

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

HBC 240 of 2017

**BETWEEN:**            **JUXTA BEACH (FIJI) LIMITED** a limited liability company having its registered office at 74 Ellis Place, Fantasy Island.

**PLAINTIFF**

**A N D:**            **EXTREME SPORT FISHING (FIJI) LIMITED** a limited liability company having its registered office at HLB Crosbie & Association, Chartered Accountants, Top Floor, HLB House, 3 Cruickshank Road, Nadi Airport, trading as Fantasia Resort

**1<sup>st</sup> DEFENDANT**

**A N D:**            **FIJI ELECTRICITY AUTHORITY** a body corporate under the Electricity Act, Cap 180 and its head office located at 2 Marlow Street, Suva

**2<sup>ND</sup> DEFENDANT**

Appearances:            Mr. A. K. Narayan (Snr) for the Plaintiff  
                                 Mr. Boseiwaqa J. for the first Defendant  
                                 Ms. Prasad L. for the second Defendant  
Date of Hearing:            03 May 2022  
Date of Ruling:            18 August 2023

**R U L I N G**

1. Before me now is a summons filed on 09 March 2022 by the second Defendant pursuant to Order 33 Rules 3 and 7 of the High Court Rules seeking the following:
  - a) Whether the Plaintiff was required to obtain the consent of the Director of Lands to institute this action pursuant to Section 13 of the State Lands Act [1945] (“the Act”) on the basis that State Leases 13905 and 14775 are “Protected Leases”?

- b) If so, then, whether the Plaintiff did obtain Director of Lands consent to institute this action?
  - c) If not, then, whether the Plaintiff's claim ought to be dismissed in limine with costs awarded on an indemnity basis for breach of Section 13 of the Act?
  - d) Alternatively, whether the installation of power poles on State Leases 13905 and 14775 constitute a "dealing on the land" pursuant to Section 13 of the Act?
  - e) If so, then whether the Plaintiff sought consent of the Director of Lands pursuant to Section 13 of the Act when:
    - i. It permitted the second Defendant to enter State Lease 13905 and install power poles?
    - ii. It granted a temporary easement to Wellesley Palms Resort for extension of power supply to its hotel situated on State Lease 14775 through the Plaintiff's State Lease 13905 on 02 July, 2013?
  - f) Furthermore, whether the first Defendant sought consent of the Director of Lands pursuant to Section 13 of the Act for installation of power poles on State Lease 14775?
  - g) Also, whether the second Defendant was authorized to enter State Lease 13905 and State Lease 14775 to erect power poles pursuant to Section 37 of the Electricity Act [Cap 180]?
  - h) Whether any or all parties are in *pari delicto* with each other and if so, whether any right or relief can be asserted and if not, then whether the Plaintiff's claim ought to be struck out.
2. The application is supported by an Affidavit of Yvonne Aitu Fatiaki sworn on 28 February 2022.
3. Ms. Fatiaki deposes:
- a) that the substantive action concerns 2 State Leases.
  - b) the Plaintiff has not provided any evidence to show that the Director of Lands consents to the institution of this action.
  - c) the substantive issue concerns arrangement between the parties pertaining to the installation of some power lines on the said State Lease.
  - d) there is no evidence that the Director of Lands had consented to the said arrangement.
4. Ms. Fatiaki opines that the substantive matter be disposed off finally and/or substantially, if the preliminary issues laid out in paragraphs (a) – (h) of the summons are defined preliminary issues.

5. I agree.
6. I grant order in terms on the following conditions:
  - a) the parties are at liberty to call witnesses.
  - b) case adjourned to 13 October 2023 to fix a hearing date.



Anare Tuilevuka  
**JUDGE**  
Lautoka

18 August 2023