

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**HBC 240 of 2021**

**BETWEEN:**                **FANTASY PROPERTIES PTE LIMITED** a limited liability company having its registered office at Lot 20, Waqadra Industrial Subdivision, Namaka, Nadi.

**FIRST PLAINTIFF**

**AND:**                        **FANTASY ROAD INDUSTRIAL PARK PTE LIMITED** a limited liability company having its registered office at Lot 20, Waqadra Industrial Subdivision, Namaka, Nadi.

**SECOND PLAINTIFF**

**AND:**                        **SEADAWN ESTATE (FIJI) PTE LIMITED** a limited liability company having its registered office at 74 Ellis Place, Fantasy Island, Nadi.

**FIRST DEFENDANT**

**AND:**                        **JUXA BEACH (FIJI) PTE LIMITED** a limited liability company having its registered office at 74 Ellis Place, Fantasy Island, Nadi.

**SECOND DEFENDANT**

**AND:**                        **THE FANTASY COMPANY FIJI PTE LIMITED** a limited liability company having its registered office at 74 Ellis Place, Fantasy Island, Nadi.

**THIRD DEFENDANT**

**AND:**                        **ABBAS ALI** of 3 Cruickshank Road, Nadi Airpot, Director.

**FOURTH DEFENDANT**

Appearances:                Ms. Choo N. for the Plaintiffs  
                                      Ms. Lata S. for the Defendants  
Date of Hearing:                15 March 2023  
Date of Ruling:                18 July 2023

**R U L I N G**

1. Before me now is a Summons for Trial of a Preliminary Point filed by A.K. Lawyers for and on behalf of the defendants.
2. The Summons is filed pursuant to Order 33 Rule 3 and Rule 7 of the High Court Rules 1988.
3. It is supported by an affidavit of Abbas Ali sworn on 24 June 2022.

4. The plaintiffs have filed an affidavit of King Anwar Hussein sworn on 13 July 2022 in opposition to the Order 33 application.
5. Essentially, what the defendants seek by their application is for the court to determine as a preliminary point the issue as to whether or not a purported agreement which was entered into between the plaintiff and the defendants is a valid agreement which is enforceable in law.
6. In the said purported agreement, it is alleged:
  - (i) that the defendant did agree to give the plaintiff the right to use a private road (“**access road**”) belonging to the defendant
  - (ii) that the plaintiff’s only practical means of accessing his neighboring property was through that access road.
  - (iii) that the agreement started as an informal arrangement which was later formalized into a written agreement executed by both parties on 14 September 2016.
  - (iv) that the plaintiff had paid some consideration pursuant to that agreement
  - (v) from September 2017, the plaintiffs have been allowed to use the access road without any problem.
  - (vi) that the plaintiffs expected the defendants to register a proper Deed of Easement to record the right of way granted to the plaintiff.
  - (vii) however, on 12 March 2021, the plaintiff received a Notice to Desist from the defendant’s solicitors alleging that the plaintiffs were using the said access road illegally.
7. The private access road in question sits on a state lease. The said lease is a protected lease granted by the state in favour of the defendant.
8. Section 13(1) of the State Lands Act provides:

13.-(1) 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.**

9. The plaintiffs' entire claim is premised on the assumption that the arrangement they had with the defendants was perfectly legal and enforceable in law. The remedies they seek are all about enforcing that arrangement. The claim does not plead any equitable relief such as equitable damages in case the agreement is unenforceable (there is some suggestion, to which I make no comment, that even in some situations where a the equitable remedy of specific performance is not available because the agreement is not enforceable in law, equitable damages in lieu of specific performance may be available).
10. The main question which the defendants wish to be determined as a preliminary point is whether the purported arrangement between the parties was a "dealing with the land" in the sense contemplated by section 13(1) and if it is so, whether the said arrangement therefore is null and void an unenforceable.
11. In my view, because the pleadings do not claim an equitable relief, the preliminary determination of this point may dispose of the claim finally.
12. Accordingly, I grant Order in Terms of the Summons.
13. Parties to bear their own costs.



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Anare Tuilevuka.  
**JUDGE**

**18 July 2023**