

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL ORIGINAL JURISDICTION

CASE NUMBER: **HBC 60 of 2019**

BETWEEN: **MOHAMMED SADIQ**

APPELLANT

AND: **RAMESH CHAND SHARMA AND RAJENDRA SHARMA**

RESPONDENTS

Appearances: *No Appearance for the Plaintiff.*

Mr. D. Nair for the Defendants.

Date/Place of Judgment: *Tuesday 25 April 2023 at Suva.*

Coram: *The Hon. Madam Justice Anjala Wati.*

JUDGMENT

A. Catchwords:

CIVIL LAW – Appeal against an order for vacant possession under s. 169 of the Land Transfer Act – appellant raises promissory estoppel which cannot be permitted under s. 59 of the Indemnity, Guarantee and Bailment Act 1881 – Appellant thus cannot establish a right to continue to stay on the property – the alleged discrimination against the registered proprietors does not create a legal interest to stay on the land – the appellant can file a constitutional redress case and have the issue of constitutional discrimination determined in that case.

B. Legislation:

1. Land Transfer Act 1971: s. 169.

2. Indemnity, Guarantee and Bailment Act 1881: s. 59.

Cause and Background

1. This is an appeal against an order of the then Master of the High Court in Labasa granting an order for vacant possession of the property contained in CL 3807 being Lot 1 on Plan M. 2277 former Nanhu Street Reserve. On the order of the Master of the High Court, the appellant had to give up and deliver vacant possession of the property within a month from the date of the judgment being 1 September 2020.
2. The appellant then filed an appeal and also applied for a stay of the execution of the orders of the Master which was refused by his Lordship Justice Amaratunga on 13 November 2020.
3. The appeal was listed before me for hearing. The appellant did not appear in Court to proceed with his appeal. He has failed to prosecute his appeal. There is so much delay by the appellant in having this matter determined with due diligence.
4. This matter should be struck out for want of prosecution of the appeal but I will still deal with the grounds of appeal and determine the case on its merits to avoid any further applications for reinstatement of this action in the High Court.
5. It is important that there be a finality to litigation and striking out for want of prosecution will not assist in this case. I have before me all the materials including the appellant's written submissions to deal with the substantive appeal.

Grounds of Appeal and Analysis

6. The 1st ground of appeal states that the Master erred in law and in fact in requiring the appellant to prove on affidavit evidence a conclusive right to remain in possession when the law requires some tangible evidence establishing a right or an arguable case which the appellant had established through an affidavit in opposition.
7. Under s. 172 of the Land Transfer Act 1971, the appellant may show cause why he refuses to give possession of the subject land and if he proves to the satisfaction of the judge a right to possession of the land, an order for vacant possession will not be granted.
8. It is essential to understand the basis on which the appellant wants to continue to occupy the property as a tenant. The appellant's claim is that the father of the respondents was originally

the owner of the subject property. It is contended that their father sub-let part of the first floor to the appellant and started collecting rent from him.

9. It is further contended that the father assured the appellant that he could occupy the premises as long as he wants and that no one would evict him. The appellant says that he relied on the assurance and never insisted for a tenancy agreement and further did a lot of legal work free for their father. He says that this arrangement between him and the respondents' father gives him the right in equity to stay on the land. He is thus raising promissory estoppel which he says precludes the respondents from seeking an order for vacant possession against him.
10. On the issue of promissory estoppel, Master Bull found that the appellant had a couple of difficulties in relying on this doctrine. The first was that the alleged promise was not made by either of the plaintiffs to the appellant but by their father who was the previous owner of the property. I presume from this finding that the Master meant that the new owners of the property cannot be bound by the previous owner's assurances and promises unless there is clear and cogent acceptance and acknowledgment of the arrangements.
11. The second basis, the Master found, was lack of any evidence of the said arrangement. The Master said that there was no such tangible evidence before her for the Court to be satisfied that any binding promise was made.
12. I find that the Master had correctly arrived at the finding that there is no tangible evidence of any promise made by the father of the respondents that the appellant can stay on the property as long as he wants. Any such promise had to be in writing and accepted by the new owners of the property to be binding on them.
13. Although Master Bull did not identify the legal provisions which requires such arrangements to be in writing by the owners of the property if it is to be used against them to claim an interest in their property, I identify s. 59 of the *Indemnity, Guarantee and Bailment Act 1881*.
14. The material parts of the section reads as follows:

"No action shall be brought ... upon any contract for sale of lands, tenements or hereditaments or any interest in or concerning them; ... unless the agreement upon which such action is to

be brought or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized".

Highlighted and Underlined by me for emphasis

15. The above section very clearly covers not only sale of lands and buildings but any interest in the lands and buildings. The issue in this action concerns a building and the appellant's right to occupy it under an oral promise to lease it for life.
16. The above law does not permit oral arrangements to be given any regard. It also states that any arrangement or agreement has to be in writing and signed by the respondents or someone whom they have lawfully authorized to do so on their behalf.
17. There is no agreement in writing of the appellant's claim and there is also no evidence that the current owners of the property are to be bound by the agreement. There is no evidence of them having assumed ownership of the property with an acknowledgement and acceptance of the appellant's rights. Therefore any agreement by the previous owner does not automatically bind the new owners. I do not find that the appellant can even raise the issue of promissory estoppel.
18. The above issue of promissory estoppel could be completely dealt with on affidavits. There is no requirement for oral evidence on the issue. The appellant failed to provide any tangible evidence under s. 59 of the Indemnity, Guarantee and Bailment Act 1881 for any right to be created and if contested thereupon to be investigated via oral evidence.
19. The 2nd ground of appeal states that the Master erred in law and in fact in failing to give proper weight to s. 26(3) and (7) of the Constitution of Fiji. The appellant is raising that only he and another tenant had been asked to vacate the property whilst some other tenants are still occupying the property. He argues that there is constitutional discrimination against him.
20. The Master found that the appellant's allegation of discrimination had not been supported by any evidence and that it does not give the defendant a right to stay on the property. I have no legal or factual basis to flaw the finding of the Master.

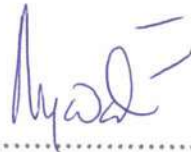
21. If the appellant feels that he has been unlawfully discriminated by anyone and that his constitutional right has been affected, he can bring a claim for constitutional redress. His allegations of discrimination does not create any right or interest to stay on the property.
22. The 3rd ground of appeal states that the Master erred in hearing the originating summons without advising the appellant of the date of hearing as the Labasa Registry had advised the appellant that the action would not be heard on 15 June 2020 and a new date was to be allocated thereby breaching the rule of natural justice to hear both parties.
23. The appellant was not denied a hearing. His counsel was present in Court on 7 May 2020 when the matter was set for hearing on 15 June 2020. Written submissions were ordered to be filed and served before 11 June 2020. The appellant did not appear on the date of the hearing however his written submissions were fully considered and the issues raised by him were determined. I cannot see how his rights were being breached.
24. On the appeal, the appellant has not satisfied me that any one of the issues that he wanted to raise orally was not in the written submissions which was not considered by the Master. If there were any other matters that the appellant wished to raise in his oral hearing before the Master and that could not be raised due to his non- appearance at the hearing, then that issue should have been highlighted before me in the appeal. The appellant failed to utilize that opportunity to raise any other matters.
25. In any event the appellant is challenging the order for vacant possession on the grounds that the Master had made an error in law in determining the issues raised by him. If that is his concern on the appeal, he cannot allege that his defence was not considered by the Master. There is no merit in the 3rd ground of appeal.
26. The 4th ground of appeal states that the Master erred in law and in fact in making a determination on affidavit evidence when:
- *It involved substantial law and triable issues which could not be decided on affidavit evidence but upon a trial.*
 - *An application under s. 169 is generally granted in clear cases where there are clear facts and non – triable issues however the appellant had raised triable issues.*

27. The appellant does not identify which issue he raised was triable. I have read his affidavit and the submissions. All the issues that he has raised did not require oral evidence. The issues did not create any cause for him to remain on the land and therefore no oral evidence was necessary. By merely saying that triable issues have been raised does not mean that a trial is necessary. One needs to examine whether the issues raise even create a right and in this case it does create any right for the appellant to stay on the land.
28. The 5th ground of appeal states that the Master erred in making a determination when another action being HBC 61 of 2019 was instituted by the respondents claiming property rights and interest of justice required that the two cases be heard together.
29. I have determined the other action HBC 61 of 2019. I find that there is no merit in the other claim as well and so the appellant cannot hinge on that matter to stay on the property. If the two cases had any bearing on each other, then an application for consolidated hearing ought to have been made. Raising such issues on appeal is not going to create any right for the appellant to stay on the land.
30. The 6th ground of appeal states that the ruling of the Master is unreasonable and cannot be supported in view of the appellant's submissions. This is a general ground of appeal which cannot be determined. There has to be a specific statement on how the Master was unreasonable and in respect of which finding she was. The ground is frivolous and carries no merit.
31. I now turn to the issue of costs. I find that the appellant has only made frivolous attempts to stay on the property and delay the final determination of this matter. The proceedings have been on foot since 2019. Both the Master and Justice Amartunga had clearly indicated that the claims of the appellant does not have any legal basis to stay on the property. The appellant decided to pursue an unmeritorious appeal for which he should compensate the respondents who have been put to legal costs to have their rights vindicated.
32. The appellant has been staying on the property for almost 4 years since the making of the application only on frivolous basis. The basis on which he claims promissory estoppel is illegal as it contravenes the law. I would have expected him to know that any interest on the land cannot be contended on an oral promise.

Final Orders

33. In the final analysis, I make the following orders:

1. *The appeal is dismissed.*
2. *The appellant is to vacate the said property by 15 May 2023.*
3. *The appellant shall pay costs to the respondents in the sum of \$6,500 within 14 days from the date of the judgment.*



Anjala Wati

Judge – High Court

25. 04. 2023



To:

4. *A. K Singh Lawyers for the Appellant.*
5. *Sairav Law for the Respondents.*
6. *Labasa HBC 60 of 2019.*