

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 63 of 2022

Fiji Public Service Association
Plaintiff

v.

Kava Bure
Defendant

Counsel: Mr Devanesh Sharma for the plaintiff
Ms L. Prasad for the defendant

Date of hearing: 1st September,2022

Date of Judgment: 28th April,2023

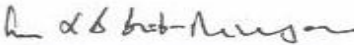
Judgment

1. The plaintiff seeks vacant possession of the property in Certificate Title 24859 Lot 1 Deposited Plan No. 6617 comprising 20890 hectares at Sports City Complex, Laucala Bay, Suva. The summons is made under section 169 of the Land Transfer Act.
2. On 1st December 2018, the parties had entered into a Lease Agreement, (Agreement) to occupy Shop No 1 at Sports City Complex for a term of 3 years.

3. The plaintiff, in supporting affidavit filed on its behalf states that after the expiry of the Agreement, the defendant was a monthly tenant. The defendant illegally constructed a bamboo structure in front to accommodate kava drinkers and sold liquid kava without its approval. The plaintiff's solicitors issued notice to dismantle the tents and bamboo structure and a Notice to Quit on the defendant.
4. The affidavit in opposition filed on behalf of the defendant states that on 27 May 2019, the National Council of the plaintiff approved the outside area for rental. The defendant engaged Engineers for drawings, approvals and certification for a new bure to be constructed. The defendant has been paying for his occupancy and the plaintiff issued receipts. The Agreement was renewed for 3 to 5 years. The rental for December was paid. The plaintiff solicitors issued a Distress of Rent.
5. The plaintiff's reply stated that one of the reasons for non-renewal of the tenancy was the defendant's breach of the Agreement. The Agreement specifically stated that the purpose of tenancy was for the sale of kava and tobacco. The defendant sold ice cream, groceries, recharge cards and other items without its approval. The Agreement does not mention the resale of liquid kava nor mixing, a sitting and relaxing area or use of any other vacant space.
6. The reply states further there was never any agreement on the construction of the Kava Bure between the parties, apart from correspondence. The defendant has not provided evidence of the National Council's approval for renting of the outside space nor the Mock Up Kava Bure and temporary fixtures area. The Kava Bure Mock Up and temporary fixtures are illegal structures. No proper plans and drawings were ever submitted to Suva City Council. The defendant has continued to operate the illegal Mock Up Kava Bure and temporary fixtures with tents and tables in breach of the OHS Act. The rental payments in the receipts produced by the defendant are rental payments for Shop No. 1, not for the Mock Up Kava Bure and temporary fixtures.

The determination

7. The question for determination is whether the Agreement, which expired in December 2021, was extended and whether the National Council approved a tenancy of the outside space where the Kava Bure is built, as contended by the defendant
8. I note that the plaintiff, in reply to the defendant's email of 8th December, 2021, stated that it would like to renew the Agreement for 3 to 5 years. But I do not find any agreement by the plaintiff to renew the tenancy for Shop No 1.
9. In my judgment, it follows that the defendant was a monthly tenant after the expiry of the Agreement.
10. With respect to the lease of the front space of the shop, as the plaintiff has pointed out, there has been exchange of correspondence on the construction of the Kava Bure, but no agreement was reached.
11. In my view, the plaintiff was entitled to give the defendant notice to dismantle the tents and bamboo structure and a Notice to Quit the premises.
12. In my judgment, the defendant has failed to show cause under section 172 of the Land Transfer Act.
13. The plaintiff's summons for vacant possession succeeds.
14. **Orders**
 - a. The defendant shall give the plaintiff vacant possession of the property in Certificate Title 24859 Lot 1 Deposited Plan No. 6617 comprising 20890 hectares at Sports City Complex, Laucala Bay on or before 31st May, 2023.
 - b. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$1500.00.


A.L.B. Brito-Mutunayagam
Judge
26th April, 2023

