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IN THE SUPREME COURT OF FIJI
(WESTERN DIVISION)

AT LAUTOKA

APPELLATE JURISDICTION

CIVIL APPEAL NO. 8 OF 1982

BETWEEN :	<u>RAHIMAN d/o Karamat</u>	Appellant
A N D :	<u>SUBARMANI MANDRI s/o</u> Tanja Mandri	Respondent

Mr. Krishna, Counsel for the Appellant.
 Mr. Prasad, Counsel for the Respondent.

J U D G M E N T

This is an appeal from the decision of a magistrate in a plaintiff's claim for possession of land.

It is agreed that the plaintiff who holds 7 acres under N.L. 5810 in Vuda area purported to sell her entire interest in half acre of the land to the defendant for \$400.00 in 1972. The defendant occupied the land and expended about \$4000.00 in building a house on it.

The prior consent of the NLTB as required under section 12 of the NLTC Cap. 134 was not obtained.

The issues agreed were:-

1. Was the transaction illegal under section 12 of the NLTA?

2. Was the plaintiff estopped from obtaining an order for possession?

The learned magistrate's judgment referred to the illegality of the agreement which was contrary to section 12 and that both parties were fully aware of it. He said that to allow the plaintiff to rely upon illegality to dispossess the defendant would be to allow her to make section 12 an instrument of her fraud and that equity would not allow it. He dismissed her claim.

The appeal is on the ground that the claim for possession was based on her title and that there was no issue as to whether the parties being in *pari delicto* affected the outcome.

On the appeal the parties simply repeated the arguments which had been presented to the learned magistrate. The defendant submitted that the plaintiff was by her conduct estopped from regaining possession. He said that having parted with possession to the defendant and having encouraged him to build a \$4000.00 house she was not in a position to claim possession by relying on the argument that there was no legal agreement.

In my view that contention cannot be supported. The object of section 12 is to ensure that a dealing in land without the consent of the NLTB is void, that is to say ineffective. No rights can pass under such an agreement. If the plaintiff were estopped from regaining possession the effect would be to leave the defendant enjoying the benefit of the illegal agreement; it would defeat the very object which section 12 is intended to achieve.

In *Chalmers v. Pardoe* 1963; 3 A.E.R. 552 the appellant (Chalmers) was in a very similar position to that of the defendant (respondent) in the instant appeal. He contended that at least he had an equitable lien on the other party's land to the value of the building he had erected on it. The Privy Council held that he had no such lien because the agreement which had allowed him into

possession was illegal under section 12 and that equity could not lend its aid to (the appellant) Chalmers.

The defendant (respondent) in the instant appeal urged that he was atleast entitled to some compensation for the money he had expended. But, in my view, that leads one back to Chalmers v. Pardoe, a claim to compensation is much the same in these circumstances as claiming a lien. The right to compensation if established would constitute an equitable lien as against the plaintiff's land. It is regrettable that the defendant has acquired no right of any kind under the arrangement.

The appeal is allowed. The defendant will give up possession to the plaintiff and of course I am not able to defer the effect of the order.

The defendant (respondent) must unfortunately pay the costs of this appeal and in the Court below.

(J.T. Williams)
JUDGE

LAUTOKA,
10th September, 1982.