

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. : HBC 343 of 2015

BETWEEN : MEREIA RAVASIGA of Lot 19, Sydney Street,
Verata, Nausori, Domestic Duties.

PLAINTIFF

AND : FIJI ELETRICITY AUTHORITY a statutory body
duly established under the Fiji Electricity
Authority Act and having its Head Office at
No. 2, Marlow Street, Suva in the Republic of
Fiji.

DEFENDANT

COUNSEL : Mr. V. Faktaufon for the Plaintiff
Mr. N. Lajendra with Mr. K. Gounder for the
Defendant.

Date of Hearing : 25th May, 2016

Date of Judgment : 01st June, 2016

JUDGMENT

[1] The plaintiff file originating summons on 02nd November 2015 seeking the following reliefs;

1. An order that the defendant carry out the installation process in providing electricity to the plaintiff's residence forthwith.
 2. An order for the defendant to provide relief to the plaintiff's costs of action on solicitor/client basis.
- [2] The position of the plaintiff is that she has been living on the property [Lot 19, Sydney Street, Verata, Nausori] for three years with her husband and her parents have been living on this property for the last 35 years without obtaining approval from the registered owner. The plaintiff and her family have on numerous occasions tried to contact the registered owner but to no avail.
- [3] The plaintiff made an application for power supply to the Fiji Electricity Authority which was unsuccessful. Although, not mentioned in the affidavit filed in support of the originating summons, it is an admitted fact that the plaintiff's first application for a power supply was on the basis that the property in question was a native land and the application was rejected by the defendant when it found that it was a freehold land and not a native land and advised the plaintiff either to obtain consent of the registered owner of the property or to obtain a sealed order from the Court. The plaintiff then instituted proceedings in the Magistrate's Court and later withdrew the action and instituted these proceedings.
- [4] The defendant's position is that in the case of freehold land only the owners are authorised to give consent for the supply of electricity to their properties and if the registered owner is deceased executor/administrator of the estate of the deceased owner must give consent.
- [5] At the commencement of the hearing the learned counsel for the defendant raised a preliminary objection to the maintainability of this action on the ground that since the plaintiff has failed to tender a proper application for electricity supply in terms of section 61 of the Electricity Regulations the defendant had no request to consider.
- [6] Section 61 of the Electricity Regulations provides as follows;

Every person who desires to be supplied with energy by the authority or a licensed supplier shall fill in, sign and deliver to the authority of licensed

supplier an application on a form to be supplied by the authority or licensed supplier for that purpose.

[7] In this case it is common ground that the plaintiff did not tender a proper application for the consideration of the defendant. The plaintiff could not have made an application as required by the defendant for the reason that she did not have the consent of the owner of the property. It is the position of the plaintiff that the owner(s) of the property cannot be located. It is therefore, practically impossible to prefer an application for the electricity supply acceptable to the defendant in view of the conditions contained in its letter 15th April 2015. When this letter was written to the plaintiff the defendant knew very well that the plaintiff could not have made an application without either the consent of the owner of the property or a sealed court order for it to provide the power supply. The defendant cannot therefore, be now heard to complain that the plaintiff is not entitled to have and maintained this action without first making a proper application to the defendant. It is important to note that if the plaintiff is successful in securing a judgment in her favour there will be no difficulty in making an application. For these reasons I hold that the preliminary objection raised by the defendant to the maintainability of this action by the plaintiff is without merit and accordingly overruled.

[8] One of the grounds urged by the plaintiff was that she had become the owner of the property by virtue of the provisions of section 78 of the Land Transfer Act (Cap 131) which provides as follows;

(1) Where-

- (a) Any person is in possession of any land subject to the provisions of this Act, for which a certificate of title has been issued or a Crown grant registered under the provisions of this Act; and
- (b) such possession has been continuous for a period of not less than twenty years, and is such that he would have been entitled to an estate in fee simple in the land on the ground of possession if the land had not been subject to the provisions of this Act,

he may apply to the Registrar in the manner hereinafter provided for an order vesting the land in him for an estate in fee simple or for such other estate or interest as may be claimed by him:-

Provided that, unless such person has been in possession of such land for a continuous period if not less than thirty years, no such application may be made in respect of any land or any part thereof, if the registered proprietor of, or any person appearing by the register to be entitled to the benefit of, any estate or interest therein is under any disability.

(2) For the purposes of this Part, possession of any land by any other person through or under whom any person making application under the provisions of this section (hereinafter in this Part referred to as "the applicant") claims, shall be deemed to be possession by the applicant.

[9] This section does not make provision for automatic vesting orders upon completion of twenty years possession. It only permits the possessor to make an application to the Registrar of Titles seeking a vesting order. The possessor becomes the registered owner only upon the making of a vesting order. Therefore, the plaintiff is not entitled to seek a judgment in this case on the ground that she had acquired title to the property pursuant to section 78 of the Land Transfer Act (Cap 131).

[10] Section 15(1) of the Electricity Act (Cap 180) provides thus;

Subject to the provisions of subsection (2), in so far as it is able to do so, the Authority shall supply energy to any person, other than a licensee, requiring a supply of energy, if such person undertakes to enter into a contract with the Authority, giving such security as the Authority may require, to become a consumer and to undertake, or continue to receive, and to pay for a supply of energy upon such terms and conditions as the Authority may determine.

[11] The learned counsel for the plaintiff submitted that the plaintiff had given the undertaking to the defendant as required by the above provisions but the application was subsequently rejected due to lack of consent of the owner of the

property and since the defendant had installed an electricity connection on the same land at the plaintiff's uncle's premises, there is no reason why the same facility cannot be afforded to the plaintiff. The defendant did not deny that it provided power to a house on the same land without the consent of the owner. The only ground on which the defendant had refused to provide the plaintiff with electricity is that the plaintiff had failed to obtain the consent of the registered owner of the property. The Electricity Act does not provide for such a requirement.

[12] The words “**any person**” in section 15(1) of the Electricity Act simply means that any person who is in need of electricity. The section does not impose any qualification other than what is stated therein that is, keeping of security, entering into an agreement and any other condition the Electricity Authority may impose.

[13] The defendant does not say under what provision of the law it imposed the condition that the plaintiff must have the consent of the owner of the property to obtain electricity to her house. If the defendant imposed this condition under the last limb of section 15(1) of the Electricity Act, which reads as, “*upon such terms and conditions as the Authority may determine*”, it is, in my view, very unreasonable. The word “**shall**” in section 15(1) makes it imperative for the defendant to provide electricity to any person subject to the conditions contained in that section. The plaintiff and her family members who have been living on this property for more than 30 years and the owner is a foreigner whose whereabouts are unknown to them. In these circumstances it is not reasonable for the defendant to require the plaintiff to obtain the consent of the owner. Such a condition will have the effect of nullifying the purpose for which the provisions of section 15(1) was enacted. These provisions must be interpreted in a manner that will facilitate the people who are in need of electricity and not to their detriment.

[14] Section 35(1) of the Constitution of Fiji provides that the State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to accessible and adequate housing and sanitation.

[15] In the present day context electricity is an integral part of housing. In the circumstances of this case the failure of the plaintiff to obtain the consent of the

owner whose whereabouts are not known cannot be a ground for the defendant to refuse her application.

[16] Section 44 (1) of the Constitution provides that if a person considers that any of the provisions of chapter 3 has been or likely to be contravened then that person (or any other person) may apply to the High Court for redress. Section 44(4) provides that the Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available.

[17] The Fiji Electricity Authority has the monopoly in providing electricity within the country and there is no alternative to electricity. Therefore, the plaintiff is entitled to succeed in this action.

[18] For the reasons aforesaid I make the following orders.

[19] **ORDERS**

1. The defendant is ordered to install electricity supply to the plaintiff's residence if an application made by the plaintiff, and after satisfying the requirements of section 15(1) of the Electricity Act (Cap 180).
2. Taking all the circumstances of this case into consideration I make no order for costs.




Lyone Seneviratne

JUDGE

01st June 2016