

IN THE HIGH COURT OF FIJI AT SUVA
PROBATE JURISDICTION

Civil Action No. HPP 18 of 2014

BETWEEN

VIMALA WATI of Solovi, Nadi.

PLAINTIFF

AND

ASUDA DEVAN of Saweni Beach Road, Saweni, Lautoka.

FIRST DEFENDANT

AND

THE DIRECTOR OF LANDS of GCC Complex, Nasova, Suva.

SECOND DEFENDANT

AND

THE REGISTRAR OF TITLES, Ground Floor, Civic Tower, Victoria Parade, Suva.

THIRD DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI, 7th Floor, Suvavou House, Suva.

FOURTH DEFENDANT

Counsel : The plaintiff in person
Mr. W. Pillai for the 1st Defendant
Ms. S. Ali and Mr. A. Prakash for the 2nd, 3rd & 4th
Defendants

Date of Hearing : 26th September, 2016

Written Submissions : 14th October, 2016 and 24th October, 2016.

Date of Order : 08th November, 2016

ORDER

(On the Preliminary Objection to the maintainability of the action)

- [1] The plaintiff filed this action on three causes of actions of which second and third causes of actions relate to a transfer of a Crown lease.
- [2] When this matter came up before this court on 26th September, 2016 the counsel for the 2nd to 4th defendants took a preliminary objection to the maintainability of the 2nd and 3rd causes of action on the ground that the court does not possess jurisdiction to proceed with the matter since the plaintiff has not obtained the consent of the Director of Lands as required by section 13(1) of the State Land Act (Cap 132).
- [3] The plaintiff and the 2nd to 4th defendants filed their written submissions.
- [4] Section 13(1) of the State Lands Act provides:

Whenever in any lease under this Act there has been inserted the following clause:-

"This lease is a protected lease under the provisions of the Crown Lands Act"

(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.

- [5] The question arises as to what point of time the consent of the Director of lands should be obtained. The provisions contained in section 15(1) of the Crown Lands Ordinance are identical to that of section 13(1) of the State Lands Act (Cap 132).

- [6] In the case of **Mohammed Rasul v Jeet Singh and Hazara Singh** [1964] FJLawRp 19; [1964] 10 FLR 16 (21 January 1964) it was held:

There is nothing in the express wording of Section 15(1) which makes it necessary to obtain the consent of the Director of Lands before an action concerning a protected lease is initiated. All section 15(1) provides, in this connection, is that no Court of Law may deal with any such lease without the consent of the Director of Lands. It appears to me that the consent of the Director can therefore be obtained up to any time before the land is actually "dealt with" by the Court, which in my view is certainly not the case at any time before an order has been made by the Court a judgment of the court has been delivered. I can also see no reason why a judgment of the Court dealing with the land could not properly be made "subject to the consent of the Director of Lands, with liberty to apply for further orders should that consent not be granted."

- [7] In the case of Brennan **Sukhdeo and Lusiana Bolalailai v Avendra Narayan** [2007] FJHC 142; HBC 406.2006 (7 February 2007) it was held:

In the present case there is consent albeit obtained after the commencement of proceedings. The critical words in the section are "***be dealt with by a court of law***". Simply filing an action in a court is not dealing in land. Action can be discontinued at any time before any orders are made. Dealing with a land occurs if the orders or judgment of a court in some way affects some interest of the lessee in the land. The prior consent of the Director is confined to transferring, alienating, mortgaging, charging etc. It does not extend to filing of actions.

- [8] It is clear from the above decisions that the consent of the Director of Lands which is required to be obtained pursuant to section 13(1) of the State Land Act (Cap 132) could be obtained after the institution of the action and before making any order affecting the rights of the lessee in the land or before the entering of the judgment in the action. This case has not reached the stage of the judgment nor has any order been made affecting the rights of the parties in the land.

- [9] The learned counsel for the 2nd to 4th defendants in support of her objection relied on the decisions in **Ram Manohar v Lallu Chaudhary** [1967] FJCA 5; [1967] 13 FLR 33 and

State v Director of lands, ex parte Tuigasiale [2016] FJHC 184; HBJ 16.2015 (21 March 2016).

- [10] In **Ram Manohar v Lallu Chaudhary** (*supra*) the plaintiff obtain the consent of the Director of Lands as required by section 15(1) of the Crown Lands Ordinance but the defendant who made a counter claim did not obtain the consent from the Director of Lands. The trial court dismissed the claim and in appeal the court of appeal, while affirming the findings of the trial court made the following observations;
- The Ordinance requires that the consent be obtained before a lease may be dealt with by any court. The consent will clearly involve a consideration by the Director of the relief claimed. In this case, for example, the relief claimed was recovery of possession from a trespasser by the registered lessee. It would be strange, and would go far to defeat the object of the section, if a counter claim, claiming some quite different relief, as in this case a change in the registered ownership of the lease, could be dealt with without the Director having opportunity to consider whether or not such a change in ownership was acceptable. For those reasons I am of the view that in dealing with suits regarding leases protected by virtue of the Crown Lands Ordinance, both claim and counter claim require the consent of the Director of lands.
- [11] In the above case the court dismissed the counter claim not because the defendant could not obtain the consent in the course of the proceedings but even at the close of the proceedings he did not have consent form the Director of lands. Therefore this decision has no bearing on the matter before this court. It is important to note the principle contained in the decision in **Mohammed Rasul v Jeet Singh and Hazara Singh** (*supra*) and in the decision cited above are the same.
- [12] In view of the decisions in **Mohammed Rasul v Jeet Singh and Hazara Singh** (*supra*) and **Sukhdeo and Lusiana Bolalailai v Avendra Narayan** (*supra*) the plaintiff in this case still have time to seek the consent of the Director of Lands if she so wishes.
- [13] In **State v Director of lands, ex parte Tuigasiale** (*supra*) the applicant filed an application for judicial review challenging a decision of the Director of Lands (1st Respondent). On behalf of the 1st respondent objection was taken to the maintainability of the application on the ground that the applicant had not obtained

the written consent of the 1st respondent to file the application against him. The court upheld the preliminary objection and dismissed the application. The court in arriving at the findings which led to the dismissal of the application followed the principles laid down in **Mohammed Rasul v Jeet Singh and Hazara Singh** (*supra*) and **Sukhdeo and Lusiana Bolalailai v Avendra Narayan** (*supra*) but dismissed that application on the submission made by the counsel for the 1st respondent that there is no likelihood of written consent being granted to the applicant by the 1st respondent. In that case the court has not deviated from the principles laid down in **Mohammed Rasul v Jeet Singh and Hazara Singh** (*supra*) and **Sukhdeo and Lusiana Bolalailai v Avendra Narayan** (*supra*) and in fact the court has cited those decisions with approval. The court has upheld the objection only on the submission of the learned counsel for the respondent that it was very unlikely that the consent would be granted.

[14] Accordingly, I hold that the objection taken to the maintainability of the 2nd and 3rd causes of action on the ground that the plaintiff has not complied with the provisions of section 13(1) of the State Land Act (Cap 132) is premature and is therefore liable to be overruled.

[15] For the reasons aforementioned I make the following orders.

ORDERS

1. The preliminary objection is overruled.
2. No order for costs.




Lyone Seneviratne,

JUDGE

08th November, 2016