

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 150 of 2021

BETWEEN: **ANDREW JORDAN** and **IRENE RITA NAIR** both of Point Cook, Melbourne, Australia, Retired Bank Officer and Businessman respectively.

PLAINTIFFS

AND: **GOVIND SAMI CHETTY** the Trustee and Administrator of the Estate of the late Armogam Chetty of Malolo, Nadi, Farmer.

DEFENDANT

Appearances: Mr. Nand for the Plaintiffs
 Mr. Prakashan for the Defendant
Date of Hearing: 10 January 2023
Date of Ruling: 20 January 2023

RULING

INTRODUCTION

1. The background to this case is set out in my Ruling dated 04 March 2022 (**Jordan v Chetty** [2022] FJHC 91; HBC150.2021 (4 March 2022)). In that, I granted in favor of the plaintiffs (**Judgement Creditors**) judgment in the sum of \$115,885.00. The Judgement Creditors sealed the order by their Solicitors Messrs S. Nand Lawyers on 21 March 2022.
2. On 11 July 2022, S. Nand Lawyers filed an *ex-parte* Notice of Motion pursuant to Order 52 Rule (1) of the High Court Rules 1988 seeking leave to issue committal proceedings against Govind Sami Chetty. At some point after that, Prakashan & Associates, acting for the Judgment Debtor, contacted S. Nand Lawyers with an offer to settle the judgment debt by an installment of \$5,000 per annum. Understandably, the offer was rejected.
3. On 26 August 2022, I granted leave to issue committal proceedings. Mr. Prakashan is on record to have told the Court on that day:

“Leave could be issued. As we try to settle”.
4. That order was sealed on 02 September 2022.

5. Then, on 17 October 2022, S. Nand Lawyers filed a Notice of Motion pursuant to Order 52 Rule 3 (1) of the High Court Rules 1988 for an Order for Committal against the Judgment Debtor. They also filed on the same day, 17 October 2022, a *Summons for Registration of Judgment and Order for Sale* pursuant section 105 (2) and section 104 (4) and (5) of the Land Transfer Act Cap 131- seeking the following:
 - 1) That the judgment dated 21 March 2022 of the Plaintiff against the Defendant be registered on the Crown Lease 7703 Lot 5 ND 5126 upon the grounds set forth in the Affidavit of Andrew Jordan and Irene Rita Nair.
 - 2) That the Plaintiff be empowered to sell the property pursuant to the said registered judgment by calling tenders through Property for Sale advertisement published twice in each of the Fiji Sun and the Fiji Times and that:
 - a) The Plaintiff be authorized to accept the highest unconditional tender, if considered appropriate by the Plaintiff.
 - b) The Plaintiff as registered judgment holder be authorized to sign the Sale and Purchase Agreement, the Transfer and all other documents as may be required and to do all things necessary to give full effect to the sales consummated by the acceptance of the tender including vesting of the property in the purchaser.
 - c) The sale proceeds be applied as follows:
 - (i) First, in payment of expenses of and incidental to the sale consequent on the default.
 - (ii) Secondly, in payment of prior charges or encumbrances, if any, in the order of their respective priorities; and
 - (iii) Thirdly, in payment of the moneys including all interest and costs which are due or owing under the judgment dated 21 March 2022.
 - (iv) Fourthly, in payment of subsequent charges or encumbrances, if any, in the order or their respective priorities; and
 - (v) Fifthly, the surplus, if any, to be paid into the High Court interest bearing account for the Defendant.
 - 3) That the Deputy Registrar of the High Court be empowered to receive all tenders and the tenders be open in the presence of the Plaintiff and Defendant's Solicitors.
 - 4) That the Deputy Registrar to execute all transfer and consent papers and all other documents as may be required and to do all things necessary to give full effect to the sales on behalf of the Defendant.
 - 5) That the costs of this application be part of the costs of sale and be recovered by the Plaintiff accordingly.
 - 6) That liberty be reserved to the Plaintiff to apply generally in respect of any matter or issue arising in the course of exercising any of the powers authorized by the Court.
6. The above application is supported by an affidavit of Andrew Jordan and Irene Rita Naidu sworn on 26 September 2022 who depose *inter alia* that the Judgement Debtor:
 - (a) has failed to settle the judgement debt.
 - (b) is the partial beneficiary and Trustee of the Estate of Armogam Chetty over Crown Lease No: 7703 more particularly under Lot 5 ND 5126.
 - (c) Crown Lease No: 7703 has a current valuation of \$2.25 million.
 - (d) the only option left to recover our money is to sell the Crown Lease No: 7703.
 - (e) the Plaintiffs are continuously incurring cost to recover the judgment amount.
7. Based on the above, the Judgement Creditors pray that order be granted to sell by way of Tender Crown Lease number 7703 more particularly under Lot 5 ND 5126.

8. An affidavit of Service of Uday Raj sworn on 29 October 2022 deposes that both applications were served personally on Govind Sami Chetty on 20 October 2022.
9. On 01 November 2022, I granted Order in Terms of prayer 1 only of the Summons for Registration of Judgment. The effect of that was to allow the registration of the Judgment dated 21 March 2022 on Crown Lease 7703 Lot 5 ND 5126. I also granted twenty-eight days to the Judgment Debtor to file an Affidavit in Opposition to the application for Registration of Judgment and the application for Committal Proceedings.
10. I then adjourned the matter to 10 January 2023 for hearing.
11. However, Prakashan & Associates did not bother to file any Affidavit in Opposition and the hearing proceeded anyway on 10 January 2023.
12. At the hearing, Mr. Nand conceded that the application for Committal is unsustainable because it was entered for hearing about a month after leave was granted, contrary to Order 52 Rule 3. The hearing then proceeded on the application for Registration of Judgment.
13. Section 104 provides:

104.-(1) No judgment, decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order issued prior to or after the commencement of this Act shall bind, charge or affect any estate or interest in land subject to the provisions of this Act unless and until the Registrar has been served with a copy of such judgment, decree or order certified by the court and accompanied by a statement signed by any party interested or his barrister and solicitor or agent specifying-

- (a) the estate or interest sought to be affected thereby;
- (b) the name, address and description of the person by whom or on whose behalf the same is lodged; and
- (c) an address or place within Fiji at which notices and proceedings relating thereto may be served.

(2) The Registrar, on being served with a copy of a judgment, decree or order under the provisions of subsection (1) shall, after marking upon such copy the time of service, enter the same in the register; and with effect from the time of service thereof upon the Registrar such judgment, decree or order shall, subject to the provisions of subsection (2) of section 105, have the effect of, and be deemed to be, a caveat lodged under the provisions of section 106, subject to any prior registered mortgage or charge forbidding the registration of any person as transferee or proprietor of and of any interest affecting, the estate or interest affected by such judgment, decree or order other than in pursuance of such judgment, decree or order.

(3) Upon the estate or interest in respect of which a judgment, decree or order has been registered under the provisions of subsection (2) having been sold pursuant to such judgment, decree or order, the Registrar shall, on receiving a transfer thereof in the prescribed form (which transfer shall have the same effect as if made by the proprietor) enter a memorial of such transfer in the register; and on such entry being made the purchaser shall become the transferee and be deemed to be the registered proprietor of such estate or interest.

(4) After the commencement of this Act, no unregistered instrument, document or writing and no equitable mortgage by deposit or otherwise without writing affecting any estate or interest in land shall prevail against a sale under the authority of a judgment, decree or order unless a caveat in respect of such unregistered instrument, document or writing or equitable mortgage shall have been lodged with the Registrar in pursuance of the provisions of section 106 before the service of the copy of the said judgment, decree or order on the Registrar but, in the absence of a caveat, all of the

estate and interest of the judgment debtor as well as of any unregistered purchaser, transferee, mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under the provisions of this section.

(5) The Registrar may register a transfer under the authority of a judgment, decree or order without requiring the production of the duplicate instrument of title:

Provided that the Registrar shall give such notice of intention to register the transfer, at the cost of the transferee, and cause the same to be published, as in the case of the production of a duplicate certificate being dispensed with under the provisions of section 26.

14. Section 105 provides:

105.-(1) Upon production to the Registrar, by way of application, of sufficient evidence of the satisfaction of any judgment, decree or order registered under the provisions of section 104, he shall direct an entry to be made in the register of a memorial to that effect, and on such entry having been made, such judgment, decree or order shall be deemed to be satisfied.

(2) Every judgment, decree or order shall cease to bind, charge or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such judgment, decree or order shall be presented to the Registrar for registration within six months, or such extended period as the court by order made on application to it upon summons shall determine, from the day on which the copy of such judgment, order or decree was served.

15. At this point, I pause and ask the question – whether the fact that the property in question is an estate property over which there are beneficiaries who, I suspect, are oblivious to what is now unfolding in this Court – or even the judgement debt which the Judgement Debtor has incurred in his capacity as trustee and administrator of the estate - should be served the application?.

16. Technically, since the judgement in this case was entered against the Judgement Debtor, in his capacity as executor/trustee of the estate in question, there is no reason to require that all the beneficiaries be served.

17. However, I have an uneasy feeling about the Judgement Debtor based on his conduct in Court in these proceedings (e.g. offering to settle the debt at \$5,000 per year, not filing affidavits etc) – which – from where I sit, seems to be totally consistent with the account of the Judgement Creditors at the formal proof of this case. They both gave evidence as to how the Judgement Debtor hoodwinked them into a land sales deal and into giving him money and how evasive he was when they demanded payment from him.

18. For the record, just this morning, a Summons To Set Aside Default Judgement and Stay of Execution by the Judgement Debtor was placed before me, just as I was putting the final touches to this Ruling. I am inclined to set as a condition for Setting Aside and Stay of Execution the following:

(a) That the Judgement Debtor Pays into Court by **12.00 p.m. Tuesday 07 February 2023** the sum of \$115,885.00, being the judgement sum against him.

(b) That the Judgement Debtor settles all the Judgement Creditors' Legal Fees reasonably incurred to date by **12.00 p.m. Tuesday 07 February 2023**.

19. In the final, I grant the following Orders.

ORDERS

20. In light of all the above, I hereby grant the following Orders:

1. If the Judgement Debtor shall comply with the conditions set out above in paragraph 18 (a) and (b), then stay will be granted on execution and a hearing date set for the hearing of the application to set aside the judgement.
2. If the conditions set out above in paragraph 18 (a) and (b) are not complied with by the Judgement Debtor by **12.00 p.m. Tuesday 07 February 2023**, the Plaintiffs/Judgement Creditors, through the Deputy Registrar, may proceed to sell the property pursuant to the registered judgment by calling for tenders through an advertisement to be published in both the Fiji Sun and the Fiji Times simultaneously on the following two days, namely **Tuesday 14 February 2023** and **Tuesday 21 February 2023** - and that:
 - a) Tenders are to close by **4.00 p.m. Tuesday 07 March 2023**. All tenders are to be addressed to the Deputy Registrar of the High Court in Lautoka.
 - b) The Deputy Registrar, together with the Plaintiffs/Judgement Creditors' Solicitors and the Judgement Debtor's Solicitors, are to meet to consider all tenders on or before **Tuesday 14 March 2023** and make a recommendation to Court as to which tender to accept.
 - c) The Deputy Registrar is to, thereafter, within seven days and no later than **Tuesday 21 March 2023**, file a Report to this Court to set out all the tenders received, the amount of each tender – and also his recommendation as to which tender is to be accepted.
 - d) The Court shall call this matter on **Tuesday 21 March 2023 at 10.30 a.m.** to review the Deputy Registrar's Report and either endorse his recommendation, or, postpone the decision if need be, after hearing all parties.
 - e) If the Court shall so endorse the Deputy Registrar's recommendation, the court shall thereafter direct the Deputy Registrar to sign the Sale and Purchase Agreement, the Transfer and all the other documents as may be required and to do all things necessary to give full effect to the sales consummated by the acceptance of the tender including the vesting of the property in the successful tenderer's name.
 - f) The sale proceeds are to be paid into Court, and will be applied as follows upon further application by the parties:
 - (i) First, in payment of all prior charges or encumbrances, if any, in the order of their respective priorities; and
 - (ii) Secondly, in payment of expenses of and incidental to the sale consequent on the default.
 - (iii) Thirdly, in payment of the moneys including all interest and costs which are due or owing under the judgment dated 21 March 2022.
 - (iv) Fourthly, in payment of subsequent charges or encumbrances, if any, in the order of their respective priorities; and
 - (v) Fifthly, the surplus, if any, to be paid into the High Court to be distributed to the beneficiaries of the estate upon further application.

3. That the costs of this application are to be part of the costs of sale and be recovered by the Plaintiffs/Judgement Creditors accordingly.
4. That liberty be reserved to the Plaintiffs/Judgement Creditors to apply generally in respect of any matters or issue arising in the course of exercising any of the powers authorized by the Court.
5. This case is adjourned to **Wednesday 08 February 2023 at 10.30 a.m.** for review to see if the Judgement Debtor has complied with the conditions set out above in paragraph 18 (a) and (b) and if he has, to then (1) set a date for hearing of the setting aside application and (2) timetable the filing of affidavits in relation to that. Otherwise, the procedure set out above in paragraph 20 subparagraph 2 a) to f) shall take its course.



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Anare Tuilevuka
JUDGE
Lautoka

20 January 2023