

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 26 of 1977

Between:

ALEFAIO PANAPA

Appellant

- and -

NATIVE LAND TRUST BOARD

Respondent

Date of Hearing: 10th November, 1977,
Delivery of Judgment: 10th November, 1977.Mr. K.C. Ramrakha for the appellant
Mr. E. Vula for the respondentJUDGMENT OF THE COURTCould V.P. (orally)

This appeal is based upon one ground only : that clause 9 of the lease, which provides that the lessee shall erect a building upon the land within two years from the date of commencement of the lease, is impossible of performance because the term of the lease is expressed to commence from the 1st January, 1962, rather more than five years before the date of its execution and registration. Therefore, it is argued, clause 9 was completely ineffective and that no rights could arise thereunder entitling the respondent Board to re-enter, as it has done.

The learned judge in the Supreme Court considered the covenant as operating from the date of registration of the lease, though both parties in their own minds believed it operated from the beginning of the term. Whatever the attitude of the parties, one thing is clear, that after the execution and registration of the lease the appellant by letter asked for an extension of one year to fulfil the covenant and was granted an extension of rather more than that period, terminating on the 31st December, 1969. This may be taken to have put an agreed time limit upon an ambiguous covenant, upon breach of which, in our opinion, the respondent Board was entitled to enforce its remedy.

In these circumstances no base has been shown for the appellant's claim for damages, which is the only issue raised on the appeal.

The appeal fails and is dismissed with costs.

- (Sgd.) T. Gould
Vice President
- " C.C. Marsack
Judge of Appeal
- " T. Henry
Judge of Appeal

SUVA,
10th November, 1977.