

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 54 of 1981

141

000472

Between :

ADESH KUMAR SHARMA s/o  
Jagdish Kumar Sharma

Plaintiff

- and -

MANUKU-WAILEVU LAND PURCHASE  
CO-OPERATIVE SOCIETY LIMITED

1st Defendant

- and -

THE REGISTRAR OF CO-OPERATIVE

2nd Defendant

- and -

THE ATTORNEY-GENERAL OF FIJI

3rd Defendant

Mr. U. Chammed  
Mr. Sohan Singh

Counsel for the Plaintiff  
Counsel for the Defendants

J U D G M E N T

This is a poorly prepared application by a caveator to extend Caveat 167308.

The summons filed on 3rd November, 1981 is taken out under section 110 of the Land Transfer Act, Cap. 131.

The applicant, is the plaintiff in an action relating to 17½ acres land, and the caveat relates to that land. His affidavit is a poorly drafted document which even fails to mention the date on which he filed his caveat. But his Statement of Claim filed on 4th February, 1981 says it was 16th November, 1978.

Paragraph 7 of his affidavit explains that he received a notice from the Registrar under section 110(1) of the Land Transfer Act to withdraw his caveat. He omits to state when he received it. At first that omission appears to be carelessness but I got the impression at the hearing of the application that it was intended to cover tardiness on the applicant's part.

There are three defendants: Manuku-Wailevu Land Purchase Co-operative (1st defendant); Registrar of Co-operatives (2nd defendant) and Attorney-General (3rd defendant). The plaintiff's affidavit, does not indicate at whose instance the Registrar

requested him to withdraw his caveat, but his summons is addressed to all defendants.

Unfortunately none of them filed an affidavit in reply. Mr. Sohan Singh appearing for the defendants stated that the notice from the Registrar was posted on 20th September, 1981. He referred to sections 110(i) and 108(3) of the Land Transfer Act and submitted that the 21 days in which the application to extend should have been made had already expired. There was no evidence in any affidavit to show when the notice was received by the applicant. Mr. Sohan Singh's statement was an attempt to give evidence from the bar. As it happens Mr. Umarji Mohammed for the applicant admitted the date of posting but stated that it was addressed by the Registrar to the applicant's lawyer's whereas service should have been effected personally on the applicant. Here again was an endeavour by the other advocate to remedy his failure to file affidavit evidence by trying to give evidence from the bar. Mr. Umarji Mohammed explained that it took him until 30th October, 1981 to find the applicant and get his signature acknowledging the Registrar's notice to withdraw.

This was another attempt to give evidence from the bar.

No doubt the post followed its normal course and the applicant's advocate would receive the notice on 22nd September, 1981. He expects me to accept that it took him from 22nd September, 1981 to 30th October, 1981 - nearly six weeks - to contact his client.

There is nothing in the Land Transfer Act which states that service of such a notice should be upon the caveator personally.

By section 110(1) of the Land Transfer Act if the Registrar does not "after 21 days from the date of service of such notice at the address mentioned in the caveat" receive notice from the Court extending the period of 21 days the caveat is discharged. The words in italics are important because of the requirements of section 107 and 108 in relation to the lodging of caveats. Section 107 requires the caveat to state the name, address and description of the person lodging the caveat.

Section 108(i) requires the caveat to state an address within Fiji at which notices shall be served. By section 108(3) every notice if served at the address appointed in the caveat shall be deemed to be duly served. Contrary to Mr. Mohammed's submissions it says nothing about personal service.

I would be most surprised to learn that the Registrar had not obeyed section 110 in that he did not send the notice to withdraw to the address shown in the caveat. He sent it to the applicant's advocate; therefore I assume that that was the address for service shown in the caveat.

Accordingly, it appears that service was effected on 22nd September, 1981, the date on which it would arrive at the advocate's address in the normal course of posting. Therefore the applicant should have applied to this court within 21 days thereafter, that is, on or before 14th October, 1981. His application dated 3rd November, 1981 is 20 days out of time. If the Registrar did not send the notice to the address shown in the caveat then this should have been revealed in the affidavit of the applicant.

There is no basis on which I can accede to the application.

The applicant suggested that I act under section 112 and direct the Registrar to accept a second caveat. In my view an order under section 112 should only be made when there has been a formal application supported by informative affidavits leaving opportunity for affidavits in reply from the other side.

The application is dismissed and the applicant will pay the respondent's costs which I fix at \$35.00.

LAUTOKA,  
13 November, 1981

*J. G. Williams*  
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(J. G. Williams)  
Judge

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20 NOV 1981  
SUPREME COURT  
REGISTRY