

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action HBC No. 33 of 2021

IN THE MATTER an application under section 169 of PART XXIV of the Land Transfer Act, Cap 131 for an Order for immediate vacant possession.

BETWEEN: **FIJI MEAT INDUSTRY BOARD** a Board under the Meat Industry Act 169, Landlord.

PLAINTIFF

AND: **LASARO KANACE t/a LASSROLAS ENTERPRISES** of FMIB Compound, Nakasi, Nasinu, Tenant.

1ST DEFENDANT

AND: **SARITA DEVI t/a 9 MILES CURRY SHOP** of FMIB Compound, Nakasi, Nasinu, Sub-Tenant.

2ND DEFENDANT

AND: **NEELAM RESHMA PRASAD t/a RESHMAS ENTERPRISES** of FMIB Compound, Nakasi, Nasinu, Illegal Occupant.

3RD DEFENDANT

Counsel : Plaintiff: Ms. Sharma. A
: Defendants: Mr. Bukayaro. M
Date of Hearing : 19.09.2022
Date of Judgment : 27.09.2022

JUDGMENT

INTRODUCTION

1. Plaintiff filed this action seeking eviction of Defendants from land comprised in State Lease No 167924. This is a ninety nine year lease issued for industrial use, in the name of

Plaintiff in 1976. The land is described in the said lease has an area of seventy Acres and one Rood. Only. It was “Protected Lease” issued as “Special Industrial Lease”, under State Lands Act 1945. First and second Defendants filed an affidavit in opposition. According to affidavit of service filed in 8.4.2022 the summons were served to second and third Defendants on 11.3.2022. They had appeared in person on 2.5.2022. According to affidavit in opposition of second Defendant first Defendant had rented her a premises as a shop. According to second Defendant’s affidavit third Defendants were brought to the premises by first Defendant after Plaintiff served a six month notice to vacate the premises. First Defendant is relying on a purported lease agreement (sub lease) he obtained from Plaintiff’s then CEO for a period of thirty years. Frist Defendant is also alleging, some errors on the purported sub lease. It is trite law that Plaintiff cannot sub lease any land under Lease No 167924, in terms of Section 13 of State Lands Act 1945 and any such instrument irrespective of errors, *null and void* as it lacked written consent of, Director of Lands. So the first Defendant had not shown a right to remain in possession on the land comprised in State Lease No 167924. Second Defendant who relied on first Defendant’s right accordingly has no right to stay in the property comprised in State Lease No 167024. Third Defendants had not filed an affidavit in opposition or participated at hearing, so they are also evicted.

FACTS AND ANALYSIS

2. Plaintiff had established that it is the last registered proprietor to land comprised in State Lease No 167924 through certified true copy annexed to affidavit in support annexed as B.
3. There is no dispute as to the proprietorship of Plaintiff. State Lease No 167924 is for ninety nine years from 1.7.1976.
4. It is issued under State Lands Act 1945 and it is a “Protected Lease” under said Act. It was a “Special Industrial Lease”.
5. Section 13 of State Land Act 1945 states any dealing including and not limiting to sub-lease is *null and void* if the written consent of the lessor (i.e Director of Lands) was not obtained for such a dealing.
6. Admittedly there was no written consent given by Director of Lands to sub-let any part of land to any of the Defendants in this action. So any dealing relating to sub-lease is null and void and has no force in law.
7. First Defendant had filed an affidavit in opposition and he had annexed a purported sub-lease he had obtained from Plaintiff in 2010.

8. There is no written consent for such a sub-lease granted by lessor who is Director of Lands. Hence, purported sub-lease dated 1.7.2010 is *null and void* in terms of Section 13 of State Lands Act 1945.
9. So there is no legally valid authority for first Defendant to possess any part of land comprised in State Lease No 167924.
10. Accordingly, first Defendant cannot legally allow tenants such as second and third Defendants to possess any part of land comprised in lease No 167924.
11. Affidavit in opposition filed by second Defendant stated that after Plaintiff had issued six months notice to second Defendant Plaintiff had brought third Defendants to the premises and had told that if second defendant vacate another person will be brought in to the said premises. According to second Defendant that was the reason that she had not left her shop. So her possession is dependent on first Defendant's right to possession.
12. These facts also supports Plaintiff's action for eviction.
13. Section 169 of the Land Transfer Act 1971 states,

“**169.** The following persons may summon **any person in possession of land** to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-

(a) the **last registered proprietor of the land;**

(b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;

(c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.”(emphasis added)
14. Plaintiff had established through Annexed B requirements under Section 169 of Land Transfer Act 1971, to institute this action.
15. First Defendant's position is that that Plaintiff and he had entered into a (Sub) Lease Agreement on 1.7.2010 for thirty years duration on a State Lease No. 16724, but this was an obvious error as State Lease 16724 does not belong to Plaintiff or to industrial lease.

16. According to annexed LK 2 State Lease 16724 is an agricultural lease and Plaintiff has no interest in that hence cannot grant any interest it never had regarding State Lease No 16724.
17. Plaintiff is not seeking eviction from State Lease No 16724, which is an agricultural lease issued to third parties. First Defendant is misconceived to rely on an obvious mistake to claim a non-existent, right to possession in State Lease No 167924.
18. First Defendant had not shown any right to possession any part of State Lease 167924. Accordingly first Defendant is misconceived to rely on a sub lease that is *null and void* in terms of Section 13 of State Lands Act 1945.
19. On paragraph 11 of the Affidavit in Reply by the Plaintiff it stated,

“Paragraph 9 of the said Affidavit is denied and I repeat paragraph 4 of my Affidavit in Support and state that the Lease No. 16724 mentioned in the Lease Agreement is a typo error. The Lease No. should read 167924 and not 16724 as stated in the said Agreement.”
20. As stated above the said error becomes irrelevant to this action as Director of Land had not consented in writing to purported lease which first Defendant relies, hence it is *null and void*.
21. Section 172 which states that:

“172. If the person summoned appears he may **show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land**, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit;

Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:

Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.

"the person summoned may show cause why he or she refuses to give possession of such land and, if he or she proves to the satisfaction of the Judge a right to the possession of the land."

22. The Supreme Court in considering the requirements of Section 172 stated in Morris Hedstrom Limited v. Liaquat All (Action No. 153/87 at p2) as follows and it is pertinent:

"Under Section 172 the person summoned may show cause why he refused to give possession of the land and if he proves to the satisfaction of the judge a right to possession or can establish an arguable defence the application will be dismissed with costs in his favour. The Defendants must show on affidavit evidence some right to possession which would preclude the granting of an order for possession under Section 169 procedure. That is not to say that final or incontrovertible proof of a right to remain in possession must be adduced. What is required is that some tangible evidence establishing a right or supporting an arguable case for such a right, must be adduced."

23. First Defendant relies on obvious mistake and also a document which is *null and void* in law to claim a right to possession. Other Defendants were brought to the premises by first Defendant on purported right.
24. First Defendant, is blowing hot and cold , on one had he state that he has a valid lease for State Lease 16724, in terms of purported sub lease granted by Plaintiff in 2010. At the same time fist Defendant state that State Lease 16724 was not issued to Plaintiff.

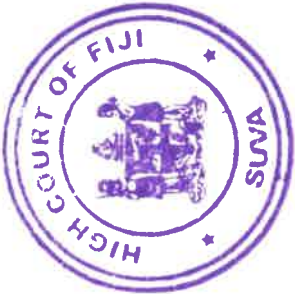
CONCLUSION

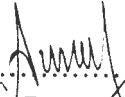
25. This application is not based on State Lease 16724 but State Lease 167924. So the objections raised by first Defendant has no basis for him to continue with possession in terms of Section 172 of Land Transfer Act 1971. First Defendant became an illegal occupant due to statutory provision contained in Section 13 of State Lands Act 1945. So he and other Defendants whom he had invited to the premises in State Lease No 167924 are ordered to give possession of entire area under State Lease 167924. First Defendant is at liberty to remove any temporary structures he had erected and possessed. For this some time is granted before execution. Considering circumstances of the case and long possession of premises, the execution is stayed till 30.11.2022. The cost of this action is summarily assessed at \$1500 to be paid by first and second Defendants, jointly and or severally.

FINAL ORDERS

- a. All the Defendants are ordered to give up possession in State Lease No 167924.
- b. The execution is stayed till 30.11.2022.
- c. Cost of this application is summarily assessed at \$1,500 to be paid by First and or Second Defendants within 21 days.

Dated at Suva this 27th day of September, 2022.




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Justice Deepthi Amaratunga
High Court, Suva