

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 85 of 2022

Maciu Raiqele
First plaintiff

Timoci Moqomoqo
Second plaintiff

v

Laitia Matalomani
First defendant

Sera Macawatolu
Second defendant

Counsel: Mr V. Bukayaro for the plaintiffs
Mr M Yunus for the defendants
Date of hearing: 4th November,2022
Date of Ruling: 8th February,2023

Judgment

1. The first and second plaintiffs in their originating summons seek vacant possession of their Housing Authority Lease,(property) No. 181025 on DP No. 4266.

2. The first plaintiff in his supporting affidavit states that the second defendant, his former wife resides in USA. She did not contribute to the purchase of the property. The first defendant is an illegal occupant. He requested the keys of the property to renovate the property before the second defendant arrived in December, 2021. He informed the first defendant not to enter the house after the renovations. The first defendant purported to act on his behalf and removed sitting tenants. On the first defendant's request, the first plaintiff sent him "*bond money and payment of ground rent*" in a sum of \$1141.00. He signed transfer documents to include the second defendant's name as owner of the property. The second defendant proposed that she will purchase the house for an undisclosed sum she claimed a sum of \$27,000.00 she sent him, which he disputes.

3. The first defendant in his affidavit in opposition states that the second defendant, his grandmother authorized him to depose the affidavit. The first plaintiff and the second defendant are divorced. The second defendant has sent a sum of \$40,988.82 to the plaintiffs to renovate and purchase the property and renew the lease. The second plaintiff agreed to transfer the property to the second defendant. She has full rights of ownership of the property as she financed the purchase. The second plaintiff agreed to transfer one-third share of the property to the second defendant on love and affection based on her contribution to the acquisition of the property. The second defendant asked him to renovate the property. The plaintiffs collected rentals. The defendants seek an injunction restraining the plaintiffs from interfering with their peaceful enjoyment and occupation and selling the property until the final determination of this matter. The defendants also seek that this action be converted into a Writ in terms of Or 28, re 9.

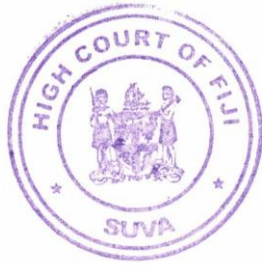
4. The first plaintiff, in his reply states that the first defendant is not the grandson of the second defendant. There is no written authority from the second defendant before Court. Renovation was done on the notion that the second defendant would rekindle their relationship. The first defendant is unaware nor privy to information between the plaintiff and the second defendant

The determination

5. The first and second plaintiffs seek that the first defendant delivers vacant possession of the property.
6. The first plaintiff in his affidavit in support states that the he was married to the second defendant and is now divorced. The second defendant never contributed to the purchase of the property. He gave the first plaintiff the keys of the property to renovate the property before the second defendant came from US, as also stated by the first defendant.
7. The defendants seek an interim injunction restraining the plaintiffs from interfering with their peaceful enjoyment and occupation of property and selling, disposing transferring or dealing with the property until the final determination of this action on the basis that the second defendant sent monies to the plaintiffs to renovate and purchase the property as well as renew the lease.
8. It is not in dispute that the first defendant renovated the property for the second defendant with the approval of the first plaintiff. The first plaintiff admittedly signed the following transfer documents to include the second defendant's name as owner of the property: Sale & Purchase Agreement, Transfer, Consent from both parties to a Solicitor to act for them, Discharge of Mortgage, Application for Housing Authority's Consent to Transfer, Capital Gain Tax Return Revenue Custom Declaration by Vendor and Letter of Authority to Solicitors to Act. The first plaintiff's position is that he was not told to obtain second advise and signed the documents under duress.
9. Be that as it may, there is no substantive claim nor an application for a permanent injunction by the defendants. Accordingly, the claim for interim relief nor conversion to a writ does not arise for consideration.
10. The second defendant has proprietary interests in the property, which the first defendant protects.
11. In the circumstances, I decline the summons for vacant possession.

12. **Orders**

- a. The summons of the plaintiffs for vacant possession of Housing Authority Lease No. 181025 is declined.
- b. The application of the defendants for an interim injunction is declined.
- c. The plaintiffs shall pay the defendants costs summarily assessed in a sum of \$1500.



A.L.B. Brito-Mutunayagam

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JUDGE

8th February, 2023