

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 247 of 2022

BETWEEN : **SAGACITY INVESTMENT PTE LIMITED**, a limited liability company
having its registered office at 153 Ratu Sukuna Road, Nasese, Suva

PLAINTIFF

AND : **THE REGISTRAR OF TITLES** Level 1, Civic Towers Building,
Victoria Parade, Suva.

FIRST DEFENDANT

AND : **THE ATTORNEY GENERAL OF FIJI** as the legal representative of the
First Defendant, Suvavou House, Victoria Parade, Suva.

SECOND DEFENDANT

AND : **PAUL PHILLIPS** of 1 Coconut Drive, Sonaisali, Nadi, Company Director

THIRD DEFENDANT

Counsel: **Plaintiff: Ms. Muir**
 1st and 2nd Defendants: Ms Harikrishan. A
 3rd Defendant: Mr. V. Singh and Ms Naco. M

Date of Hearing: **14.2.2023**

Date of Judgment: **11.4.2023**

Catch Words

Land Transfer Act 1971 Sections 23,103,104,165,166,167,168. Priority of instruments – orders directed to Registrar of Titles – Order 42 rule 4 of High Court Rules 1988, Section 53 of Companies Act 2015

JUDGMENT

INTRODUCTION

1. Plaintiff instituted this action invoking jurisdiction in terms of Section 168 of Land Transfer Act 1971 and also Order 7 and 28 of High Court Rules 1988 and inherent power of the court. Plaintiff had sought to register of three titles and instruments, pursuant to purported sale and purchase agreements entered with respective vendors. All three land parcels were iTaukei Leases that required consent of Itaukei Land Trust Board (ILTB) in terms of Section 12 of Itaukei Land Trust Act 1940. The vendors were restrained not to deal with said titles. The court made these orders on 26.10.2020 but it was not registered on the title, and vendors entered with Plaintiff purported sale and purchase agreements. Despite the order of the court restraining ILTB, it had illegally, consented to the purported sale in violation of the said order of the court made on 26.10.2020. The order of court made on **26.10.2020 *inter alia* directed first Defendant** to enter caveats against all three titles. This court order was sealed on 17.12.2021, and served to first Defendant on 20.12.2021. Plaintiff had lodged purported transfers of same three land parcels on 8.12.2021 and seeks an order to direct first Defendant to register the transfers, on the basis that application for transfers were made before the order of the court was served to first Defendant.

Before the transfer of the three land parcels in pursuant to purported sale and purchase agreements and respective consents obtained in violation of court order, **first respondent received**, orders made on 26.10.2020. First Respondent did not register the Plaintiff's transfers and desired to seek directions of the court in terms of Section 165 of Land Transfer Act 1971. Plaintiff had requested that application to be withdrawn by first Defendant and filed this originating summons.

Plaintiff is seeking priority contained in Section 23 of Land Transfer Act 1971 to register unlawfully entered sale and purchase agreements, and illegally obtained consent of ILTB for said transfers for registration. The purported consent of ILTB granted in violation of court order and purported sale and purchase entered in violation of court order cannot be the basis of court order for registration when these facts were brought to the notice of first Defendant prior to registration. Order of the court made on 26.10.2020 was a direction aimed at first Defendant to register three caveats and Section 23 of Land Transfer Act 1971, has no application to such an order.

FACTS

2. The Plaintiff has initiated these proceedings by way of an Originating Summons dated 31 .8. 2022, seeking clarifications in orders (a),(b) and (c) regarding non registration of three transfers by first Defendant.

3. Plaintiff's 'claim' is contained in prayer (d) of the Originating Summons where it seeks to register three transfers and mortgages relating to the following properties iTaukei Lease Nos. 26608, 32670 and 32671. (the Properties);
4. Third Defendant has filed proceedings in the High Court at Lautoka in HBC 140 of 2019, seeking specific performance of an agreement to sell and transfer the Properties to him.
5. On 17 .9. 2020 an order was made restraining the dealing of the Properties in HBC 140 of 2019. This was an interim order on an application that the Third Defendant had filed seeking orders restraining any dealing with the Properties until HBC 140 of 2019, was a determined.
6. On 26 .10. 2020 *inter alia* an order was made on the application restraining any dealing with the Properties in the following manner

“1. **The Registrar of Titles** shall enter a caveat (sic) on the properties comprised in iTaukei Lease No 26608, iTaukei Lease No 32671 and iTaukei Lease No 32670 and Agreement to Lease with the reference number LD No 60/1020 in favour of the Plaintiff until determination of this action.’(emphasis added)
7. Apart from above order there was restraining order against all eight Defendants including vendors of the Properties and ILTB, preventing them from dealing with the Properties.
8. This order was not registered on the titles of the Properties when Plaintiff entered sale and purchase agreements with the vendors (who were restrained by court order made on 26.10.2020) and consent of ILTB was granted (again in violation of court order made 26.10.2020).
9. Upon perusal of the titles there were no judgments registered so Plaintiff lodged the documents to transfer the Properties on 8.12.2021. Subsequently, third Defendant who was the Plaintiff in HBC 140 of 2019, sealed the orders made on 26.10.2020 and submitted it to first Defendant, on 20.12.2021.
10. First Defendant, who was not a party to HBC 140 of 2019, was directed by court to register three caveats on the titles of the Properties on 26.10.2020, until final determination of the action and this action had not concluded.
11. First Defendant, had refused to register the three transfers to the Properties to Plaintiff submitted on 8.12.2021 as they remained in unregistered state till the receipt of sealed order of 26.10.2020

12. Plaintiff seeks an order /direction to first Defendant to register three transfers of the Properties irrespective of violations of court order by vendors and ILTB and also to contravene order of the court made to first Defendant to register three caveats on the titles of the Properties!

Counter Claim – Section 165 of Land Transfer Act

13. First Defendant, had also stated that a Court order in HBC 140 of 2019 is dated as of the day on which it is pronounced and it takes effect from the day of its date, hence seeks court's direction on registration of Plaintiff's instruments. (see paragraph 26 of the affidavit of Krystal Prasad). Accordingly, I consider this request as counter claim by first Defendant seeking directions of the court in terms of Section 165 of Land Transfer Act.

ANALYSIS

14. The issue before the court is whether Plaintiff's lodgment instruments including transfers on 8.12.2020 of the Properties should obtain 'priority' irrespective of orders of the court made on 26.10.2020 aimed at first Defendant to register three caveats on the Properties. This order was served to first Defendant on 20.12.2020.
15. Plaintiff's claim under originating summons is made in terms of Section 168 of the Land Transfer Act 1971 states

“Power of court to direct Registrar

168. **In any proceedings respecting** any land subject to the provisions of this Act, or any estate or interest therein, or in respect of any transaction relating thereto, **or** in, respect of any instrument, memorial or other entry or endorsement affecting any such land, estate or interest, the court may by decree or order direct the Registrar to cancel, correct, substitute or issue any instrument of title or make any memorial **or** entry in the register or any endorsement **or** otherwise to do such acts as may be necessary to **give effect to the judgment or decree or order of such court.**” (emphasis added)

16. The Plaintiff in these proceedings has not obtained any Court order or Judgment that it is seeking to give effect to. In contrast Plaintiff is seeking orders of the court to direct first Defendant to 'give' effect to purported sale and purchase agreements and purported consent of ILTB obtained in violation of court orders by vendors and ILTB.
17. In my mind Plaintiff could summon first Defendant in terms of Section 164 of Land Transfer Act 1971 which states,

“164.-(1) If, upon the **application of any person interested** to have any **instrument registered**, or to have any instrument, instrument of title, foreclosure order, vesting order or other document issued under the provisions of this Act, or to dispense with the production of any instrument of title, or to have any act or thing done or performed by the Registrar, **which the Registrar refuses so to do, such person interested may require the Registrar to state in writing the grounds of his refusal and such person may**, if he thinks fit, at his **own cost, summon the Registrar** to appear before the court to **substantiate and uphold the grounds of his refusal, such summons** to be issued out of the court and to be served upon the Registrar six clear days at least before the day **appointed for hearing the complaint** of such person.

18. Plaintiff could summon the first Defendant to court to ‘substantiate and uphold’ the ground for not registering the transfers presented by Plaintiff on 8.12.2021 for over a year. In terms of Section 164 of Land Transfer Act 1971 only first Defendant can be made a party, subject to directions of the court to add necessary parties. Such a hearing is quick and limited, and serves the purpose in a stale mate, situation such as this.
19. First Defendant also could seek direction from court, in terms of Section 165 of Land Transfer Act 1971 and in this action that was the preferred option for fist Defendant, but this was prevented by Plaintiff. This has caused delay and uncertainty as to titles.
20. Section 165 of Land Transfer Act 1971 states,

‘165. Whenever any question arises with regard to the performance of any duties or the exercise of any of the functions by this Act conferred or imposed upon the Registrar or, in the exercise of any of the duties of the Registrar, any question arises as to-

- (a) the true construction or legal validity or effect of any instrument; or
- (b) as to the persons entitled or to the extent and nature of the estate, right or interest, power or authority, of any person or class of persons; or
- (c) the mode in which any entry ought to be made in the register or any endorsement made on any instrument of title; or
- (d) any doubtful or uncertain right or interest stated or dealt with by the Registrar.

it shall be competent for him to refer the same to the court in the prescribed form, which shall require all the parties interested to appear and show cause in relation thereto, and if, upon such reference, the court, having regard to the parties appearing before it, shall think proper to decide the question, it shall have power so to do or to direct any proceedings to be instituted for that purpose or, at the discretion of the court, and without deciding such question, to direct such particular form of entry or endorsement to be made in the

register or on the instrument of title, as the case may be, as in the circumstances shall appear to be just.”(emphasis is mine)

21. Section 164 of Land Transfer Act 1971 allows a party to compel Registrar of Title to justify its position in court and Section 165 of Land Transfer Act 1971, allows Registrar of Title to seek directions. These are two complementary provisions when complex matters arise before Registrar of Title, to seek a determination of court as an efficient method, in cost effective manner. The aggrieved party, from a decision of Registrar could file ‘summons’ seeking determination by court.
22. Section 166 of Land Transfer Act 1971 deals with corrections and Section 167 of Land Transfer Act 1971 also deals to assist the preceding provision as to correction where the court is granted power to produce instrument of title for correction by order of the court.
23. Section 168 of Land Transfer Act 1971, empowers a court to make an order in ‘proceeding’ and ‘court may by decree or **order direct the Registrar to cancel, correct, substitute or issue any instrument of title or make any memorial or entry in the register or any endorsement or otherwise to do such acts as may be necessary** to give effect to the judgment or decree or order of such court’. This is in a proceeding relating to a land subjected to Land Transfer Act 1971. So this is a provision that allows a court to make some orders though, the Registrar of Title is not a party to such action. The paramount consideration is to ‘give effect to’ the Judgment or Orders of the court. So this is a provision to assist the court to make orders in order to give effect to orders and this may be interlocutory or final.
24. I was also submitted Court of Appeal decision by Plaintiff *Central Rentals Limited v Patton & Storck Limited* [1996] 42 FLR 137, but I could not see provisions contained in Section 164 of Land Transfer Act 1971, discussed in the said decision and even Section 168 of Land Transfer Act 1971, was not analyzed but it was held that Section 168 of Land Transfer Act 1971 allowed a party to ‘invoke general jurisdiction’ for ‘unlawful administrative action on his part’. With respect such ‘administrative actions’ can be dealt under Section 164 of Land Transfer Act 1971.
25. *Kadhim v Housing Benefit Board, Brent* [2000] EWCA Civ 344 (20 December 2000) England and Wales Court of Appeal (civ) held, that ratio of a case is not binding if the issue was made without benefit of argument to that effect. I do not have to decide this issue in this case, as there is a counter claim by first Defendant seeking directions of the court. In any event Plaintiff could issue summons to first Defendant seeking explanation in terms of Section 164 of Land Transfer Act 1971.
26. First Defendant had made an attempt to make an application under Section 165 of Land Transfer Act 1971, but this did not eventuate due to Plaintiff preferring an

application in terms of Section 168 of Land Transfer Act 1971, to seek priority under Section 23 of Land Transfer Act 1971.

27. Plaintiff could make this application if first Defendant made a decision not to register, the transfers in terms of Section 164 of Land Transfer Act 1971. Already second Defendant had explained the position after a discussion with parties, in writing which is annexed marked KP3 to affidavit of first Defendant. This letter was addressed to Plaintiff's solicitors explaining the position of first and second Defendants regarding delay in registration of the transfer of the Properties.
28. First Defendant did not refuse the registration, but desired to seek clarification from court in terms of Section 165 of Land Transfer Act 1971, this would be the correct approach.
29. Court had utilize, Section 168 of Land Transfer Act 1971, when making a direction to first Defendant who was not a party to HBC 140 of 2019. This is an enabling provision for court when an order or judgment is made to give directions to first Defendant irrespective of it was not named as a party. This is a vital tool that allows a court to aim an order directly at Registrar of Title.
30. Plaintiff has not obtained no judgment or order to 'give effect' in terms of section 168 of Land Transfer Act 1971, instead seeking orders of the court to compel first Defendant **to disregard direction made by court**, in pursuant to Section 168 of Land Transfer Act 1971 to register caveats on the Properties. This would be misapplication of the said provision, to say the least!
31. Plaintiff's argument is his instruments including the transfer of the Properties were lodged on 8.12.2021 and at that time there was no registered orders or caveats on the title.
32. Apart from direction to first Defendant to enter caveats, there were restraining orders against vendors and ILTB to deal with the Properties, too. After 20.12.2021, knowingly first Defendant could not assist a party to violate a court order under the purported priority in terms of Section 23 of Land Transfer Act 1971.
33. The vendors and ILTB were parties to HBC 140 of 2019 and they were restrained from dealing with the Properties on 26.10.2020. So vendors and ILTB had violated the said orders when sale and purchase agreements were entered for the Properties and consent of ILTB were sought and obtained respectively.
34. Plaintiff is seeking this court to make orders to first Defendant to register purported transfers and purported consent in violation of orders made by another court in HBC

140 of 2019, based mainly on Section 23 of Land Transfer Act 1971. This is another reason not to allow violations of court orders knowingly by first Defendant.

35. Section 23 of Land Transfer Act states

“Except as otherwise provided in this Act, every **instrument presented for registration shall, unless it is a Crown grant, be attested by one witness, and shall be registered in the order of time in which the same is presented for that purpose.** and instruments registered in respect of or affecting the, **same estate or interest shall, notwithstanding any express, implied or constructive notice,** be entitled to priority according to the date of each registration and not according to the date of each instrument itself, and the Registrar, upon registration thereof, shall enter a memorial of the same in the register and, if such instrument is in duplicate as herein provided, he shall deliver the duplicate to the person entitled thereto, and as soon as it has been registered, every instrument shall, for the purposes of this Act, be deemed to be embodied in the register as part and parcel thereof.”(emphasis added)

36. Section 23 of Land Transfer Act 1971, allows **registration of instruments** according to the time of presentation. It cannot apply to direct orders of court to first Defendant which needs no registration for first Defendant to act upon.

37. Priority under above-mentioned, can happen when **instruments are presented** for registration, but if a direct court order is made to first Defendant it comes in to operation immediately or when first Defendant was informed of the order. It can be sealed order or direct communication, a letter or electronic mail. What is paramount consideration in such a communication is that first Defendant should either acknowledge the receipt or evidence to prove that such order was made aware to first Defendant. In my mind there is no need even for formal sealed order for first Defendant to act upon. If informed of the date and case number and the judicial officer who made the order such a direct order to first Defendant can come in to operation immediately. If not there is a possibility of a party to steal a march, by lodging an instrument after court order was made but before it is sealed and served! That is not what happened in this action, but if Plaintiff's contention is accepted such an action by scrupulous party cannot be prevented. This is the rationale in that the effective date of judgment or order, is the date of the order, not the date of service.

38. When the court had made directions to first Defendant to perform a particular act, it must be obeyed. First Defendant is bound to carry out the order of the court as the order for direction is a command from the court. It comes in to effect as soon as it was communicated to first Defendant had received it and aware of it, and the authenticity of the order was established by first Defendant.

39. The fact that order of the court made on 26.10.2020 was sealed almost a year later and served to first Defendant on 20.12.2021 is not a reason to **ignore or disregard order**

of the court, after it was made known. It would be illogical to seek an order of court for violation of court order based on Section 23 of Land Transfer Act 1971, based on purported priority.

40. A sealed court order directed to first Defendant cannot be considered as 'instrument' pending registration. It was direction of court aimed to first Defendant to perform an act preserve *status quo*.
41. Similar orders were made against all the parties in HBC 140 of 2019, including vendors and ILTB. Not only ILTB and vendors had violated said order of the court , but also now requesting first Defendant and this court to prioritize it as against direction of the court in HBC 140 of 2019
42. Order 42 rule 4 of the High Court Rules 1988 states,

Date from which judgment or order takes effect (O.42, r.4)

4.-(1) A judgment or order of the Court takes effect from the day of its date.

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day

43. So irrespective of formalization, the judgment or order, takes in to effect the day it is pronounced.
44. The effect of this rule is found in The Supreme Court Practice (White Book) 1988 p 667 , and it states at 42/3/1

'... all judgments and orders whether pronounced, given or made in Court or in Chambers or by a Judge or Official or ... or Master or Registrar.

Thus a judgment when entered relates back to the day on which it was pronounced (*Guardian of West Ham v Churchwrdens of Bethnal Green* [1895] 1 Q.B. 662); therefore garnishee proceedings, taken between the date when the judgment against the garnishee was pronounced and the date when it was entered, are valid (*Holtby v Hodgson* (1889) 24 Q.B.D 103).

45. The Plaintiff relied on the case of *Redback -v- The Registrar of Titles and TLTB Civil Action No. HBC 377 of 2015*, but there was **no direct order of the court aimed at Registrar of Title** in that case and priority was between two instruments lodged. In contrast to that in this case Plaintiff had lodged instruments including transfers of the Properties, while there was an order against first Defendant to register caveats on the titles of the Properties until determination of the action HBC 140 of 2019.

46. So the issue of 'priority' in this case is direct court order aimed to first Defendant (prohibiting any transfer made on 26.10.2020 but made known on 20.12.2021), and the Plaintiff's purported instruments including transfer dated 8.12.2021. So the above case can be clearly distinguishable.
47. Another feature that can be distinguished is that Plaintiff's purported transfer documents were illegal and clearly in violation of court order that restrained vendors and ILTB from dealing which they had violated to made the instruments illegal.
48. Even if am wrong on the above Plaintiff cannot seek orders directing first Defendant in terms of Section 23 of the Land Transfer Act , due to following irregularities on the face of it
- (a) All three transfer instruments filed with first Defendant, which copies were annexed as TB 11, TB12, and TB13 had not complied with Section 23 of Land Transfer Act 1971. The Plaintiff's instruments do not show that they have been attested by any witness.
 - (b) Form 7 to the schedule to the Land Transfer Regulation 1971, contains the forms that are to be followed for transfer of leaseholds. The Plaintiff has not complied with this form as the attestation clause in the form does not appear in the Transfer instruments.
 - (c) The Plaintiff's Transfers have been signed twice by the same person under common seal. This is contrary to Section 53(1) of the Companies Act 2015.
49. The Plaintiff also relies on sections 103 and 104 of the Land Transfer Act 1971 and for completion those are discussed briefly.
50. Section 103 of the Land Transfer Act provides as follows;
103. Whenever the court has given any judgment, decree or order preferring as proprietor of any estate or interest in land subject to the provisions of this Act, any person other than the registered proprietor thereof, the Registrar, on being served with an office copy of such judgment, decree or order, shall enter a memorial thereof in the register and shall state in such memorial the date of such judgment, decree or order, the date and hour of its production to him, and the name and description of the person in whom such judgment, decree or order such estate purports to vest or interest, and such person shall thereupon be deemed to be the registered proprietor of such estate or interest, and unless and until such entry is made, the said judgment, decree or order shall have no effectual operation.(emphasis added)

51. Section 103 of Land Transfer Act 1971, applies when a court had 'given any judgment, decree or order preferring as proprietor of any estate or interest in land' this has no application to Plaintiff.
52. Section 104 of the Land Transfer Act provides as follows:

“Enforcement of judgments, etc. against land:

104.- (1) No judgment, **decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order issued prior to or after the commencement of this Act shall bind**, charge or affect any estate or interest in land subject to the provisions of this Act unless and until the Registrar has been served with a copy of such judgment, decree or order certified by the court and accompanied by a statement signed by any party interested or his barrister and solicitor or agent specifying-

- (a) the estate or interest sought to be affected thereby;
 - (b) the name, address and description of the person by whom or on whose behalf the same is lodged; and
 - (c) an address or place within Fiji at which notices and proceedings relating thereto may be served.
- (2) The Registrar, on being served with a copy of a judgment, decree or order under the provisions of subsection (1) shall, after marking upon such copy the time of service, enter the same in the register; and with effect from the time of service thereof upon the Registrar such judgment, decree or order shall, subject to the provisions of subsection (2) of section 105, have the effect of, and be deemed to be, a caveat lodged under the provisions of section 106, subject to any prior registered mortgage or charge forbidding the registration of any person as transferee or proprietor of and of any interest affecting, the estate or interest affected by such judgment, decree or order other than in pursuance of such judgment, decree or order.
- (3) Upon the estate or interest in respect of which a judgment, decree or order has been registered under the provisions of subsection (2) having been sold pursuant to such judgment, decree or order, the Registrar shall, on receiving a transfer thereof in the prescribed form (which transfer shall have the same effect as if made by the proprietor) enter a memorial of such transfer in the register; and on such entry being made the purchaser shall become the transferee and be deemed to be the registered proprietor of such estate or interest.

- (4) After the commencement of this Act, no unregistered instrument, document or writing and no equitable mortgage by deposit or otherwise without writing affecting any estate or interest in land shall prevail against a sale under the authority of a judgment, decree or order unless a caveat in respect of such unregistered instrument, document or writing or equitable mortgage shall have been lodged with the Registrar in pursuance of the provisions of section 106 before the service of the copy of the said judgment, decree or order on the Registrar but, in the absence of a caveat, all of the estate and interest of the judgment debtor as well as of any unregistered purchaser, transferee, mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under the provisions of this section.
- (5) The Registrar may register a transfer under the authority of a judgment, decree or order without requiring the production of the duplicate instrument of title:

Provided that the Registrar shall give such notice of intention to register the transfer, at the cost of the transferee, and cause the same to be published, as in the case of the production of a duplicate certificate being dispensed with under the provisions of section 26.”
(emphasis added)

53. This provision has no relevance to the current application as there is no ‘judgment, decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order’ of the Properties. So this cannot be applied by Plaintiff to seek legitimacy to its illegally obtained consent of ILTB and sale and purchase agreements, which clearly violate orders of the court. Section 12 of Itaukei Land Trust Act 1960 requires consent of the ILTB Board. Illegally obtained consent is null and void hence it is not a consent required under section 12 of the said Act. So the instrument of transfer null and void.
54. The contention of Plaintiff cannot hold water as all orders when entered relate back, so before registration the orders comes in to operation to the persons directed by said court as soon as they are alerted to the order of the court. Though first Defendant was not a party HBC 140 of 2019, there was an order made by the court directing first Defendant to enter caveats on the Properties. Court can made directions, by way of orders for third parties depending on the circumstances and Section 168 of Land Transfer Act 1971, is the enabling statutory provision and not limited to that.
55. Due to indefeasibility if there were transactions already entered in the memorials, subject to exceptions under Land Transfer Act 1971, that may remain, but this cannot be applied before registration in order to enter in the memorials of the title, in

violation of court order and or illegal and, or null and void documents in violation of court order. This is a far-fetched argument.

56. As there is a positive direction to first Defendant to enter caveats to the Properties by the direction of court made on 26.10.2020 the effect of that is from the date of order in terms of Order 42 of High Court Rules 1988. So first Defendant is obliged to enter caveats to the properties and Plaintiff's purported pending registration based on illegal sale and purchase agreement and illegal consent of ILTB cannot be registered.
57. There is no indefeasibility prior to registration, hence Plaintiff is misconceived to claim priority for registration in terms of Section 23 of Land Transfer Act 1971.
58. The issues raised as orders in originating summons are addressed as follow same order
 - a. There is no need to 'process judgments' by first Defendant, simply obliged to obey them and comply with such orders. Section 23 of Land Transfer Act 1971 is irrelevant to a court order aimed at first Defendant, it must be complied with as it was a stand alone direction.
 - b. Sections 23, 103, and 104 of Land Transfer Act 1971 were discussed above and need no repetition. Suffice to state they have no application to the issue at hand.
 - c. Plaintiff cannot rely on one or all the above provisions to obtain an order, to register thee transfers of the Properties. First Defendant is directed to forthwith comply with the order of 26.10.2020 in HBC 140 of 2019.
 - d. The orders sought by Plaintiff in this section (1),(2) and (3) are refused.
 - e. Order seeking 'not to give effect' to orders in HBC 140 of 2019 till the registration of transfers of the Property is denied for obvious reasons.

CONCLUSION

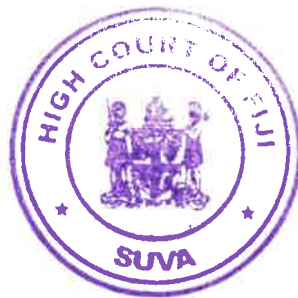
59. Plaintiff's originating summons dismissed, firstly, as Section 23 of Land Transfer Act 1971, had not complied with requirements under Section 23 of Land Transfer Act 1971, and also Section 53(1) of Companies Act 2015. Secondly, Defendant is ordered in HBC 140 of 2019 to lodge caveats on the Properties on 26.10.2020 until finalization of HBC 140 of 2019, and this order comes in to effect from that date it was made. First Defendant is obliged to obey orders of the court made on 26.10.2020 when it was informed and accepted the receipt. Thirdly. The consent of ILTB was obtained in violation of court order and same is true regarding vendors who entered sale and purchase agreement with Plaintiff disregarding, the restraining order not to deal with the Properties. So the basis of transfer is illegal. No transfer can be ordered to be registered by court when the basis of the said registration is violation of court order, and or on null and void documents. First Defendant had correctly sought to seek directions in terms of Section 165 of Land Transfer Act in the affidavit in

Response, and I consider that as counter claim. Accordingly first Defendant is directed to enter caveats in terms of order made on 26.10.2020 in HBC 140 to preserve the status of the three Properties. Plaintiff's originating summons struck off, subject to directions of comply with order of court in HBC 140 of 2019. As the matter had raised some important legal issues that needed clarification from court, no order as to costs ordered.

FINAL ORDERS

- a. Originating summons struck off.
- b. First Defendant is seeking directions of the court, accordingly an order is made to place caveats as ordered on 26.10.2020 in HBC 140 of 2019 forthwith on Itaukei Lease Nos 26608, 32670 and 32671.
- c. No order as to cost considering importance of legal issues discussed.

Dated at Suva this 11th day of April, 2023.



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Justice Deepthi Amaratunga
Judge High Court, Suva