

In the High Court of Fiji
At Suva
Civil Jurisdiction

HBC 206 of 2020

Navitalai Koroï Bogitini

Anare Sovu

Letila Dica Mataitoga

Penieli Bikei

Josua Daveta

Plaintiffs

v

Kamal Deo Sharma

trading as KEMS Wholesalers & Retailers

Defendant

Counsel: Ms L. Jackson for the plaintiffs

Ms S. Nand for the defendant

Date of hearing: 8th February, 2021

Date of Judgment: 11th August, 2022

Judgment

1. The plaintiffs, in their originating summons seek declarations that the Sub-Lease Agreement, (SLA) between the Mataqali Valewai Trust, (MVT) and the defendant is null and void ab initio and the defendant is illegally occupying TLTB No. 4/5/11232, Lot 9, Natuba Subdivision, Tavuki, Kadavu, (the land). The plaintiffs also seeks vacant possession of the land.

2. The first plaintiff, a trustee of the MVT in his supporting affidavit states that on 26 July, 2018, the former trustees of the MVT,(Sireli Watisoko, Semisi Ketenalagi, Samuela Sautamata, Mataiasi Veretayaco, Jalesi Mara, Aminiasi Cula and Ulaiasi Rabesa Sovu,) were removed as trustees by Amaratunga J in HBC 287 of 2016. On 27 August, 2018, the members of Mataqali Valewai,(MV) appointed the plaintiffs as new trustees.
3. On 4 December, 2015, the former trustees of the MVT had entered into a Sub-Lease Agreement with the defendant to lease the land for a term of 50 years commencing 1 January, 2016. On 23 December, 2015, TLTB granted consent to the defendant for the sub-lease. On 14 March, 2016, the former trustees signed an Agreement for Lease No. 4/5/11232 with TLTB. The SLA and consent to sub-lease are illegal and void, as both pre-date the Agreement for Lease. The affidavit concludes that the defendant is in illegal occupation of the Agreement for Lease.
4. The defendant, in his affidavit in opposition states that the first plaintiff was removed in 2014 by members of the Mataqali. The present record of the Titles Office and the Minutes of the 2014 Board meeting provide that Sereli Watisoko, Semisi Ketenalagi, Samuela Sautamata, Mataiasi Veretayaco, Jalesi Mara, Aminiasi Cula, and Ulaiasi Rabesa Sovu are still trustees and new trustees were neither appointed nor registered. The plaintiffs do not have locus standi to institute this action. The members do not have knowledge of these proceedings. He obtained consent from iTLTB for the lease.
5. The plaintiffs, in their reply states that they were appointed as trustees by members of the MV at a meeting on 27 August, 2018, in terms of the Orders of Court. The plaintiffs were not required to register their appointment as trustees of the MVT with the Registrar of Titles. The plaintiffs do not require the majority consent of the members of the MV to bring this action.

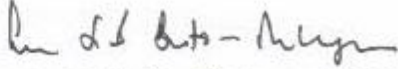
The determination

6. The plaintiffs contend that the SLA between the MVT and the defendant of 4 December, 2015, is null and void ab initio.
7. The defendant contends that the plaintiffs have no locus standi to bring these proceedings, since the present record of the Titles Office and the Minutes of the 2014 Board meeting provides that Sireli Watisoko, Semisi Ketenalagi, Samuela Sautamata, Mataiasi Veretayaco, Jalesi Mara, Aminiasi Cula, and Ulaiasi Rabesa Sovu are still trustees and new trustees were neither appointed nor registered.
8. In my view, the contention that the plaintiffs have no locus standi to bring these proceedings for the reason stated by the defendant cannot be maintained, as on 26th July, 2018, Amaratunga J in HBC 287 of 2016 removed the stated persons as trustees.
9. Order was also made that new trustees be appointed at a meeting of the MV.
10. The Minutes of the meeting of 27th August, 2018, provide that the plaintiffs were appointed as “*new trustees for the Mataqali replacing the old Trustees*”.
11. I now consider the case for the plaintiffs.
12. On 4th December, 2015, the MVT executed a Sub-Lease Agreement, (SLA) to lease the land to the defendant. However, as at that date, the Agreement for Lease of the land was not executed by the iTLTB and the trustees.
13. In my view, the SLA is void ab initio, as it pre-dates the Agreement for Lease which was executed subsequently between the iTLTB and the trustees of MVT on 14th March, 2016.
14. In my judgment, the defendant is in illegal occupation of the land and the plaintiffs are entitled to vacant possession.

15. **Orders**

- a. I declare that the Sub-Lease Agreement between the Mataqali Valeiwai Trust and the defendant of 4 December, 2015, is null and void ab initio and the defendant is in illegal occupation of Lot 9, Natuba Subdivision, Tavuki, Kadavu.
- b. The defendant shall give the plaintiffs vacant possession of Lot 9, Natuba Subdivision, Tavuki, Kadavu on or before 11th September, 2022.
- c. The defendant shall pay the plaintiffs costs summarily assessed in a sum of \$ 1500




A.L.B. Brito-Mutunayagam
JUDGE
11th August, 2022