Defendant to file an opposition after the acknowledgement of service if he wishes to contest the summons. The Court reiterate the fact that there was no opposition filed by the Appellant. Filing of written submission is a practice adopted by the Courts to allow parties to elaborate on their evidential position in order to assist the Court.
- [31] The learned Acting Master's direction was to file written submission subsequent to the filing of opposition. When there is no opposition filed, there is no evidence provided by the Appellant in order to assist Court by providing further written submission. However the learned Master allowed the Appellant to make oral submission before her in a comprehensive manner. Thus this Court rules that there was no prejudice caused by the learned Acting Master's decision, not to allow further time for the Appellant to file written submissions. Allegation of bias therefore unfounded.

Conclusion

- [32] Apart from the main argued grounds, I have considered the remaining grounds of appeal raised by the Appellant and unable to find any merits to challenge learned Acting Master's judgment.
- [33] Hearing of the appeal included consideration of the Appellant's Summons dated 30th August 2022 for Stay of Execution. The Court notes that it was not filed in accordance with Order 59 Rule 16 (2) of the High Court Rules. The supporting affidavit which is mandatory under the Rule has been filed in support of an irregular application dated 23rd August 2022. Accordingly the Summons dated 30th August 2022 struck off.

ORDERS

1. Appeal dismissed.
2. Appellant to pay \$ 1000 (one thousand dollars) to the Respondent within 14 days of this judgment.



Yohan Liyanage

JUDGE

At Suva on 03rd August 2023