

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 386 of 2020

BETWEEN: **MARCO POLO HOLDINGS PTE LIMITED** a duly incorporated
company having its registered office at Garden City, Laucala Bay,
Suva, Fiji.

PLAINTIFF

AND: **SANDEEP ANAND REDDY** of Naulu, Nakasi, Fiji.

DEFENDANT

Representation : Ms. L. Prasad (Sherani) for the Plaintiff.
 : No representation or appearance of the Defendant.

Date of Hearing : 16th November 2023.

RULING

A. Introduction

[1] The Plaintiff on 2nd November 2023 filed a Summon (for sale of property) pursuant to Order 31 Rule 1 of the High Court Rules 1988 and the inherent jurisdiction of the Court for the following orders:

“ (a) An order ... allowing the Plaintiff through his Solicitors, Messers, Sherani & Co to sell the Defendant’s interest iTaukei Lease no 35476 Vunivaudamu (part of) being Lot 1 on Plan SO 8763 in the Tikina of Nausori Province of Tailevu and having an area of 1027 m² to recover judgment debt and all costs including cost thereof; and

(b) An order that Deputy Registrar of the High Court do sign the transfer document and all other necessary documents to transfer of iTaukei Lease No. 35476 to the purchaser.

(c) That in the event if the present application is not heard within the time, the Plaintiff seeks to this honourable Court to grant extension of the judgment registered on the lease."

The summons was accompanied by an affidavit of Keven Yee, manager of the Plaintiff Company.

B. Brief Background

[2] On 31st December 2020 the Plaintiff filed a Writ of Summons seeking judgment in the sum of \$89,036.42, interest on the said sum at the rate of 10% per annum from 1st May 2016 to the date of judgment, exemplary and punitive damages, costs on indemnity basis and such further relief as court deemed just. On 8th February 2021 default judgment was entered against the Defendant to pay the Plaintiff the sum of \$89,036.42 together with default interest at the rate of 10% per annum from 1st May 2016 until the date of full payment together with \$333.75 costs (made up of solicitor's costs, writ of summons and praecipe and judgment).

[3] On 15th November 2021 the Plaintiff registered the judgement on the Defendant's lease. On 13th January 2022 the Plaintiff filed summons to sell the Defendant's Property (iTaukei Lease No. 35476) to recover the judgment debt. This was listed for 10th March 2022. On 3rd March 2022, the Defendant filed summons to set aside the default judgment. On 10th March 2022, Master Lal ordered that Plaintiff's summons for sale be hold in order to deal with the setting aside application by the Defendant. On 23rd August 2022, Master Lal dismissed the Defendant's setting aside application.

[4] The summons filed on 13th January 2022 by the Plaintiff was dealt with by Justice Brito. The Plaintiff's summons failed as the registration of the judgement lapsed after six months and an application for extension was not made before that period.

C. The Law

[5] Order 31 rule 1 of the High Court Rules provides that "*where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or*

matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct. In this Order, "land" includes any interest in, or right over, land."

[6] The lawyer for the Plaintiff informed me that they have re-registered the judgment as the previous judgment had lapsed. The new registration lapses on 3rd January 2024. I note from the certified copy of the iTaukei Lease No 35476 that two judgments are endorsed on the lease. One is No. 909887 registered on 15th November 2021 and the other No. 936165 registered on 3rd July 2023.

[7] The law relating to registration of judgments is found in sections 104 and 105 of the Land Transfer Act 1971.

"Section 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.

Section 105 –

(1) Upon production to the Registrar, by way of application, of sufficient evidence of the satisfaction of any judgment, decree or order registered under the provisions of section 104, he shall direct an entry to be made in the register of a memorial to that effect, and on such entry having been made, such judgment, decree or order shall be deemed to be satisfied.

(2) Every judgment, decree or order shall cease to bind, charge or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such judgment, decree or order shall be presented to the Registrar for registration within six months, or such extended period as the court by order made on application to it upon summons shall determine, from the day on which the copy of such judgment, order or decree was served.”

- [8] As I have stated in paragraph 6 above that the judgment has been registered twice. The question is whether a party is entitled to register the same judgment more than once. If a party is unable to complete a sale under a registered judgment section 105(2) of the Land Transfer Act 1971 provides that such party must seek an extension of time. The law does not provide for reregistering of the judgment.
- [9] The registration of the judgment on the iTaukei lease has expired 15th May 2022. A judgment was delivered by Justice Brito where the Plaintiff had sought an order for the sale of Defendant’s interest in the said iTaukei Lease to recover the judgment debt and costs. The application was declined. The Plaintiff’s following the lapsing of the

judgment and no extension of time being granted re-registered the judgment on the lease. Following the re-registration the Plaintiff has moved this court seeking the sale of the property of the Defendant.

- [10] I am in agreement with Justice Seneviratne who in **Prasad v. Hussain [2021] FJHC 235 (10th September 2021)** stated that “Sections 104 and 105 of the Land Transfer Act 1971 are absolutely clear and those provisions do not provide for more than one registration. If that was the intention of the legislature in enacting those provisions there was absolutely no necessity to make provisions for extension of time.” And his Lordship further went on to say that “[1]he other question is whether judgment creditor is entitled in law to register the judgment more than once. Section 104 and 105 of the Land Transfer Act 1971 provides for only one registration and the period of six months prescribed by section 105(2) can only be extended by court only on an application in that regard made by the judgment creditor. The power conferred upon the court by the statute cannot be exercised by the judgment debtor. Registering of a judgment amounts to an extension of the time prescribed by section 105(2) which a judgment creditor is not entitled in law to do. Therefore, the court will only take into consideration the first registration of the judgment. At the time this application is made by the plaintiffs the period of six months prescribed by section 105(2) has long been lapsed and the plaintiffs’ application for extension of time to register the judgment is liable to be dismissed.”
- [11] Having noted the first registration of the judgment at the time this application is made by the Plaintiff the period of six months prescribed by Section 105 (2) has long lapsed. The Plaintiff’s application to sell the property and that for the grant of extension of time to register the judgement is dismissed. No other party was involved so there will be no orders as to costs.

Orders

- (a) **The Plaintiff’s Application to sell the property is dismissed.**
- (b) **The Plaintiff’s Application for the grant of extension of time to register the judgment is dismissed.**
- (c) **No orders as to costs.**


Chaitanya Lakshman
Acting Puisne Judge
28th December 2023

