

IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CIVIL PETITION NO. CBV 0015 of 2019

[Court of Appeal No. ABU 0085 of 2018]

BETWEEN : **DIRECTOR OF LANDS**
REGISTRAR OF TITLES
ATTORNEY-GENERAL OF FIJI

Petitioners

AND : **PATRICK PAUL**

Respondent

Counsel : **Ms M. Motofaga for the Petitioners**
Ms N. Choo for the Respondent

CIVIL PETITION NO. CBV 0018 of 2019

[Court of Appeal No. ABU 0085 of 2018]

BETWEEN : **PATRICK PAUL**

Petitioner

AND : **DIRECTOR OF LANDS**
REGISTRAR OF TITLES
ATTORNEY-GENERAL OF FIJI

Respondents

Coram : **The Hon. Madam Justice Chandra Ekanayake**
Judge of the Supreme Court

The Hon. Mr. Justice Priyasath Dep
Judge of the Supreme Court

The Hon. Mr. Justice Priyantha Jayawardena
Judge of the Supreme Court

Counsel : **Ms N. Choo for the Petitioner**
Ms M. Motofaga for the Respondents

Date of Hearing : **16th of August, 2022**

Date of Judgment : **26th of August, 2022**

JUDGMENT

Ekanayake, J

[1] I have read the judgment in draft in the above case. I agree with its reasons, considerations and the orders proposed.

Dep, J

[2] I have read in draft the judgment of Jayawardena J and I agree with his reasoning and conclusions.

Jayawardena, J

Facts in Brief

[3] Kilowen Fiji Limited company was granted a crown lease for the development of a foreshore in Savusavu. In terms of the said lease, Kilowen Fiji Limited was required to develop the land within 2 years by constructing buildings on the said land. Further, the company was required to pay the lease rentals as stipulated in the said lease agreement.

[2] Subsequently, the said company has obtained a loan from Patrick Paul who is the Petitioner in this appeal, to develop the land. Thereafter, Patrick Paul had registered a mortgage over the said lease with the approval of the Director of Lands to secure the loan he gave to the said company.

[3] On the 15th of October, 2012 the Registrar of Titles has informed R. Patel & Co, Barristers & Solicitors that the Director of Lands, as the landlord of the land, has filed an application for re-entry for non-payment of rent due on the said lease. Further, the said letter stated that it is giving notice under section 57 (a) and (b) of the Land Transfer Act, 1971 to pay the arrears of rent. Further, if the arrears are not paid within a month of the said notice, the re-entry process will take place.

[4] Responding to the said letter, R. Patel & Co, Barristers & Solicitors, had informed the Registrar of Titles that they were taking steps to pay the arrears of rent within the stipulated time. However, the arrears of rent were not paid within the said period and therefore, the lease had been cancelled.

[5] Following the cancellation of the said lease, Patrick Paul had instituted proceedings against the Director of Lands, the Registrar of Titles and the Attorney-General stating that at no point - in time was he served with a notice under section 57 of the Land Transfer Act and that the effect of the re-entry extinguished his mortgage interest on the lease.

Statement of Claim

[6] The Petitioner filed a Statement of Claim and stated that;

[7] He stated that he lent monies to Kilowen Fiji Limited company (hereinafter referred to as the said company) to develop State land that was taken on a lease.

[8] Further, with the consent of the Director of Lands, he registered a mortgage on the lands.

[9] Kilowen Fiji Limited company (hereinafter referred to as the said company) was given a 10 year 'Approval Notice of Lease' over Crown Foreshore Land in Savusavu commencing on the 1st of April, 1988.

[11] Moreover, the said company complied with the terms and conditions of the Approval Notice by reclaiming a large part of the foreshore and having the same surveyed to 4.678 hectares.

[12] The Registrar of Lands being satisfied that the said company had complied with the development Approval Notice given to it had given a 99-year Crown Foreshore Lease with effect from the 1st of July, 1998.

[13] It was further stated that the said company had to develop the land within two years by putting up a building or buildings for a hotel on the said land.

[14] The Petitioner had given a loan to the said company to develop the said land. On the 20th of November 2001, and he had registered a mortgage over Crown Lease **No.** 13569 to secure advances that he had given to the said company.

[15] It was further stated that on the 5th of April, 2012, the Director of Land had issued a Notice under section 105 of the Property Law Act alleging that the said company was

in arrears of \$72,002.37 under the said Crown Lease. However, a copy of the said Notice was not served on him.

- [16] Moreover, on the 4th of May, 2012, the Director of Lands had sent another Notice to the said company without copying it to the Petitioner.
- [17] The Petitioner stated that on the 9th of August, 2012 the Director of Lands had given notice of cancellation of the said Crown lease to the said company under section 57 of the Land Transfer Act, section 105 of the Property Act and the Crown Lands Act. However, the said Notice was not served on the Petitioner.
- [18] Moreover, on or around the 5th of October, 2012 the Director of Lands had lodged an application under section 4(2) of the Crown Lands Act with the Registrar of Titles to cancel the said Crown lease. However, the Director of Lands failed to give notice of the application to cancel the lease to the Petitioner. Further, the Petitioner was not given an opportunity to pay the alleged arrears of rental as required under the proviso to section 57 of the Land Transfer Act.
- [19] Furthermore, the Registrar of Titles had acted on the direction of the Director of Titles and cancelled the said Crown lease on the 15th of October, 2012 without the consent of the Petitioner.
- [20] The Petitioner stated that he suffered losses due to the actions of the Director of Lands and the Registrar of Titles.

Hence, the Petitioner prayed *inter-alia* for;

- a. A Declaration that the purported cancellation of Crown Lease No. 13569 by the 1st Defendant was illegal and thus void.
- b. A Declaration that the registration of the 1st Defendant's Cancellation of Crown Lease No. 13569 by the 2nd Defendant was illegal and thus void.
- c. A Declaration that Crown Lease 13569 remains current.
- d. A Declaration that the 2nd Defendant's actions in cancelling Mortgage No. 502595 was illegal and that such cancellation was void.
- e. General damages against Defendants.

Statement of Defence

- [21] The Director of Lands, the Registrar of Titles and the Attorney-General filed a common answer and stated that;
- [22] There was no requirement to obtain the consent of the Petitioner before directing the Registrar of Titles to cancel the said Crown lease. Further, there is no requirement to obtain the consent of the Petitioner under section 4(2) of the Crown Lands Act.
- [23] It was further stated that the Registrar of Titles had written to the Petitioner's legal firm, R. Patel & Co., on the 15th of October, 2012 and had informed them that the Director of Lands had filed an application for re-entry for non-payment of rent on the said Crown lease as the Petitioner had registered a mortgage over the said land.
- [24] Furthermore, the Petitioner was given a month's time to pay the arrears of rentals. Moreover, the Registrar of Titles had written to R. Patel & Co. because the mortgage documents were lodged by them.
- [25] It was further stated that the Registrar of Titles had acted on the direction given by the Director of Lands and cancelled the said Crown lease. Moreover, there was no need to obtain the consent of the Petitioner prior to the cancellation of the lease. However, he was notified and given an opportunity to pay for the arrears of rent.
- [26] In the circumstances, it was prayed;
- a. That the claim against the Defendants be dismissed in entirety;
 - b. That costs be awarded on an indemnity basis;
 - c. That the Court grant such further Order or other relief that this Honourable Court may deem fit, just, expedient, equitable and necessary in the circumstances of the case. Patrick Paul lent loan facilities to Kilowen Fiji Limited ("KFL") who was granted Crown Lease No. 13569 ("Lease") by the 1st Respondent, Director of Lands ("DoL") and with the consent of DoL, Patrick Paul's mortgage No. 502595 was registered against KFL on the Lease."

[27] After the pleadings were completed, the case was taken up for trial and after the trial the learned High Court Judge delivered the judgement and held *inter-alia*;

*Section 4(2) of the State Lands Act states that in respect of any land which is registered in the name of the Director of Lands for and on behalf of the State, the Registrar of Titles shall, if directed in writing by the Director of Lands, cancel, either in whole or in part, the title in respect of any land, **provided that**, if any encumbrances registered the lease shall not be cancelled without obtaining the written consent of the encumbrancee.*

Section 4 (2) clearly provides that where an encumbrance is registered on a title, the Director of Lands is not entitled to give a direction to the Registrar of Titles, to cancel a title without “the written consent of encumbrance”. In my judgment, the direction given by the first to the second defendant to cancel the lease was contrary to section 4 (2) of the State Lands Act. It follows that the cancellation is illegal and void.

For completeness, I will consider the second issue in this case, viz, whether the defendants failed to give notice to the plaintiff of the application for re-entry.

The plaintiff testified that he was not served a section a notice under 57 of the Land Transfer Act by the second defendant. The defendants argue that notice was served on the plaintiff’s solicitors.

Further, section 57 requires the second defendant to give notice to any person who has a registered interest in the lease. A mortgage is included in the definition of the word “interest”.

DW2, (Torika Goneca, Deputy Registrar of Titles) in cross examination accepted that the name of the plaintiff and his address were specified on the Mortgage document. She said that notice under section 57(a) and (b) of the Land Transfer Act was not sent to the mortgagee, as he had an overseas address. The cancellation was not advertised in the Gazette nor in the Press. She accepted that notice sent to R. Patel & Co was “completely defective”.

However, on the 29th of October 2012, R, Patel & Co, in reply to the second defendant’s letter of 15th of October 2012, stated that they are arranging for the alleged arrears of rental to be paid. Accordingly, the plaintiff had an opportunity to pay the arrears of rental.

Further, the primary obligation of the first defendant was to obtain the plaintiff’s written consent for the cancellation of the lease. This was not obtained. For this reason, I hold that the cancellation was illegal and void, as being in contravention of section 4(2) of the State Lands Act.

The claim for damages is declined. No evidence was led in this regard.

Orders

- (i) *The plaintiff is granted the following declarations:*
 - a) *the cancellation of cl no. 33569 by the first defendant is illegal and void;*
 - b) *the registration by the second defendant of the cancellation of cl no. 13569 is illegal and void;*
 - c) *the claim for damages declined.*
- (ii) *The defendant shall pay the plaintiff costs summarily assessed in a sum of \$1250.”*

[28] Being aggrieved by the said judgement of the High Court, the Director of Lands and the other two Respondents had appealed against the finding of the learned trial judge in respect of the applicability of section 4 (2) of the States Lands Act to leases given by the Director of Lands. Further, Patrick Paul had filed a Cross Appeal contesting the finding in respect of the requirement to give notice under section 57 of the Land Transfer Act, 1971 as amended.

Judgment of the Court Appeal

Civil Appeal No. ABU.0072 of 2018

The Appeal of the Director of Lands, the Registrar of Titles and the Attorney General of Fiji

The Court of Appeal had delivered the judgement and held inter-alia that:

Section 4(2) of the State Lands Act refers to two types of lands. The first category would be ‘the lands that are transferred and registered in the name of the Director of Lands on behalf of the State’ and the second category is “any land which is registered in the name of the Director of Lands for and on behalf of the Crown”. Therefore, the provisions contained in Section 4(2) would invariably become applicable to the said Crown Lease.

Further, a mortgage had been registered in the name of the Petitioner and this was admittedly with the consent of the Director of Lands. Thus, the Petitioner was an ‘encumbrancee’ as envisaged under the proviso to section 4(2) and hence it was imperative for the Director of Lands to obtain his written consent before he directed the Registrar of Titles to cancel the lease.

It is important here to note that the legislature in its wisdom has included such provision in order to ensure that the legal rights of a person who has an interest in such lands are not violated. The constraint imposed on the Director of Lands is to enable an

'encumbrancee' to avail of any legal/administrative remedies if considered necessary, prior to a decision adverse to his/her interests are taken.

Determination

In view of the matters discussed above, I agree with the determination of the learned High Court judge that the cancellation of the Crown lease by the Director of Lands and its registration by the Registrar of Titles was illegal and void, since they had acted in violation of Section 4(2) of the State Lands Act.

I therefore, affirm the judgment of the learned High Court Judge and dismiss this Appeal.

Civil Appeal No. ABU 0085 of 2018 The Cross Appeal filed by Patrick Paul

Having considered the cross appeal, the Court of Appeal held that;

A perusal of section 57 of the Land Transfer Act makes it clear that the notice requirement arises under two situations. Sub-section (a) relates to situations where the default is limited to non-payment of rent and in such situations 'any person other than the lessee who has a registered interest' has to be served with notice so that such person can come forward and pay the arrears. In terms of sub section (b) notice has to be given to 'all persons who have an interest in the land', in situations where re-entry was other than through a formal process of law. In lieu of such notice, a gazette notification or a paper advertisement has to be published.

It is admitted that the company had failed to pay lease rentals and it is also admitted that a mortgage had been registered in favour of the Appellant. Thus, he falls into the category of 'any person other than the lessee who has a registered interest in the lease' as well as 'all persons interested under the lease' as found in section 57 (a) and (b) respectively, and there is no doubt that he was a person who was statutorily entitled to receive a notice from the 2nd Respondent.

The Respondents had taken up the position in their pleadings that notice had been sent. However, it transpired in evidence that the notice had in fact been sent to R Patel and Co., the lawyers who had acted for the Appellant at the time of the mortgage. The position of the learned counsel for the Respondents was that adequate notice was given to the Appellant and that the learned High Court judge had come to a correct conclusion.

The witness called by the Respondent had explained in evidence that the notice had been sent to the law firm since the lease had been lodged by them and because the Appellant had an overseas address. It has also been admitted by the witness that it was the Appellant who was the mortgagee and not the law firm, and also that no attempt was made to serve it on the Appellant or to find out from the law firm if they were still acting on behalf of the Appellant. The witness has further accepted that no steps were taken to publish an advertisement in terms of section 57 (b) and that the notice to the law firm was completely defective. The learned counsel for the Appellant, in her submissions, referred to the evidence given by his witness and in her written

submissions the portions of the transcript have been reproduced. Even the learned High Court judge has reproduced this evidence in his judgment.

Section 57(a) spells out as to when the notice must be sent and also stipulates the manner in which the notice is to be sent. The notice has to be sent to such person 'at his or her address appearing in the register'. Further, section 176 of the Land Transfer Act also spells out the manner in which notices under the Act are to be served. That too states that notices are to be served 'to that person at his or her address'. Thus, it is clear that in sending out a notice, this procedure has to be followed. However, in arriving at a conclusion, this court must invariably consider the circumstances peculiar to this case.

It is admitted that, consequent to the notice being sent, the law firm responded within the one-month period. The letter said, "Kindly note that we are arranging for the alleged arrears of rental to be paid by our client in order to ensure that there is no cancellation of our client's Lease. We understand that our client has until 14th November 2012 to make this payment." and concluded by stating, "We will shortly forward to you the receipt of payment." This was clear and unequivocal evidence that the Appellant in fact has notice and that he had acted in pursuance of such notice.

Determination

[29] The purpose of the notice is to bring to the attention of the party that has an interest in the property that the lease is to be cancelled and to afford him an opportunity to pay the arrears of lease rental and avoid cancellation of the lease. The intention of the legislature no doubt was to avoid any arbitrary conduct on the part of officers of the State and to ensure that rules of natural justice prevailed. In this case, notwithstanding the absence of strict compliance on the part of the Registrar of Titles, there was sufficient compliance. The ultimate objective of making the Appellant aware of the impending step and affording him an opportunity to pay the arrears was achieved. The contents of the law firm's letter confirm that the Appellant had acted pursuant to the notice and had given them instructions. The law firm indicated that steps were being taken by the Petitioner to pay the arrears. However, for reasons best known to him, he has not taken steps to do so.

[30] Taking all circumstances into consideration, it is clear that no prejudice has been caused to the Petitioner by the failure of the Registrar of Titles to serve notice personally on him. This court is therefore not inclined to allow the appeal.

Order

Both Appeals are accordingly dismissed. No costs.

Leave to appeal application to the Supreme Court

Appeal No. CBV 0015 of 2019

by Director of Lands, Registrar of Titles and Attorney General

[31] The Petitioners stated that on the 12th of November, 2014, the Respondent had instituted action against the Petitioners seeking the following declarations;

- (a) The cancellation of the Crown Lease by the First Defendant is illegal and void;
- (b) The registration by the Second Defendant of the cancellation of the Crown Lease is illegal and void; and
- (c) The Crown Lease remains current; and
- (d) General damages, interests and costs.

[32] Further, on the 27th of June 2018, the learned trial judge delivered his judgment and stated *inter-alia*;

- (a) The cancellation of the lease is illegal and void;
- (b) The registration of the cancellation of the lease is illegal and void;
- (c) The claim for damages is declined (no evidence was led in this regard).

[33] Being aggrieved by the said judgement, the Appellants appealed to the Court of Appeal.

The Grounds of Appeal of the Appellants before the Court of Appeal were as follows:

- 1) That the learned trial judge erred in law by holding that section 4(2) of the State Lands Act applies to State leases when it only applies to cases of compulsory acquisition.
- 2) That the learned trial judge erred in law and in fact, in that The Director of Lands was subject to section 4(2) of the State Lands Act 1945 when he directed the Registrar of Titles to cancel Crown lease No. 13569.

- 3) That the learned trial judge erred in law and in fact, in finding that the primary obligation of the Director of Lands was to obtain the Respondent's written consent for the cancellation of Crown Lease No. 13569.
- 4) That the learned trial judge erred in law and in fact, in finding that the cancellation of the lease is illegal and void.
- 5) That the learned trial judge erred in law and in fact, in finding that the cancellation of the Crown Lease was in contravention of section 4(2) of the State Lands Act 1945 when section 4(2) does not apply to cancellation of crown leases but to cases of compulsory acquisition.

[34] After the hearing, the Court of Appeal delivered its judgement on the 7th of June, 2019 and dismissed both the appeal and cross appeal with no order as to costs.

The Appellants stated that;

- (a) the Court of Appeal erred in law in misinterpreting section 4(2) of the State Lands Act, 1945 as amended and holding that the provisions of the said section apply to the cancellation of State leases,
- (b) the Court of Appeal erred in law in holding that the Director of Lands should obtain prior written consent of an encumbrancee before cancellation of State leases,
- (c) the Court of Appeal erred in law in misconstruing the provisions of section 4(2) of the State Lands Act, 1945 by holding that the legislature in its wisdom has included this section to ensure that the legal rights of a person who has an interest in such lands are not violated,
- (d) the Court of Appeal erred in law in failing to consider that the rights of any person who has a registered interest in a State lease is already protected under sections 57 of the Land Transfer Act 1971 and section 105 of the Property Law Act 1971, and
- (e) the Court of Appeal erred in law in affirming the declaratory orders granted by the learned trial judge.
- (f) Further, the appellants stated that the following questions of law raises far-reaching questions of law, matters of great general or public importance and substantial general interest to the administration of civil justice and therefore, leave to appeal should be granted by the Supreme Court.

- (g) This appeal would determine the correct interpretation of section 4(2) of the State Lands Act, 1945 as amended and whether it applies to State leases without title and requires a proper determination of the intention of legislature in implementing this provision;
- (i) instant appeal will determine whether the consent of all persons who are having encumbrances are required before cancelling State leases without title; and
 - (ii) instant appeal will consider the recourse available to the First Petitioner should an encumbrancee refuse to grant consent and whether such refusal can be set aside in the absence of guiding legislative provisions.
 - (iii) The correct interpretation and application of section 4(2) of the State Lands Act 1945 is a matter of great general or public importance and the interpretation of section 4(2) of the State Lands Act 1945 by the High Court and the Court of Appeal needs intervention of the Supreme Court, and
 - (iv) This appeal will determine rights and obligation of the State in re-entering and re-possessing the lands given on leases and the rights of the people in Fiji.

Appeal No. CBV 0018 of 2019

by Patrick Paul

- [35] Being aggrieved by the finding of the learned High Court judge, which was affirmed by the Court of Appeal where it was held that Patrick Paul had notice under section 57 of the Land Transfer Act, he filed a counter appeal against the judgement of the Court of Appeal.
- [36] His main grounds of appeal are that the High Court and the Court of Appeal erred in law by holding that he had notice in terms of section 57 of the Land Transfer Act. Further, the Court of Appeal erred in law in applying section 57 of the Land Transfer Act when the witness for the Registrar of Titles admitted under oath that her Office contravened the requirements of section 57 of the Land Transfer Act.
- [37] Now, I will consider whether the above-mentioned appeal and the counter appeal warrants granting of leave to appeal to the Supreme Court.

Consideration of Granting of Leave to Appeal

[38] The jurisdiction of the Supreme Court with respect to leave to appeal is set out in section 7 of the Supreme Court Act, which states;

7(1)

7(2) In relation to a criminal matter, the Supreme Court must not grant special leave to appeal unless-

(a) A question of general legal importance is involved;

(b) A substantial question of principle affecting the administration of criminal justice is involved; or

(c) Substantial and grave injustice may otherwise occur.”

7(3) In relation to a civil matter (including a matter involving a constitutional question) the Supreme Court must not grant special leave to appeal unless the case rises

-

a. A far-reaching question of law;

b. A matter of great general or public importance;

c. A matter that is otherwise of substantial general interest to the administration of civil justice.”

[39] The criteria laid down in section 7(3) of the Supreme Court Act, 1998 in order to obtain leave to appeal shows that leave to appeal to the Supreme Court cannot be obtained as a matter of course but after fulfilling the criteria set out by the Act.

[40] The Petitioner stated that the subject matter of this case raises issues of substantial general interest to the administration of civil justice in respect of State land given on leases.

[41] The Respondent submitted that the grounds of appeal set out in the petition does not satisfy the stringent criteria set out in section 7(3) of the Supreme Court Act, 1998. It was further submitted that the questions of law involved in this appeal does not affect the public or even a part of the public and the questions of law raised in the instant appeal are specific to the parties to this appeal.

[42] Moreover, the Court of Appeal did not err in its findings when the said court held with the Respondent that the instant appeal has no merit. Therefore, the Respondent submitted that the special leave to appeal should not be granted in this appeal.

[43] I have considered the questions of law raised by the parties and I am of the view that the said questions of law that are required to be determined in this appeal are far-reaching questions of law, matters of great general and public importance, and have substantial general interest in the administration of civil justice.

[44] Thus, I hold that the Petitioner has satisfied the threshold contemplated in section 7(3) of the Supreme Court Act, 1998 to obtain special leave to appeal in respect of the aforementioned, and therefore the application for Special Leave is allowed.

Analysis

[45] At the hearing, the counsel for the Director of Lands, Registrar of Titles and the Attorney-General and the counsel for Patrick Paul informed the court that the parties would confine themselves to the following questions of law. i.e.;

[46] On behalf of the Director of Lands, Registrar of Titles and the Attorney-General, it was informed that she would pursue the questions of law with regard to –

(a) whether section 4(2) of the State Lands Act as amended, applies to cancellation of the leases given by the Registrar of Lands? and

(b) whether the Registrar of Lands had complied with the requirement of giving notice under section 57 of the Land Transfer Act to Patrick Paul, prior to the cancellation of the Crown Lease?

[47] On behalf of Patrick Paul, it was informed that she would pursue the following questions of law –

(a) whether it was necessary to obtain the written consent of Patrick Paul to cancel the Crown lease under section 4(2) of the State Lands Act, and

(b) whether the notice given to R. Patel & Co. can be considered as a notice served on Patrick Paul under section 57 of the Land Transfer Act.

[48] Furthermore, the parties agreed to consolidate the said appeal and the cross appeal.

The sequence of events

[49] The events relevant to the appeal can be summarized as follows;

[50] The Director of Lands had given a State land on lease to Kilowen Fiji Limited. The said company was required to develop the land within 2 years and also pay the lease rentals in terms of the said agreement.

[51] Thereafter, the said company had obtained a loan from Patrick Paul and he had registered a mortgage over the said lease to secure the monies he lent to the company.

[52] On the 5th of October 2012, the Director of Lands had lodged an application with the Registrar of Titles to cancel the said lease due to non-payment of rent by the said company.

[53] On the 15th of October 2012, the Registrar of Titles had sent a notice to R. Patel & Co, Barristers & Solicitors under section 57(a) and (b) of the Land Transfer Act.

[54] On the 29th of October 2012, R. Patel & Co. had informed the said Registrar of Titles that they were arranging for the payment of alleged arrears of rental to be paid.

[55] As the arrears of rent were not paid within the stipulated period in section 57 of the Land Transfer Act, the said lease had been cancelled.

Questions of Law involved in this Appeal

[56] I will now consider the question of law applicable to section 57 of the Transfer of Titles Act to leases given by the Director of Lands.

[57] The counsel for the Director of Lands, the Director of Titles and the Attorney-General submitted that section 4(2) of the State Lands Act has no application to re-entering and recovering possession of lands given on lease by the Director of Lands, if a lessee defaults on payment of lease rentals. Further, it was submitted that any other

interpretation of the said section would lead to a lot of hardships for the State in re-possessing State lands given on lease by the Director of Lands.

[58] However, the counsel for Patrick Paul submitted that section 4(2) of the State Lands Act, as amended applies to re-entry and taking over possession of State lands given on leases by the Director of Lands. Further, the counsel for Patrick Paul submitted that her client was not given notice as required by section 57 of the Land Transfer Act. However, this position was denied by the opposing counsel.

LAND TRANSFER ACT

Legality of the notice served on Patel & Company by the Registrar of Lands

[59] I will now consider the legality of the notice served on Patel & Company by the Registrar of Lands prior to the cancellation of the Crown Lease under reference.

[60] The Court of Appeal considered the contents of the said notice dated 15th of October, 2012 and the letter sent by R Patel & Co dated 29th of October, 2012 to the Registrar of Titles where it stated, “*Kindly take notice that we are arranging for the alleged arrears of rental to be paid by our client in order to ensure that there is no cancellation of our client’s lease. We understand that our client has until 14th November 2012 to make this payment.*” and held that Patrick Paul had notice issued under section 57 of the Land Transfer Act and he had acted in pursuance of such notice.” Hence, the Court of Appeal held that the said notice sent by the Registrar of Titles can be considered as a notice sent under section 57 of the Land Transfer Act.

[61] The counsel for Patrick Paul submitted that the operative words in the said letter were “**our client’s lease**”. Hence, it was submitted that by referring to “**our client’s lease**” R. Patel and Co. has referred to the lessee of the land under consideration. Further, there is no reference to Patrick Paul in the said letter. Accordingly, it was submitted that the said letter was not written by the said legal firm on behalf of Patrick Paul, who was the mortgagee of the land under reference.

[62] Moreover, it was submitted that the letter had been written on behalf of Kilowen Fiji Limited, who was the lessee of the land, as the said company was under a duty to pay the lease rentals in terms of the lease given by the Director of Lands. Further, Patrick

Paul was not under an obligation to pay the lease rentals to the Director of Lands. In the circumstances, it was submitted that the Court of Appeal erred in holding that there was sufficient compliance with section 57 of the Land Transfer Act.

[63] Counsel for the Director of Lands and the Director of Titles submitted that the Registrar of Titles had complied with section 57 of the Land Transfer Act by giving notice to Patrick Paul, who was the mortgagee. In this regard, it was submitted that the said notice has been sent to R Patel & Co., who were the lawyers acting for Patrick Paul at the time of executing the said mortgage. Therefore, it was submitted that serving the said notice on R Patel & Co. should be considered as sufficient notice given to Patrick Paul in terms of section 57 of the Land Transfer Act. Therefore, it was submitted that the learned High Court judge and the Court of Appeal had come to a correct conclusion by holding that there was sufficient compliance with section 57 of the Land Transfer Act.

[64] I will now consider the scope and applicability of section 57 of the Land Transfer Act to State lands given on lease by the Director of Lands.

Section 57 of the Land Transfer Act states;

“Cancellation by Registrar

57. The Registrar, upon proof to his satisfaction of lawful re-entry and recovery of possession by a lessor either by process of law or in conformity with the provisions for re-entry contained or implied in the lease, shall cancel the original of such lease and enter a memorial to that effect in the register, and the estate of the lessee in such land shall thereupon determine but without releasing the lessee from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar shall cancel the duplicate of such lease if delivered up to him for that purpose:

Provided that-

(a) where the right of re-entry is based upon the non-payment of rent only, the Registrar shall, where any person other than the lessee has a registered interest in the lease, give notice to such other person at his address appearing in the register to pay the rent in arrear and, if the same is paid within one month

from the date of the said notice, then the Registrar shall not cancel the original or duplicate of such lease; and

(b) unless the re-entry and recovery of possession have been by formal process of law, the Registrar shall require notice of application to register the same to be served on all persons interested under the lease, or, failing such notice, shall give at least one calendar months' notice of the application by publication in the Gazette and in one newspaper published and circulating in Fiji before making any entry in the register. [emphasis added]

[65] The above section confers power on the Director of Lands to re-enter and recover possession of State land given on lease by him if a lessee defaults on the payment of lease rentals. Further, the said section sets out the procedure that should be followed in re-entering a property given on lease. In this regard, the *process of re-entry commences by giving a notice to the lessee of the land and to any other person who has registered an encumbrance on such a lease.*

[66] If a re-entry is based on a non-payment of rentals, the Registrar of Lands is required to give notice to persons who have registered an interest in the lease in terms of proviso to section 57 of the said Act, in addition to the lessee of the State land.

[67] The word "shall" used in the said section has made it mandatory for the Registrar of Titles to give notice to such persons. Further, the said section states that notice to such persons should be given at the address appearing in the register.

[68] I will now consider the requirement to give notice to a person who has *registered an encumbrance on a lease* given by the Director of Lands under the sub-section (a) of the proviso to section 57 of the said Act and the mode of service of such a notice.

Mode of Service of a notice under Land Transfer Act

[69] The mode of service of any notice under the Act is stated in section 176 of the said Act. It states thus;

“Service of Notices

176 (1). Any notice required by or under the provisions of this Act to be served or given to any person may be served or given by being sent by registered post to that person at his or her address of service.

(2) The address of any person as entered in the register shall, until amended or altered, be his or her address for service.

(3) The address or place in Fiji appointed in a caveat as the address or place at which notices relating to the caveat may be served shall be the address for service of the caveator for the purposes of this section.

(4) The Registrar shall cause a copy of each notice so sent to be filed with a memorandum of the same having been sent and such memorandum shall be sufficient proof that the notice was duly sent.

(5) The Registrar shall on request in writing made by any person whose address is entered in the register or in the Powers of Attorney Register and on production to him or her of the duplicate instrument of title and on payment of the prescribed fee amend or alter such address.

(6) The Registrar shall on request in writing by a caveator and on payment of the prescribed fee amend or alter the address appointed in the caveat at which notices may be served and the additional address (if any) given by the caveator.

(7) When any notice is sent by registered post to any person at his or her address for service and the letter is returned by the post office the Registrar may if in the circumstances and having regard to the provisions of this Act he or she thinks fit –

- (a) direct any further notice to be given; or
- (b) direct substituted service in such manner as he or she considers appropriate in the circumstances; or
- (c) proceed without notice.

(8) The provisions of this section shall apply notwithstanding any other of the provisions of this Act relating to the service of notices.

- [70] In terms of section 176 (8) of the said Act, all notices issued under the Act should be served or given to any person by sending them by registered post to a person at his registered address of service. Section 167(2) of the said section states, “The address of any person as entered in the register shall, until amended or altered, be his address for service.” Hence, all notices under the Act should be sent to the address entered in the register. Further, sub-section (8) stipulates the steps that need to be taken if a notice is returned by the post office.
- [71] A careful consideration of section 57 read with section 176 of the said Act shows that it is mandatory to serve notices at the address entered in the register in the first instance. However, if it is not possible to serve a notice at the registered address, the Director of Titles can invoke the provisions in sub-section 8 of section 176 of the said Act.
- [72] In this case, Patrick Paul had registered a mortgage over the land under reference with the consent of the Director of Lands. Further, the said mortgage had been registered as an encumbrance on the lease under reference. Moreover, in the said register, Patrick Paul had been given an address in the United Kingdom. It is an admitted fact that the Director of Titles had not sent a notice to the address entered in the “register” by Patrick Paul. Instead, a notice had been sent to R. Patel & Co.
- [73] The counsel for Patrick Paul submitted that the notice sent to R. Patel & Co. by the Registrar of Titles had no reference to Patrick Paul. It was further submitted that, in any event, the said notice could not be considered as a notice sent to Patrick Paul.
- [74] However, the counsel for the Registrar of Lands submitted that the contents of the reply sent by R. Patel & Co. dated 29th of October, 2012 shows that it was written on behalf of Patrick Paul by the said legal firm. Moreover, it was submitted that the learned High Court judge and the Court of Appeal were correct in holding that R. Patel & Co. had acted for Patrick Paul in sending the said reply and therefore, Patrick Paul had notice under section 57 of the Land Transfer Act.
- [75] Hence, in order to consider whether Patrick Paul, being the mortgagor of the lease under reference, had notice under section 57 of the Land Transfer Act, it is useful to consider the correspondence between the Director of Lands and R. Patel & Company.

Consideration of letters exchanged between the Director of Lands and R. Patel & Co.

[76] The letters exchanged between R. Patel & Co. and the Director of Lands are reproduced below;

The Registrar of Titles had written the following letter to R. Patel & Co.

“Monday, October 15, 2012

R. Patel & Co.
Barristers & Solicitors
3rd Floor, Development Bank Centre
360 Victoria Parade
Suva, Fiji.

SUVA

Dear Sir,

Re: **APPLICATION FOR RE-ENTRY NO.**
CROWN LEASE NO. 13569

The Director of Lands as Landlord has field application for re-entry for no-payment of rent on Crown Lease No. 13569 of which Kilowen Fiji Limited are the registered proprietors and over which you hold the registered Mortgage Number 502595 dated 20th November, 2001.

You are hereby given notice in terms of Section 57 (a) and (b) of the Land Transfer, 1971, to pay the rent in arrears and if the sum is not paid within one month from the date of this notice, then the re-entry of the lease in question will be proceeded with.

Yours faithfully

G. Bai (Mr.)

REGISTRAR OF TITLES

[emphasis added]

R. Patel & Co. had sent the following reply to the above letter -

R. PATEL LAWYERS

BARRISTERS & SOLICITORS
COMMISSIONERS OF OATHS
NOTARIES PUBLIC

Our Ref. DPS/vk/K240

29 October 2012

Registrar of Titles
Suvavou House
Victoria Parade
Government Buildings
Suva

Attention: **Mr Gene Bai**

Dear Sir,

Re: **Application for Re-entry No. 763648**
Kilowen (Fiji) Limited – Crown Lease No. 13569
Ref: **LD/60/441-3**

We refer to your letter dated 15th October 2012 in the above matter

Kindly take notice that we are arranging for the alleged arrears of rental to be paid by our client in order to ensure that there is no cancellation of our client's Lease. We understand that our client has until 14th November 2012 to make this payment.

The legal issues pertaining to the imposition of such rental shall of course be dealt with by the parties at a later time.

We will shortly forward to you the receipt of payment.

Yours faithfully,

R. Patel Lawyers

Devanesh Sharma

cc The Director of Lands

Suva

[emphasis added]

[77] A careful consideration of the contents of the above two letters show that they do not refer to any person by name. Further, it neither refers to the lessee or the mortgagee. i.e., Kilowen Fiji Limited company or Patrick Paul. Hence, it is necessary to consider the contents of the letter dated 29th of October, 2012 sent by R. Patel & Co. to ascertain whether the said legal firm wrote the said letter on behalf of Patrick Paul, and also, whether the said legal firm had the instructions from Patrick Paul to write the said letter.

[78] The sentence “Kindly take notice that we are arranging for the alleged arrears of rental to be paid by our client in order to ensure that there is no cancellation of our client’s Lease.” is significant in asserting the purpose of the letter. The words “our client’s Lease.” in the said sentence was a reference to the lease entered between Kilowen Fiji Limited company and the Director of Lands. Further, there is no evidence in the appeal to show that R. Patel Co. had instructions from Patrick Paul to write the said letter to the Registrar of Lands on his behalf.

[79] Having considered the words in the aforementioned two letters, they cannot be construed as letters written to and on behalf of Patrick Paul. Hence, the letter sent by the Registrar of Titles dated 15th of August, 2015 cannot be construed as a notice sent to Patrick Paul in terms of section 57 of the Land Transfer Act.

[80] When considering the nature of the notice dated 15th of October, 2012 sent by the Registrar of Titles, it is useful to consider the evidence given by Ms. Torika Goneca Gomes, Deputy Registrar of Titles who testified on behalf of the Registrar of Titles at the trial. Under cross-examination she had stated as follows;

“Mr. Sharma: Would you agree that R. Patel and Company was not the Mortgagee in this case.

Ms. Gomes: No, My Lord.

*Mr Sharma: **Who was the Mortgagee?***

*Ms. Gomes: **Patrick Paul, My Lord.***

Mr. Sharma: And you didn’t even say that Patrick Paul holds the mortgage, did you? You said you hold the mortgage. Would you accept that your notice in fact was wrong?

Ms. Gomes: Yes, My Lord.

Mr. Sharma: And if you look at the second paragraph, you are saying you are hereby given notice in terms section 57 [a] and [b] of the land Transfer Act to pay the rent in arrears and if the sum is not paid within one month from the date of this mortgage then the re-entry of the lease questions will be

proceeded with. Once again this is not a notice to the mortgagee, is it? It's the notice to the law firm, would you agree with that?

Ms. Gomes: Yes, My Lord.

Mr. Sharma: Given that would you agree Ms. Gomes that this notice was completely defective.

Mr. Gomes: Yes, My Lord.

Mr. Sharma: Was any steps taken by you to rectify this notice?

Ms. Gomes: No, My Lord.

Mr. Sharma: And you confirm to the court that this is the notice on which you acted on to cancel the lease?

Ms. Gomes: Yes, My Lord.”

[81] The above witness had categorically admitted that the alleged notice was defective and that no steps were taken to rectify it. Hence, the aforementioned evidence should also be taken into consideration in determining whether a notice was given to Patrick Paul in terms of section 57 of the Land Transfer Act as it involves both facts and law.

[82] Further, there was no evidence before the court to say that R. Patel & Company had the Power of Attorney of Patrick Paul to act on his behalf, particularly with regard to the matters relating to the mortgage. In any event, neither the High Court nor the Court of Appeal considered such a scenario. Hence, I am of the opinion that the words in section 57 of the said Act are plain and clear, and therefore the question of interpreting the said section, taking into consideration other materials, particularly those letters do not arise.

[83] Furthermore, a court should not read additional words into a section of an Act in the absence of clear necessity. This view was expressed in Maxwell on The Interpretation of Statutes, 12th edition at page 33 where it states;

*“It is corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which is omitted to express. Lord Mersey said: “It is a strong thing to read into an Act Parliament words which are not **there**, and in the absence of clear necessity it is a wrong thing to do.”*

[emphasis added]

[84] Further, a careful consideration of section 57 of the Land Transfer Act shows that it contains the procedure for re-entry and recovery of possession by a lessor. Procedural laws enable a dispute to be brought to court and they prescribe the procedure that is to be followed in litigation. Furthermore, it contains not only the procedure that the courts should follow but also, the procedure that should be followed by the parties, including what requirements must be satisfied by a party to commence legal proceedings. Thus, the underlying purpose of any procedural law is to ensure the fairness of the legal process for all parties involved in the case.

[85] Moreover, in interpreting correspondence that had taken place between the parties, the courts should not interpret such letters in such a way that the interpretation will adversely affect the individual rights of a person unless there are very clear words on the face of the letter.

[86] Having considered the law and the facts of this appeal, I hold that the letter dated 15th of October, 2012 sent by the Registrar of Lands to Patrick Paul, cannot be considered as a notice sent under section 57 of the Land Transfer Act to him. Further, I am of the opinion that the letter dated 29th of October, 2012 sent by R. Patel & Co. cannot be considered as a response to a reply sent on behalf of Patrick Paul to the Registrar of Lands. Hence, I am of the opinion that the mandatory requirement to send a notice to the registered address of a mortgager in terms of the proviso to section 57 of the Land Transfer Act has not been complied with by the Registrar of Lands.

STATE LANDS ACT

[86] I will now consider whether section 4(2) of the State Lands Act, as amended, applies to the cancellation of a State Land given on lease by the Director of Lands.

Is section 4(2) of the State Lands Act, as amended, applicable to cancellation of leases given by the Director of Lands?

[87] The Crown Lands Ordinance No. 15 of 1945 was enacted in the year 1945 to control, administer, and dispose of Crown lands. Since then, the said Ordinance has been amended from time to time.

[88] Section 4 of the of the **principal** Crown Lands Ordinance No. 15 of 1945 stated as follows;

4(1). *Where the freehold estate of any person in land in respect of which a Crown grant or native grant **has been issued is acquired by the Crown**, the title to such land shall be taken in the name of the Director of Lands of Fiji for and on behalf of the Crown.*

(2). *Notwithstanding anything contained in the Land (Transfer and Registration) Ordinance, upon the registration of any transfer of land to the Director of Lands for and on behalf of the Crown, the Registrar of Titles shall cancel the title in respect of such land, but shall not issue any certificate of title in respect thereof.*

(3). *Upon the application of the Director of Lands, the Registrar of Titles shall cancel the certificate of title of any land registered at the commencement of this Ordinance in the name of the Director of Lands for and on behalf of the Crown.*

[89] On the 24th of May 1974, subsections 2 and 3 of the said Crown Lands Ordinance were amended by the Crown Lands (Amendment) Act, 1974.

The said amendment to section 4(2) of the Crown Lands Ordinance states as follows;

“by substituting the following for subsection (2):-

“(2) Notwithstanding anything contained in the Land Transfer Act, 1971, upon the registration of any transfer of land to the Director of Lands for and on behalf of the Crown, **or in respect of any land** which is registered in the name of the Director of Lands for and on behalf of the Crown, the Registrar of Titles shall, if directed in writing by the Director of Lands, cancel, either in whole or in part, the title in respect of such land:

*Provided that, in respect of any title against which are registered any encumbrances, **no such direction shall be given, without the written consent of the encumbrance.***

(3) *For the purpose of last preceding subsection, the expressions “encumbrancee” and encumbrance” shall have the same meaning as in the Land Transfer Act.”*

[emphasis added]

[90] It is pertinent to note that by the said amendment, the Director of Lands cannot give a direction to the Registrar of Lands to cancel a title either in whole or in part ***in respect of any land***, which is registered in the name of the Director of Lands for and on behalf of the Crown. ***without the written consent of an encumbrancee, if an encumbrance is registered in respect of a land.***

[91] This court is now called upon to consider whether it is necessary to obtain the *written consent of an encumbrancee in terms of section 4(2) of the State Lands Ordinance in addition to a notice given under section 57 of the Land Transfer Act, before canceling a lease given by the Director of Lands.*

[92] Section 4(2) of the State Lands Act was amended by State Lands (Amendment) Act No. 4 of 1974. Hence, it is useful to consider the Hansard to ascertain the intention of the Parliament in amending the said section.

Crown Lands (Amendment) Bill 1974 had been debated in the Parliament on the 19th of April, 1974 and the relevant parts of the Hansard to this appeal are reproduced below;

“CROWN LANDS (AMENDMENT) BILL 1974

Hon. Ratu J B Toganivalu – Mr. Speaker Sir, I beg to move that a Bill to amend the Crown Lands Ordinance be read a second time.

The primary object of this Bill is to protect persons, who may hold a lease, mortgage or other encumbrance over freehold land and subject of transfer to the Director of Lands on behalf of the Crown.

By subsections 2 and 3 of Section 4 of the Crown Lands Ordinance the Registrar of Titles is required to cancel the title of any land upon registration of any transfer of the land to the Director of Lands. Also, the Registrar of Titles upon the application to the Director of Lands is required to cancel the title of any land which was on the date of coming into force of the Crown Lands Ordinance registered in the name of the Director of Lands for and on behalf of the Crown.

Sir, it is now considered that *these requirements are not administratively convenient and would at some time lead to anomalous situations* where, for an example, a part of

the land in question is leased. **Therefore, Sir, clause 2 of the Bill seeks to improve the situation by providing that no title or transfer to the Director of Lands shall be cancelled in whole or in part except on the instruction of the Director of Lands.** *This instruction cannot be given without the written consent of any person entitled to any encumbrances registered against the title thus avoiding any injustice that would be otherwise caused by the extinguishment of the interest of any person entitled to the benefit of any lease, or mortgage or any other encumbrances.* Mr Speaker, Sir, I commend this Bill to the House.

Hon. M N Raibe – Mr. Speaker Sir, I support the Bill before the House. Although this Bill does not affect the Fijian community I am glad to see that the Government is being fair to all concerned. I know that a lot of people in my constituency, who occupy CSR freehold lands, which has now reverted to Government, will rest assured that their interests are being taken care of by that they leased with the CSR. I am pleased to say that ~~that~~ it has been looked into in this Bill and I add that their security is being solidified through this Bill and the privilege that they enjoy would be improved. Sir, I support the Bill before the House.

.....
.....
.....

Hon. Ratu J B Toganivalu - Mr. Speaker Sir, I did not realise that this very simple Bill would create so much discussions in the House. I am sorry if I did not make it plain when *I was moving the second reading.*

Discussions have trespassed on to Native land, Crown Schedule A and Schedule B lands, and Colonial Sugar Refining Company lands. **The simple matter deals with the transfer of freehold land; it is to safeguard anyone leasing a freehold land if that land is going to be transferred to the Director of Lands for and on behalf of the Crown.** That is all Sir, and no more.

This Bill seeks to do just that, and I hope that it will get the support of everyone in the House.

Question put.

Motion agreed to.

Bill read a second time.

In committee:

Clauses 1 and 2, title and enacting clause agreed to.

The House resumed:

Bill reported without amendment, **read a third time and passed** (Act No. 8 of 1974).”

[At page 17, 18 and 181 of the Hansard dated 19th of April, 1974].

[emphasis added]

[93] The proceeding of the said debate clearly shows the said amendment had been brought to secure the rights of the persons who are **occupying freehold lands** and the persons who are having encumbrances over such lands when a land is acquired by the State.

[94] Further, when a provision in an Act is considered, it should be considered as a part of the Act and should be interpreted in harmonisation the other provisions of the Act. Hence, one or several provisions in a legislation should not be considered in isolation. Furthermore, a subsection in a section should not be considered and interpreted in isolation. Hence, subsection 4(2) should be considered along with the other subsections in section 4.

[95] Subsection 4(1) refers to an instance where a land has been acquired by the State. Further, sub-section (2) of the said section stipulates the procedure of taking possession of such a land by the Director of Lands on behalf of the State without seeking the assistance of the courts.

[96] Further, section 4(3) provides for the cancellation of certificate of title issued in respect of lands pursuant to an application of the Director of Lands in respect of lands that are registered in the name of the Director of Lands for and on behalf of the Crown.

[97] Section 4(3) of the **principal** Ordinance of the State Lands Ordinance stated;

“(3). Upon the application of the Director of Lands, the Registrar of Titles shall cancel the certificate of title of any land registered at the commencement of this Ordinance in the name of the Director of Lands for and on behalf of the Crown.”

[98] However, the said section was amended by Act No. 8 of 1974. Now the said subsection reads as follows;

“For the purpose of subsection (2), the expressions “encumbrancee” and encumbrance” shall have the same meaning as in the Land Transfer Act.”

Section 2 of the Land Transfer Act states inter-alia;

“encumbrancee means the proprietor of any encumbrance;

encumbrancer means the proprietor of any land, or of any estate or interest therein, that is subject to an encumbrance;

encumbrances includes all prior estate, interests, rights, claims and demands which can or may be had, made or set up in respect of land and includes a mortgage;”

This is an indication that the legislature was mindful of the provisions of Land Title Act at the time of amending section 4 of the State Lands Act.

[99] Accordingly, the legislature had amended the State Lands Act to secure the rights of the persons *who are having rights over the freehold land.*

[100] Further, if section 4(2) is interpreted to say that it is necessary to obtain the written consent of the persons who have any interest on a land prior to re-entering and taking over possession of a State land given on lease by the Director of Lands for non-payment of arrears, it would lead to enormous hardships for the State. Moreover, such an interpretation would lead to hardship, inconvenience, and injustice to the State. Further,

it leads to absurdity. Further, it is presumed that Parliament would not intend to enact legislation which is unreasonable or irrational.

[101] In the Indian case of *Kishen Singh v Mohd Shafi* AIR 1964 J & K page 39 at page 41, the court held;

“One should avoid construction which would result in absurdity and give a harmonious construction so as to avoid making one provision of the act conflict with the other.”

N S Bindra’s Interpretation of Statutes (9th edition) at page 305 states:

“Statutes have to be construed in a manner so as to promote the purpose and object of the Act, and not too literally so as to defeat the purpose or render the provision meaningless and otiose.”

[102] Further, the legislation should be interpreted to give a just, reasonable and sensible meaning to achieve justice. Moreover, the legislation should be interpreted to harmonise the laws. Particularly, such an interpretation is necessary when interpreting the legislations that are applicable to a particular branch of the law.

[103] In any event, since the Registrar of Titles is required to give notice of cancellation of a lease under section 57 of the Land Transfer Act, section 4(2) of the State Lands Act cannot be interpreted to say that in addition to the a notice given by the Registrar of Titles, it is necessary to obtain the written consent of persons who are having encumbrances over a land prior to cancelling a lease and re-enter a State land to take possession of the same.

[104] In the circumstances, I am of the opinion that section 4(2) has no application to cancellation of leases under section 57 of the Land Transfer Act, 1974.

Conclusion

[105] In view of the foregoing findings, I am of the opinion that;

(a) the Registrar of Titles has not complied with the mandatory requirement of giving notice to Patrick Paul who had a mortgage over the land under consideration, in terms of proviso to section 57 of the Land Transfer Act, and

(b) section 4 of the State Lands Act has no application to instances where the Director of Lands is taking steps to re-enter and recover possession of a State Land given on lease.

[106] In the circumstances, I answer the below mentioned questions of law as follows;

(a) whether section 4(2) of the State Lands Act as amended applies to cancellation of the leases given by the Registrar of Lands?

No. It applies only to instances where the State acquires land.

(b) whether the Registrar of Lands had complied with the requirement of giving notice under section 57 of the Land Transfer Act, prior to the cancellation of the Crown Lease?

No. The notice dated 15th of October 2012, sent to R. Patel & Co., Barristers & Solicitors, cannot be considered as a notice given to Patrick Paul in terms of section 57 of the Land Transfer Act. Further, the letter sent by the said legal firm dated 29th of October, 2012 cannot be considered as a notice given in terms of and under section 57 of the Land Transfer Act.

[107] For the reasons stated above, I allow both the appeals subject to the findings stated in this judgement.

[108] Further, I am unable to agree with the reasons given in the judgment of the High Court dated 27th of June, 2018 and the judgement of the Court of Appeal dated 7th of June, 2019.

[109] However, I agree only with the final Orders of the judgement of the Court of Appeal dated 7th of June, 2019 and the judgement of the High Court dated 27th of June, 2018 (stated above).

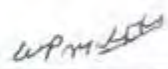
[120] Accordingly, the final Orders of the Court of Appeal and the High Court are affirmed subject to the reasons and the order stated in this judgement.

Order of Court –

- (a) The Registrar of Titles has not complied with the mandatory requirement to send a notice to the registered address of a mortgagee (Patrick Paul) in terms of the proviso to section 57 of the Land Transfer Act.
- (b) Section 4(2) of the State Lands Act, as amended has no application to State Lands given on lease by the Director of Lands and the cancellation of such lease. Thus, it was not necessary to obtain the consent of Patrick Paul prior to the cancellation of the lease.
- (c) Subject to the above findings, the judgement of the Court of Appeal which allowed the appeal preferred by Patrick Paul is affirmed.
- (d) Subject to the above findings, both appeals are allowed.
- (e) No Costs.



Hon. Madam Justice Chandra Ekanayake
JUDGE OF THE SUPREME COURT



Hon. Mr. Justice Priyasath Dep
JUDGE OF THE SUPREME COURT



Hon. Mr. Justice Priyantha Jayawardena
JUDGE OF THE SUPREME COURT