

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 272 of 1980

191  
000192

BETWEEN:

GUTNIEL SHARAN  
f/n Bhawani Samuel Sharan

Applicant

A N D :

DAL RAM f/n Jai Ram

Respondent

Mr. Tappoo  
Mr. C. Gordon

Counsel for the Applicant  
Counsel for the Respondent

J U D G M E N T

The applicant is the registered proprietor of a protected Crown lease of a house and area of land known as Allotment 7, Section 17 Lautoka. The respondent is presently occupying the premises despite a notice to vacate dated 14th March, 1980. It is not disputed that there is no written tenancy agreement, and no consent by the Director of Lands to any letting of the premises, so that were there any tenancy agreement the same would be null and void in accordance with Section 13 of the Crown Lands Act.

The applicant in his affidavit of 8th July, 1980 alleges that the premises were let to "Ram's Studios" of Lautoka, of which the respondent was an employee, but whether there was consent to this letting is not stated. Apparently the respondent ceased to work for Ram's Studios last year but has continued to occupy the premises.

The respondent alleges that the applicant let the premises to him and has been receiving rent from him. The applicant in an affidavit dated 25th August, 1980 denied that the respondent was a tenant of his although he has not given any explanation how the respondent came to occupy the premises. From the defendant's affidavit and from the letter written by the applicant's solicitors dated 14th March, 1980 it appears that the applicant has certainly been accepting rent from the respondent. But on the other hand the respondent has not given any details of the alleged "letting", which could hardly be more than a licence to occupy. As such this has been terminated by the notice to vacate.

Under Section 169 of the Land Transfer Act the onus is upon the respondent to show that he has a right to occupy the premises or that there is a triable issue. So far he has only claimed a tenancy of which he gave no details and which would in any case be null and void under Section 13 of the Crown Lands Act. Whatever licence to occupy he may have had would have been

terminated by the notice to vacate. The only other matter the respondent has raised is that his occupation of the premises is protected in accordance with Section 19(1) of the Fair Rents Act. He has not cited any authority in support of this proposition relying apparently solely on the wording of the Act. The Crown Lands Act is specifically mentioned in the Fair Rents Act and Section 11 for instance specifically provides that even though there was no consent to a letting in accordance with Section 13 of the Crown Lands Act that is no bar to the determination of fair rent. But conversely it seems to imply that lack of consent is relevant in respect of other matters, particularly where there is no such specific reference to Section 13. Section 23 says that the Fair Rents Act will apply to Crown Land and dwelling houses on Crown Land, but except for Section 11, it must mean that the Act applies to valid leases or tenancies under the Crown Lands Act.

Section 19 for instance must apply only to valid leases or tenancies under the Crown Lands Act. Where Section 13 of the Crown Lands Act applies so as to render any purported lease or tenancy null and void, there is no lease or lessee for the purposes of Section 19 of the Fair Rents Act. It would make nonsense of Section 13 of the Crown Lands Act to think otherwise.

Section 7 of the Fair Rents Act can only mean that the determination of fair rent is fixed for the next twelve months, not that the tenant is given security of tenure for twelve months regardless of whether he has a valid lease or not.

The respondent has therefore not shown any right to remain on the land, or that there are any triable issues, and therefore I grant the order for possession sought by the applicant.

(sgd.)

G. O. L. Dyke

JUDGE

LAUTOKA,

12th September, 1980