

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: **HBC 50 of 2025**

BETWEEN : **TIMOTHY TERENCE MANNING** of 11/19 Como Street,
Takapuna, Auckland, New Zealand, Director

PLAINTIFF

AND : **YADUA ISLAND (FIJI) PTE LTD** a duly incorporated
company having its registered office situated at Parshotam
Lawyers, Level 2, Midcity, Cnr of Waimanu Road and
Cumming Street, Suva.

DEFENDANT

Coram : **Banuve, J**

Counsels : **Kumar Lawyers for the Plaintiff**
Parshotam Lawyers for the Defendant

Date of Hearing : **3rd February 2025**

Date of Ruling : **3rd February 2025**

RULING

A. Introduction

1. The Plaintiff lodged a Caveat No. 953410 on 28th August 2024, pursuant to section 106(a) of the *Land Transfer Act* [Cap 131], prohibiting any dealing with the land comprised in TLTB Lease No. 28062, Yadua Island on Lots 1 on SO 5580, Malolo, Nadroga (the “subject property”).
2. On 31st December 2024, the Registrar of Titles issued a written Notice pursuant to section 110(1) of the *Land Transfer Act* [Cap 131], requiring the Plaintiff to withdraw his caveat within 21 days of receipt of the Notice.
3. On 23rd January 2025, the Plaintiff issued an Ex Parte Summons seeking an extension of the caveat ‘until the hearing and determination of this action,’ and that the Plaintiff be allowed 4 days to file the Writ of Summons.
4. A brief affidavit was deposed by a Taufua Ema and filed on 23rd January 2025, who attested that an annexed copy of the Affidavit in Support of the Plaintiff would be filed as soon as it was received from New Zealand.
5. A Writ of Summons was filed on 30th January 2025 although the Plaintiff’s Affidavit in Support has yet to be filed, to date.
6. When this matter was called on 23rd January 2025 the Court informed the Plaintiff’s counsel that section 110(3) of the *Land Transfer Act* [Cap 131] required that the Plaintiff’s summons to extend the caveat beyond the period contained in the Notice from the Registrar of Titles, needs to be served on the Defendant, even if the orders sought therein was sought ex parte.
7. The Court adjourned the matter to 24th January 2025 to allow the Plaintiff’s counsel to take instructions on this issue. On that date, counsel informed the Court that it needed a short extension to allow it to effect service on the Defendant until 3rd February 2025, given the imminent expiry of the notice period from the Registrar of Titles and to file a Writ of Summons.

8. On 24th January 2025, an interim order extending the time for removal of Caveat No 957385 over the subject property to subsist until 3rd February 2025 at 9.30 am when the Summons would be called inter parte.
9. When the matter was called inter parte on 3rd February 2025, the Defendant made a brief submission based on section 110(3) of the Land Transfer Act, that the extension of the caveat ordered by the Court on 24th January 2025 was done in excess of jurisdiction.
10. Section 110(3) of the Land Transfer Act [Cap 131] states;

“The caveator may either before or after receiving notice from the Registrar apply by summons to the court for an order to extend the time beyond the 21 days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the court upon proof that that the caveatee has been duly served, and upon such evidence as the court may require, may make such order in the premises either ex parte or otherwise as the court thinks fit”
11. As this Court clarified in *Mahendra Anganu v Dayawanti Anganu*-Civil Action No HBC 629 of 1993;
 - (i) Section 110(3) may be invoked either before or after receiving notice from the Registrar;
 - (ii) The Court has a discretion to extend the time with which a caveat will lapse as the court thinks fit;
 - (iii) The application for extension must come by way of an inter partes summons and supported with proof that the caveatee has been duly served
 - (iv) The use of the term ‘ex parte’ in section 110(3) refers to the order of the Court and not to the nature of the caveator’s application .
12. Further, the Court of Appeal confirmed in *ANZ v Maharaj* –Civil Appeal No 49 of 1983 (unreported) the importance of adhering to the procedure for the

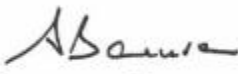
removal of a caveat following a notice pursuant to section 110(1) of the Act, is prescribed.

13. In the circumstance, the Court is bound by the Court of Appeal ruling in *Maharaj* in holding that the Court did not have jurisdiction to grant an interim order extending the time for the removal of Caveat No, 957385 until 3rd February 2025, when the matter was called inter parte, because on 24th January 2025 when the order granting the extension of the caveat was made, no proof that the Defendant (caveatee) had been duly served had been provided by the Plaintiff.
14. In short, the order for extending the caveat made on 24th January 2024 was made in excess of jurisdiction as the mandatory requirement of section 110(3), of the Act had not been complied with, and the said order is vacated accordingly.

ORDERS:

1. The Interim order of 24th January 2025 extending the time for the removal of Caveat No 957385 over the property comprised in ILTB Lease No 28062 being Yadua Island on Lots 1 SO5580 in the Tikina of Malolo in the Province of Nadroga/Navosa containing an area of 10.9791 HA until 3rd February 2025 at 9.30 am, is vacated
2. The Inter Parte Summons [For Extension of Time for removal of caveat], filed on 23rd January 2025 and heard on 3rd February 2025 is dismissed.
3. No order as to costs.




Savenaca Banuve
Judge

At Suva
03rd February, 2025