

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Civil Appeal No. 21 of 1960

Between:

JUMMAN SAI

Appellant

v.

HARRY ATCHSON

Respondent

Native Land Trust Ordinance (Cap. 104)—purported subletting of house on native land by tenant-at-will holding over rent free—whether a “dealing” in land by a lessee under the Ordinance within section 12 (1) (Cap. 104).

One Jumman Sai held a lease of native land from the Native Land Trust Board. After this lease had expired he continued to hold over, paying no rent. In 1959 without obtaining the Board's consent he let his house on the land to one Harry Atchson. Subsequently, when Jumman Sai sued Harry Atchson in the Magistrate's Court for arrears of rent he was met with the contention that since no consent had been obtained from the Board the contract of letting was illegal and hence unenforceable against him. The learned Magistrate stated two questions for the decision of the Supreme Court:

- (1) Whether letting of premises in the circumstances of this case is a dealing in land within section 12 (1), Cap. 104?
- (2) Whether an occupier of Native Land as a tenant-at-will holding over rent free is a “lessee under this Ordinance” within section 12 (1), Cap. 104?

Held.—(1) The purported letting by Jumman Sai of the house on the land to Harry Atchson constituted a dealing with the land within the meaning of section 12 (1) (Cap. 104).

(2) As a tenant-at-will of the native land in question, holding over rent free, Jumman Sai was a “lessee under this Ordinance” within the meaning of these words in section 12 (1) (Cap. 104).

A. S. Sahu Khan for the Appellant.

K. P. Mishra for the Respondent.

KNOX-MAWER, Ag. J. (11th November, 1960).

This is a case stated, under section 38 of the Magistrates' Courts Ordinance (Cap. 5), by the learned Magistrate, Ba, in which the agreed facts are as follows:—

Jumman Sai held a lease of certain Native Land at Vatulaulau, Ba, from the Native Land Trust Board. This lease expired some 10 or 12 years ago, since which time the appellant has continued to hold over, paying no rent to the Board. Jumman Sai has a house on this land, which, without first obtaining the consent of the Native Land Trust Board, he let to Harry Atchson in 1959 at a rent of £5 per month. Under their agreement, Jumman Sai required Harry Atchson to keep the yard clean. Harry Atchson has also planted kasava on the land without objection by Jumman Sai.

On 28th April, 1960 Jumman Sai instituted an action against Harry Atchson in the Magistrate's Court of the First Class, Ba, for arrears of rent under their agreement, claiming, in his Particulars of Claim, "moneys due and owing . . . for balance rent due in respect of premises occupied by the defendant from the plaintiff at Vatulaulau Ba". In his affidavit of defence, Harry Atchson contended, *inter alia*, that the omission by the appellant to obtain the consent of the Native Land Trust Board rendered the agreement upon which Jumman Sai sued, an illegal contract, which the courts would not enforce. This issue turned upon the meaning of section 12 of the Native Land Trust Ordinance (Cap. 104) which reads:

"(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Ordinance to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void:

Provided that nothing in this section shall make it unlawful for the lessee of a residential or commercial lease granted before the 29th day of September, 1948, to mortgage such lease.

(2) For the purposes of this section "lease" includes a sublease and "lessee" includes a sublessee.

The two questions stated by the learned Magistrate are:—

- (1) Whether letting of premises in the circumstances of this case is a dealing in land within section 12 (1) Cap. 104?
- (2) Whether an occupier of Native land as a tenant-at-will holding over rent free is a "lessee under this Ordinance" within section 12 (1) Cap. 104?

I shall answer the second question first. I agree with the learned Magistrate that Jumman Sai's status in relation to the Native Land in question is that of a tenant-at-will holding over rent free. As such he is, in my view, a "lessee under this Ordinance" within the meaning of these words as used in section 12 (1).

The answer to the second question is therefore in the affirmative.

The first question is, I think, more difficult. However the words "deal with . . . in any other manner whatsoever" are very wide indeed.

Upon the facts of this case I think the agreement between the parties, necessarily involved a purported granting by Jumman Sai to Harry Atchson of such rights over the land in question as to constitute a "dealing" with the land, within the meaning of subsection 12 (1). Accordingly the first question is also answered in the affirmative.