

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

Civil Action No. **HBC 376 of 2025**

**Between** : **PETER SAVONA** of Lot 3 Raghunath Singh Drive, Lami.

**Applicant/ Caveator**

**And** : **MOHAMMED JAAVED KHAN** of Lot 1 Waibola, Lami.

**First Respondent/ Caveatee**

**And** : **SHAIFUN NISHA** of Lot 1 Waibola, Lami

**Second Respondent/ Caveatee**

**Representation:**

**Plaintiff:** In Person

**First Respondent:** Mr. Romanu (MIQ Lawyers)

**Second Respondent:** Mr. Nand (Nands Law)

**Date of Hearing:** 22<sup>nd</sup> January 2026

**Ruling**

**A. Introduction**

[1] Before the court is an application seeking an extension of time pursuant to section 110 (3) of the Land Transfer Act 1971 following the issuance of a Notice of Removal of Caveat No. 948295 by the Registrar of Titles. The Applicant also seeks orders that the caveat remain in force pending determination of the present proceedings or until further order of this Court.

[2] The caveat was lodged over land comprised in Certificate of Title No. 5597 (Lot 1 DP 5597), which is jointly owned by the First and Second Respondents as tenants in common in equal shares.

[3] The Second Respondent opposes the application.

**B. Background**

[4] The Applicant relies on a loan agreement dated 15<sup>th</sup> December 2021 allegedly entered into between himself and the First Respondent for the sum of FJD 6,000.00, with further alleged advances.

[5] It is not disputed that the Second Respondent was not a party to the loan agreement and did not consent to any charge or encumbrance over her half share

[6] The Applicant's claim is therefore grounded in the alleged lending of money to the First Respondent.

### C. Issues

[7] The issues are:

- (a) *Whether the Applicant has established a caveatable interest under section 106 of the Land Transfer Act 1971?*
- (b) *Whether the caveat describes the interest claimed with sufficient certainty as required by law?*
- (c) *Whether the failure to annex the registered caveat is fatal to the application; and*
- (d) *Whether a loan agreement with only one co-owner can support a caveat over the entire property?*
- (e) *Where the balance of convenience lies.*

### D. Determination

[8] Section 106 of the Land Transfer Act 1971 allows the lodging of a caveat by a person claiming to be entitled to or beneficially interested in land by virtue of an unregistered agreement or other instrument, or by reason of any trust expressed or implied.

[9] Section 107 requires the caveat to state with certainty the estate or interest claimed.

[10] Section 110 empowers the Registrar to issue a Notice of Removal, and the Court to extend time only where a caveator demonstrates a proper basis for continuation.

**(a) and (b) Whether the Applicant has established a caveatable interest under section 106 of the Land Transfer Act 1971 and, if so, whether the caveat describes that interest with sufficient certainty as required by law.**

[11] It is well established in Fiji that a mere debtor–creditor relationship does not create a caveatable interest in land.

[12] In **Australian and New Zealand Banking Group Ltd v Prasad [2013] FJHC 204; HBC21.2011S (29 April 2013)**, it was held that money advanced to a mortgagor did not constitute a caveatable interest, observing that the alleged interest was purely monetary and did not create any proprietary right.

[13] The principle was reaffirmed in **Australian and New Zealand Banking Group Ltd v Nair [2013] FJHC 227; HBC22.2011S (9 May 2013)** where the Court emphasized that the caveat itself must disclose the proprietary basis of the claim.

[14] The Applicant asserts only that he lent money to the First Respondent. There is no pleaded equitable charge, no trust arrangement, no agreement creating security over land, and no instrument evidencing an intention to create a proprietary interest.

[15] The Fiji Court of Appeal in **Cambridge Credit (Fiji) Limited v WFG Limited [1975] FijiLawRp 25; [1975] 21 FLR 182 (26 November 1975)** confirmed that section 106 is concerned with proprietary interests arising from unregistered instruments in land and does not extend to purely personal claims.

[16] The Applicant's claim even taken at its highest, is purely monetary and characterised as a personal action for debt recovery and does not amount to a caveatable interest.

**(c) Failure to Annex the Registered Caveat**

[17] The caveat itself is the primary evidence of the interest claimed.

[18] In **Kumar v Nasinu Land Purchase and Housing Co-operative Society Ltd [2018] FJHC 540; HBC336.2017 (25 June 2018)**, the Court held that where the caveator fails to clearly identify and place before the Court the caveat relied upon, an application for extension cannot succeed.

[19] The Applicant failed to annex the registered caveat. The document marked "PS3" in the Affidavit in Support filed on 21<sup>th</sup> November 25 is an unregistered form rather than the lodged instrument. The absence of the registered caveat deprives the Court of the essential document required to assess whether the statutory requirements of sections 106 and 107 have been met.

[20] This omission is not a mere technicality. It goes to the foundation of the application.

**(d) Effect on the Second Respondent's Share**

[21] The Second Respondent is the registered proprietor of an undivided half share. Under the Torrens system, her interest is indefeasible subject only to statutory exceptions.

[22] There is no evidence that she consented to any encumbrance. A co-owner cannot unilaterally encumber the share of another. Even if an arguable equitable interest arose against the First Respondent's share, it could not extend to the Second Respondent's interest.

[23] The caveat as lodged affects the entirety of the title and therefore improperly restrains the proprietary rights of an innocent co-owner.

(e) **Balance of Convenience**

- [24] A caveat is an interim protective measure designed to preserve the status quo pending resolution of a genuine proprietary dispute.
- [25] In **Miller v Minister of Mines [1963] 1 All ER 109**, the Privy Council described the caveat procedure as a temporary mechanism to freeze dealings until proper proceedings are commenced.
- [26] In **Bank of Baroda v Fiji Registered Nurses Association [2018] FJHC 184; HBC88.2015 (14 March 2018)** the Court affirmed that a caveat is a temporary procedural measure intended to preserve an alleged proprietary interest pending determination of substantive proceedings, and does not itself create or determine rights or justify restraining dealings in land in the absence of an arguable proprietary interest.
- [27] The Applicant's remedy, if any, lies in a personal action for recovery of monies against the First Respondent. The prejudice to the Second Respondent, who is prevented from dealing freely with her property, is immediate and substantial.
- [28] The balance of convenience therefore favours removal.

E. **Conclusion**

- [29] The Applicant has failed to establish a caveatable interest within the meaning of section 106 of the Land Transfer Act 1971. He has failed to place before the Court the registered caveat. His claim is purely monetary. The continuation of the caveat would unjustly prejudice an innocent co-owner.

F. **Court Orders**

- a. ***The application under section 110 (3) of the Land Transfer Act 1971 is dismissed.***
- b. ***Caveat No. 948295 shall be removed forthwith.***
- c. ***Parties to bear their own costs.***



  
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Hon Justice Chaitanya S C A Lakshman  
Puisne Judge

20<sup>th</sup> February 2026