

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

Civil Action # 173 of 2024

BETWEEN:

RUSSEL THORNLEY usually of Lot 16 Tokotoko Back Road, Navua in the Republic of Fiji but currently in Bali, Indonesia, Retiree.

Plaintiff

AND:

KATHERINE GAIL O'CONNOR of Lot 16 Tokotoko Back Road, Navua in the Republic of Fiji, Self-Employed.

Defendant

Representation

Plaintiff: Ms M Rakai (Sherani).

Defendant: Ms B. Kinivuwai (Legal Aid).

Date of Hearing: 9th September 2024

Ruling

[1] The Plaintiff filed originating summons pursuant to Section 119 of the Property Law Act and Order 31 of the High Court Rules 1988 seeking the following orders:

"(1) An order that the Court allows a registered real estate agent of the Plaintiff's choice be allowed to inspect Certificate of Title No. 33269 being Lot 16 on Deposited Plan No. 8162 in Navua without obstruction by the Plaintiff;

(2) An order that the Court allows a registered Valuer and Engineer of the Plaintiff's choice be allowed to inspect Certificate of Title No. 33269 being Lot 16 on Deposited Plan No. 8162 in Navua without obstruction by the Defendant;

(3) Order that the property comprised in Certificate of Title No. 33269 be sold by tender;

(4) That the advertisement and sale of the said properties and the tender process be conducted by Solicitors. Messers Sherani & Co of Suva.

(5) The Deputy Registrar of the High Court of Fiji at Suva do execute all instruments of Transfer and all other necessary documents pertaining to the sale of the said property comprised in Certificate of Title No. 33269.

(6) Such further or other relief as this honourable Court deems just; and

(7) Costs of this application and the legal costs on the sale of the said property be paid out of the sale proceeds and the balance sale proceeds be divided equally between the Defendant and I."

The summons is supported by an affidavit of the Plaintiff. An affidavit in opposition of the Defendant was filed.

[2] From the documents and the hearing I note that the parties were married in 2002. They separated in 2018 and divorced in December 2022. The property was acquired by the Plaintiff in 2012. It is matrimonial property under the Family Law Act. The Defendant has commenced property distribution proceedings in the Navua Magistrates Court. The Defendant is seeking 50% share in the property. The Plaintiff is willing to giving her 50%. The property proceedings which are the appropriate forum to deal with the property can easily make the relevant orders between the parties. The Navua Family Court which is in possession of the property proceedings is the appropriate forum to deal with the issues. What each party is seeking can be agreed upon and necessary orders sought in the Family Court.

[3] The Plaintiff's Originating summons are struck out. No orders as to costs.

Court Orders

1. Originating Summons struck out.
2. No orders as to costs.

.....
Chaitanya S.C.A Lakshman*
Puisne Judge



30th September 2024