

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 177 OF 1979

Between:

ZAVENI KINI PLAINTIFF

- and -

SANOHAR s/o Dhur Prasad DEFENDANT

Miss A. Prasad for the Plaintiff.
Mr. V. Parmanandam for the Defendant.

DECISION

The plaintiff is the registered proprietor of the land described as Lot 3 on D.P. 2886 comprised in Certificate of Title No. 18058. She has summoned the defendant under the provisions of section 169 of the Land Transfer Act to show cause why he should not give up possession of the said land to the plaintiff.

The defendant on the 8th January, 1980 filed an affidavit in reply to the plaintiff's affidavit and on that date Mr. Parmanandam appeared for him. Three supplementary affidavits have been filed, two by the plaintiff and one by the defendant. In his affidavit the defendant discloses that from about April 1952 to July 1975 he was lessee of the land in question. The lessor was Mr. A.H. Marlow who was registered proprietor of the land prior to the plaintiff to whom he sold the land on a date not disclosed but would appear to be after the 24th March, 1977.

The first lease was lease No.45036 expiring on 30th June, 1959 to one Sundarjee Bhagwanjee who, it is assumed, transferred his lease to the defendant about April, 1952. Between that date and 1st July, 1965 the defendant's affidavit does not disclose what title

he had but on 1st July, 1965 Mr. Marlow leased, under lease No. B3610, the land to the defendant for a term of 10 years and 6 months i.e. expiring on 31st December, 1975. Clause 12 of this lease contained provision for renewal of the lease in the following terms :-

"The lessor will upon the written request of the lessee made not less than 3 (three) months before the expiration of the term hereby created and provided there shall not at the time of such request be any existing breach or non-observance of the covenants or agreements on the part of the lessee herein contained or implied give to the lessee a first option to be exercised by him within 30 days in writing to the lessor to take a lease of the demised land at a rent to be fixed by the lessor but not to be less than the rent reserved by these presents nor greater than the rent the lessor could reasonably expect to receive in respect of such a Lease of the said land from other persons or corporations willing and able to take such a Lease such Lease to contain the like covenants conditions and provisos as are contained in these presents with the exception of this present covenant for renewal."

On 19th August, 1974 the defendant by letter addressed to Mr. Marlow sought renewal of the lease but Mr. Marlow was not prepared at that time to renew the lease. On the 2nd July, 1975 the defendant again wrote to Mr. Marlow about renewal of the lease. Messrs. Wm. Scott & Co. on behalf of Mr. Marlow wrote to the defendant advising him Mr. Marlow was willing to renew the lease at a new rental of \$100 per annum.

On 3rd July, 1976 Mr. Marlow wrote to the defendant saying that rent from the 1st May, 1976 would be \$120 per annum and that rent up to that date remained as it was i.e. \$24 per annum.

The defendant did nothing about Mr. Marlow's letter until 24th January, 1977 when his solicitors wrote to Messrs. Wm. Scott & Company, Solicitors, for Mr. Marlow referring to their letter of 7th July, 1975, purporting to accept the offer of \$100 a year

rent. Messrs. Wm. Scott & Co. on 24th March, 1977 on behalf of Mr. Marlow gave the defendant notice to vacate.

Messrs. Wm. Scott & Co. by letter dated 30th October, 1978 on behalf of the plaintiff gave the defendant notice to vacate by the end of November, 1978.

The defendant is relying on his purported option to have a renewal of lease No. 83610 which he claims to have exercised. In fact the defendant did not exercise his option. Clause 12 of the lease required him to first notify his lessor that he required an extension. This notice he gave and his lessor in compliance with the clause offered him a renewal of the lease at an annual rental of \$100. The defendant did not accept this offer within 30 days - that is exercise his option as required by clause 12 within 30 days. It was 18 months later when he purported to accept the offer and this was after Mr. Marlow had increased the proposed rent to \$120 per annum.

If the defendant's occupation was not terminated by Mr. Marlow's notice to vacate it certainly was terminated by the plaintiff's notice of 30th October, 1978.

It is for the defendant to show cause why he should not deliver up possession of the plaintiff's property to her. I am satisfied that he did not properly exercise any rights he had to a renewal of his lease and any rights he had to occupy the property have been lawfully terminated by the plaintiff.

I order that the defendant forthwith vacate and deliver up possession of the property he occupies being Lot 3 on D.P. 2586 to the plaintiff.

(R. J. Kersode)
JUDGE