

INTRODUCTION

1. The **Plaintiff** filed an **Originating Summons** on 03rd December, 2019 and sought for the following orders-
 - (i) That the 1st Defendant cancel the transmission by Death being Dealing No. 847676 registered in favour of the 2nd Defendant over Housing Authority Sublease No. 170068;
 - (ii) That the 1st Defendant cancel the Transmission by Death being Dealing No. 847677 registered in favour of the 2nd Defendant over Housing Authority Sublease No. 170068.
 - (iii) That the 1st Defendant cancel the issuance of Provisional Title being Dealing No. 847678 to the 2nd Defendant over Housing Authority Sublease No. 170068.
 - (iv) That the 2nd Defendant forthwith surrender the Provisional Title to the 1st Defendant issued to her on 12 December 2017.
 - (v) That the 1st Defendant forthwith complete the registration of Request for Provisional Title lodged by the Plaintiff being Dealing No. 783382 over Housing Authority Sublease No. 170068.
 - (vi) That the 1st Defendant accept registration of Transfer by Suliasi Vula and Akanisi Vula as transferors to Sera Likukula Uluiviti as transferee (Interested Party) executed on 7 February 2013 in respect of Housing Authority Sublease No. 170068.
 - (vii) That the 1st Defendant accept registration of Mortgage by Sera Likukula Uluiviti as Mortgagor to Housing Authority as Mortgagee executed on 8 February 2013 in respect of Housing Authority Sublease No. 170068.
 - (viii) Costs of this application.
 - (ix) Such further and/ or other orders the Honourable Court may deem just and appropriate in the circumstances.

Plaintiff's Contention

2. The Late Suliasi Vula and late Akanisi Dromunasiga were registered Lessees of the sublease no. 170068.

3. On 23rd May 2012, Suliasi and Akanisi agreed to sell the sublease to Sera Likukula Uluiviti (interested party) who agreed to buy at \$20,000.
4. The Agreement between Suliasi and Akanisi as vendors and interested party as purchasers was consented to by the Plaintiff.
5. Transfer of the Lease instrument was prepared by the Plaintiff on 7/2/2013, executed by Suliasi and Akanisi as Transferors and Interested party as Transferee. Capital Gain Tax Clearance and certificate was also obtained on 5/3/2013.
6. The interested party was given an approval to the loan by the Housing Authority and the sub-lease was accordingly mortgaged.
7. The sale proceed was released to Suliasi and Akanisi on 26/03/2013. In light of the consent being granted to the Transfer of Lease Instrument and same duly executed and stamped and all other requirements fulfilled, the Plaintiff was ready to effect settlement.
8. Unfortunately, the Plaintiff was informed that settlement could not be effected because Suliasi and Akanisi did not have in their possession the original sublease which was required for registration of transfer of the sublease from Suliasi and Akanisi to the interested party and further registration of its interest as mortgagee on the sublease.
9. The Plaintiff proceeded to credit \$20,000 to the interested party in light of the loan offer whilst Suliasi and Akanisi applied to the First Defendant for a Provisional Title of the sublease in question.
10. The Plaintiff on behalf of Suliasi and Akanisi caused an affidavit to be made in the daily newspaper and government gazette as a requirement to inform the General Public of the lost sublease and issuance of the Provisional Title for the sublease.
11. The request to the First Defendant for Provisional Title to the sublease was never registered and/or issued to the Plaintiff even though it had complied with the requirements of Advertising and furnishing the advertisement to the First Defendant.
12. The Registration of Transfer of sublease dated 07th February 2013 from Suliasi and Akanisi to the Interested Party and further registration of the Plaintiff's interest on the sublease pursuant to the mortgage dated 08th February 2013 was never registered.
13. However, the Second Defendant being the daughter of Suliasi and Akanisi applied for and was granted Letters of Administration No. 59534 and 59535 in the Estate of Suliasi and Akanisi respectively, executed a Transmission by Death in the said Estate and also requested for Provisional Title of Housing Authority Sublease No. 170068.
14. The First Defendant registered the Transmission by Death and requested for Provisional Title of the Second Defendant on Housing Authority Sublease No. 170068.

15. The First Defendant thereafter on 14th August 2017 issued the request for the Provisional Title of the Second Defendants on Housing Authority Sublease No. 170068 and issued the Provisional Title to the second Defendant.
16. The First Defendant at no time had notified the Plaintiff about the request made by Suliasi and Akanisi to the First Defendant for the Provisional Title to the sublease, instead remained pending and unregistered rather proceeded to register the request of the Second Defendant and issued the Provisional Title to the Second Defendant.
17. The Plaintiff after becoming aware of the issuance of Provisional Title to the Housing Authority sublease no. 170068, wrote to enquire why and how the First Defendants had issued the Provisional Title to the Second Defendant in 2017 when the Plaintiff had lodged the Request for Provisional Title in 2013, which remained impending to-date.
18. However, there was no response made by the First Defendant.
19. The Interested Party who is the Purchaser (Sera Likukula Uliviti) followed up on the Transfer of the Housing Authority sublease no. 170068 to her with the Plaintiff; to date no response had been received from the First Defendant.

First Defendant's Contention

20. The First Defendant's Contention is that the Housing Authority sublease no. 170068 was issued to Suliasi Vula and Akanisi Vula on 09th June 1979.
21. The Plaintiff did not lodge the transfer and mortgage investment at the First Defendant's Office.
22. It is a requirement for the transfer of land that the Duplicate Title and/or lease and/or sublease should be lodged with the transfer instrument.
23. The Plaintiff did request for a Provisional Sublease on behalf of Suliasi Vula and Akanisi Vula.
24. They were required to advertise the notice of the application in the gazette and one of the Local Newspaper and the First Defendant provided the notice for publication. There is no record with the First Defendant whether or not the advertisement in the gazette and newspaper were submitted and made and therefore the application remained unregistered. However, the application is endorsed on the sublease and memorial remains unregistered.
25. Provisional sublease has not been issued to the Plaintiff.
26. Lessees' application remains unregistered and that the Plaintiff would have been aware of the pending application since the provisional sublease was not issued to them.

27. The transfer instruments executed between the lessees' and the interested party has not been lodged at the First Defendants' office.
28. The provisional sublease was issued to the Second Defendant pursuant to her application lodged at the First Defendant office on the basis of her being the Administratrix of the State of the Lessees.

Determination

29. The Plaintiff filed this application via an originating summons and sought for:
 - the cancellation of the Transmission by Death in favour of the Second Defendant's registration on Housing Authority sublease no. 170068,
 - cancel the issuance of Provisional Title to the Second Defendant,
 - Second Defendant forthwith surrender the Provisional Titles to the First Defendant,
 - First Defendant forthwith complete the registration of request for Provisional Title lodged by the Plaintiff,
 - First Defendant to accept registration of Transfer by Suliasi Vula and Akanisi Vula as Transferors to the Interested party, Sera Likukula Uluiviti as transferee, and
 - First Defendant accept registration of mortgage by Sera Likukula Uluiviti as mortgagor to Housing Authority as mortgagee executed on 8th February 2013 in respect of Housing Authority sublease no. 170068.
30. The affidavit evidence before this Court has been submitted and furnished by the Plaintiff and the First Defendant coupled with the written submission in order to determine the orders sought by the Plaintiff in his originating summons. The Second Defendant has also furnished its written submissions accordingly.
31. There are various issues raised by the Plaintiff and the First Defendant, some of which are:
 - The Plaintiff contends that due to the failure on the part of First Defendant to issue the Provisional Title in 2013 had caused the Transfer and mortgage to remain unregistered.
 - Whether the Plaintiff had failed to provide evidence of advertisement/publication with regards to the issuance of Provisional

Title to the sublease to the First Defendant? Whether any evidence has been adduced in Court with this regard?

- Whether there was any settlement done in this case in relation to the transfer and mortgage and if there were any issues in this regards then, it would be between the Plaintiff and the Lessees personal representative.
- If the Plaintiff had any objections to the issuance of a Provisional sublease to the Second Defendant, then whether they should have raised the same during 14 days' time period when the second defendant had advertised the First Defendant Notice of Intention to issue a Provisional Sublease to the Housing Authority sublease no. 170068.
- Did the Plaintiff fails to pursue their application for a Provisional sublease from 2013 and only enquired after a lapse of 5 years in 2018 when a Provisional sublease was already issued to the second defendant.
- Whether the plaintiff had lodged with the First Defendant any Transfer Instrument bearing in mind section 45 of the Land Transfer Act [LTA] that the Transfer instrument must be accompanied with the Provisional sublease.
- Whether the Transfer and Mortgage instruments would have still been lodged for registration had the First Defendant proceeded to issue the Provisional Title that has been lodged by the Plaintiff on behalf of Suliasi and Akanisi?
- Did the First Defendant failed to issue the Provisional Title as lodged by the Plaintiff in 2013 and that which caused the Transfer and Mortgage instrument to still remain unregistered on the Housing Authority sublease no. 170068?

32. Above are not all but some of the issued raised within the Plaintiff's and the First Defendants' affidavit evidence and written submissions furnished to Court.
33. The question that I now pause to myself is whether these and other issues Tentamount to triable issues and needs to be challenged in a Court of Law by the parties to the proceedings and then a determination be made on the merits of the current case?
34. The answer is simple. These are triable issues and cannot be summarily determined within an originating summons which in itself is a summary proceedings.
35. *Vive-voce* evidence needs to be heard and subjected to cross examination for clarity. This will reveal who is at fault and/or where the error (if any) lies with which party to the

proceedings. Whether any error made inadvertent and/or otherwise, can now be rectified in the interest of the party who should have the entitlement to the Housing Authority sublease no. 170068 accordingly.

36. For the aforesaid rational and impending triable issues, I proceed to dismiss the Plaintiff's originating summons filed on 03rd October 2019 in its entirety.

Costs

37. The originating summons proceeded to full hearing on affidavit evidence and written submissions coupled with oral arguments by both parties to the proceedings.
38. It is only just and fair that the Plaintiff pays the Defendants (First - Third defendants) a summarily assessed costs of \$1000 each, a total of \$3,000 within 14 days timeframe.

Orders

- (i) The Plaintiff's Originating Summons of 03rd December 2019 is dismissed in its entirety.
- (ii) The Plaintiff to pay each of the Defendants (First - Third Defendants), a summarily assessed costs of \$1,000 each, a total of \$3,000 within 14 days timeframe.
- (iii) Orders accordingly.
- (iv) The file is closed.

Dated at **Suva** this **07th** day of **August** ,2024.



Vishwa Datt Sharma
PUISNE JUDGE

cc: *Lajendra Lawyers, Suva*
Attorney-General's Chambers
MIQ Lawyers, Laucala Beach Estate, Suva