

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 198 OF 2022

BETWEEN: ROHIT RITESH BHAN and PHUL KUMAR of Navo, Nadi. **PLAINTIFFS**

AND: ILIESA AND OCCUPANTS of Navo, Nadi. **DEFENDANTS**

BEFORE: Hon. A.M. Mohamed Mackie –J

APPEARANCE: Mr. Elwin Dass- For the Plaintiffs.
Defendant absent & No representation

DATE OF HEARING: 23rd November, 2022.

DATE OF JUDGMENT: 01st March, 2023.

JUDGMENT

INTRODUCTION:

1. The plaintiffs on 12th July, 2022 filed their Writ of Summons and the Statement of Claim against the Defendant seeking the following reliefs:
 - a. *Order for vacant possession of the flat situated on Crown Lease No. 8189 the property of the Plaintiff.*
 - b. *Judgment for the sum of \$1,000.00 (One Thousand Dollars) being rental arrears.*
 - c. *Damages for continued illegal occupation \$ 100,000.00 (One Hundred Thousand Dollars)*
 - d. *Costs on Solicitor/ Client indemnity basis.*
 - e. *Any other relief which the Honorable Court seems just.*
2. The action is founded on breach of a verbal Agreement, which, as per a verbal agreement, had allowed the 1st named defendant to occupy a flat out of two flats constructed by the Plaintiffs as bona fide and equitable owners of 800m2 residential lot situated on Crown Lease No.8189, being the file no. LD 4/10/1554 known as Lot 7 on ND 5183 situated at Navo, Nadi.
3. The writ of summons was, reportedly, served on the defendant. The plaintiff on 13th July, 2022 filed an affidavit of service sworn on 20th July, 2022 by **Mr. Krishneel Kunal Kumar**, a Law Clerk in proof of service. As per the report, it was personally served on

the defendant. But he had refused to acknowledge by signing on the acknowledgment copy.

4. The defendant neither filed an acknowledgement of service nor did he file a statement of defence. As a result, the plaintiff filed a Notice of Motion (the application) to enter judgment by formal proof, against the defendant pursuant to Order 19, Rule 2,3,4,5 & 6 of the High Court Rules 1988 ('HCR'), which says:

Default of defence: Mixed claims (O 19, R 6)

"6 Where the plaintiff makes against a defendant two or more of the claims mentioned in Rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he or she would be entitled to enter under those Rules if that were the only claim made, and proceed with the action against the other defendants, if any".

5. This application was also, reportedly, served on the defendant. Again, the plaintiff filed an affidavit by Mr. **Krishneel Kunal Kumar**, Law Clerk in proof of the service. As per the affidavit, it was personally served on the defendant on 16th August, 2022, but he had again refused to acknowledge by signing on the acknowledgment copy.
6. The matter proceeded for formal proof hearing 23rd November, 2022. At the hearing, without the presence of the defendant or any representation on his behalf, the plaintiff, **Mr. Viveka Nand** (a Son of the Original Lease-holder , namely, **Sukh Raj**) , the second named Plaintiff, namely, **Phul Kumari**, and the 1st named Plaintiff, namely, **Ritesh Rohit Bhan**, gave evidence respectively .
7. At the trial following documents were marked as "Pex-1" to substantiate the Plaintiff's' claim;
 - i. Agreement entered into on 11th June, 2003 between **Kamla Wati**, (who was the Administratrix of the Estate of aforesaid **Shuk Raj**, the original Lease holder), and the second Plaintiff **Phul Kumari** , to sell part of the Land which is the entitlement of **Viveka Nand**, as a Trustee and beneficiary, being a Son of said Shuk Raj.
 - ii. The Crown Lease No.8189 registered on 24th December, 1982 issued in the name of Shuk Raj.
 - iii. The Letters of administration bearing No.28152 issued on 23rd June,1992 unto said Kamla Wati, and
 - iv. The site Plan showing the Land in question.

BACK GROUND

8. The Plaintiff are claiming to be the bona fide and equitable owners of the land in dispute as per the documentary and the oral evidence adduced at the trial. The Plaintiff claims to have constructed a dwelling House consisting of two (2) flats.

9. The defendant became a monthly Tenant of the Plaintiff on a verbal Agreement with the 1st named Plaintiff at the rate of \$350.00 per month, and recently he has fallen arrears of rent for the Months of May, June and July 2022 amounting to \$1,000.00 plus a further sum of \$350.00 equivalent to one month's rental as bond money.
10. Plaintiff complains of arrears of rental and bond money , harassment , nuisance and deprivation of the Plaintiff's peaceful enjoyment of the property. Despite the notice to vacate dated 27th May 2022, the Defendant has failed to vacate. Plaintiff suffers loss and damages due to defendant's continued and forcible occupation of the premises in suit.

EVIDENCE:

11. **PW-1** states that His Father and Phul Kumari's fathers are siblings, thus the 2nd named Plaintiff Phul Kumari is his Cousin Sister. That his Father is deceased Shuk Raj. The lease is now expired and, he and his other brothers are the Trustees and the process of renewal of Lease is now underway. He also stated that the probate was granted to his Mother KAMLA WATI. This witness also confirmed that, he being a beneficiary of the Will, has sold his share and beneficial interest unto the 2nd Plaintiff Phul Kumari. He said it was his Mother, Kamla Wati, as the Administratrix of the Estate of Shuk Raj, who signed the Agreement with the 2nd Plaintiff Phul Kumari, to sell the piece of Land, on which the flat in question is situated.

PW-2 (the 2nd named plaintiff) in her testimony confirmed that there was an Agreement between her and the Administratrix of the estate, namely, Kamala Wati, to sell the right and interest of Viveka Nand, in the extent of 800 square meter land. According to the witness Viveka Nand is a Trustee of the Estate. This witness identified her signature in the Agreement marked "Pex-1".

PW-3, the 1st named Plaintiff in his evidence speaks as to how the defendant came to be a tenant in the premises in suit on a verbal Agreement only for a six months' time and fell in arrears of rent for the Months of May, June and July. The witness also states that the defendant has failed pay the bond money too and despite several reminders he has failed to pay, not only the said arrears, bond money, but also the rental from the month of August.

DISCUSSION

12. Through the oral and documentary evidence led before me, it became apparent that after the demise of the Original Lessee **Shuk Raj**, the Letters of Administration was granted to Shuk Raj's wife KAMLA WATI, who is the Mother of the PW-1 Viveka Nand. It is the said the Administratrix of the deceased's Estate, namely, KAMLA WATI, has entered into the Agreement with the 2nd named Plaintiff, Phul Kumari, for the sale of the right and interest of Vivek Nand (PW-1) .

13. It is also revealed through the evidence that the said Viveka Nand, along with his two other siblings and mother, was a Trustee and beneficiary of the Estate of Shuk Raj. It is the beneficial interest of the said Viveka Nand in the Land in question that has been agreed upon to be sold as per the Agreement between the said Administratrix Kamla Wati and the 2nd Plaintiff Phul Kumari.
14. It is also has transpired that, though the Original Lease has expired, pending the issue of a new Lease, the Plaintiffs have put up a dwelling House with 2 flats and living in one flat there, while renting the flat No.1 with one room to the defendant from December, 2021.
15. As per the evidence, the first named Plaintiff (PW-3) Rohit Ritesh Bhan , had permitted the defendant to occupy premises temporarily for a period of 6 months . The defendant, after occupying the flat -1, has failed to pay the rent for 3 months (ie.May, June, July, 2022 and continue to do so causing loss and damages to the plaintiffs.
16. I am also convinced that the defendant, whose occupancy was limited to 2 persons initially , has commenced bringing outsiders as well causing nuisance and various other issues to the Plaintiffs.
17. The question that needs to be answered is the *locus standi* of the Plaintiffs to have the Defendant evicted.
18. Generally, a court of equity may intervene to declare the existence of a beneficial interest in property.
19. The 2nd named plaintiff has agreed to purchase the beneficial interest of the PW-1, Viveka Nand, which derives from his deceased Father's Estate as per the Original Lease , Letters of Administration and Agreement dated 11th June , 2003 all marked as "Pex-1". The Plaintiffs have constructed their own building out of which a part has been rented out to the defendant at the rate of \$350.00 per month, which he has failed to pay as agreed and finally fallen arrears.
20. The defendant, who came as a tenant, cannot dispute the Ownership or claim for the Ownership of his Landlord or Lessor. A tenant can occupy the premises in suit as long as his tenancy/ lease Agreement permits, subject to payment of the agreed rent and complying with the other explicit and implied conditions thereto.
21. The evidences led by and on behalf of the plaintiffs have gone uncontested. After considering the evidence, both oral and documentary, adduced by and on behalf of the Plaintiffs, and considering that neither the defendant nor his counsel has bothered to appear to defend the action, I accept all the evidence given by and for the plaintiff.
22. Accordingly, I do find that the plaintiffs, ROHIT TITESH BHAN and PHUL KUMARI have made out their case for the eviction of the defendant and recovery of arrears of rent

from the Month of May 2022 till the eviction of the defendant and all those holding under him from the premises in suit.

The claim for bond money need not be granted as the defendant is no longer a tenant and the plaintiff is granted other reliefs.

ORDERS

23. Following Orders are granted in favor of the Plaintiffs against the defendant and all those holding under him.

1. Plaintiffs' action succeeds.
2. Order for vacant possession of the flat 1 situated on the Crown Lease No.8189 to be given to the Plaintiffs within 28 days from today.
3. Judgment for the sum of \$1,000.00 being the arrears of rental till the month of July, 2022.
4. Judgment for damages at the rate of \$350.00 per month from August 2022 till the vacant possession is given to the Plaintiffs.
5. Defendant shall also pay \$500.00 being the summarily assessed costs.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 1st day of March, 2023.

SOLICITORS:

For the Plaintiffs:

Messrs Pillai Naidu & Associates, Barristers and Solicitors

For the Defendants

Absent and no representation