

In the High Court of Fiji at Suva

Civil Jurisdiction

HBC Action No. 329 of 2012

BETWEEN :

Jamnadas & Associates  
Plaintiff

AND :

Rabi Island Council  
First defendant  
Registrar of Titles  
Second defendant

AND :

Attorney General of Fiji  
Third defendant

Appearances: Ms M. Drova with Mr K. Jamnadas for the plaintiff  
Ms M. Muir for the first defendant  
Ms K. Vuiba for the second and third defendants

Dates of hearing: 5<sup>th</sup> November, 2013

### **Judgment**

1. The plaintiff obtained a money judgment against the first defendant. On the application of the plaintiff, the judgment was registered by the second defendant on a certificate of title of the first defendant on four occasions. These proceedings filed by way of originating summons is a sequel to the Registrar of Titles, the second defendant declining the plaintiff's fifth application to extend the period for registration of the judgment. The first defendant claims restitution against the second defendant for registering the judgment on multiple occasions, contrary to the Land Transfer Act. The second defendant's riposte is that the State is not liable for compensation for any loss or damage occasioned by an improper exercise of sale.

2. *The first defendant's notice*

The first defendant, in its notice filed on 4<sup>th</sup> September,2013,pursuant to Or 16,r 8 claims damages from the second and third defendants, as a result of the second defendant permitting the multiple registration and endorsement of the same judgment.

3. *The second and third defendants affidavit and notice of opposition*

- a) The affidavit in reply of the second and third defendants filed on 26<sup>th</sup> September,2013, admits that the judgment was registered on four occasions.
- b) In its notice of opposition to the first defendant's notice under Or 16,r 8, these defendants state that the applications for registration of the judgment were filed by the plaintiff under section 147 of the Land Transfer Act.

4. *The determination*

- a. I will first consider the plaintiff's application.
- b. The affidavit in support of the originating summons states that the plaintiff had obtained a consent judgment against the first defendant in the Magistrates' Court on 21<sup>st</sup> October,2008, for a sum of \$ 42,975 together with interest and costs.
- c. On the application of the plaintiff, the judgment was first registered against CT 13596, DP 3400,Lot 1 of the first defendant by the second defendant on 10<sup>th</sup> December,2008, and subsequently registered on 3<sup>rd</sup> November 2009, 18<sup>th</sup> November, 2010, and 19<sup>th</sup> January 2012.
- d. On the plaintiff presenting its fifth application for registration on 31<sup>st</sup> August,2012, the second defendant directed the plaintiff to seek an extension from Court.
- e. Section 105(2) of the Land Transfer Act (Cap 131) provides that:

*Every judgment, decree or order shall cease to bind, charge or affect any estate or interest in land in respect of which it is registered unless a transfer upon a sale under such judgment, decree or order shall be presented to the Registrar for registration within six months, or such extended period as the court by order made on application to it upon summons shall determine ... (emphasis added)*

- f. This section provides that a judgment may be presented for registration to the Registrar of Titles, within six months of its pronouncement. A party is required to apply to Court for any extension thereafter.
- g. In *Wai Hing Lee vs Lum Sui Fong*, (2012) FJCA 53; Civil Appeal No: ABU 0029 of 2011 as referred to by the plaintiff and first defendant in their written submissions, it was held that a judgment creditor can, upon “*good reasons*” seek to extend the registration of a judgment.
- h. In that case, a judgment dated 27<sup>th</sup> August, 2010, was registered on 12<sup>th</sup> November, 2010. On 13 April, 2011, the plaintiff made an application to extend the period for registration, since they had not been able to dispose of the property within 6 months. The application was made within 5 months of the first registration. There was a delay in the first registration, as the Registrar of Title had incorrectly registered the judgment in favour of the second defendant, instead of the first defendant. It was held that “*good reason*” was shown for the extension.
- i. In the present case, the plaintiff seeks an extension for the reason that the defendant had promised to settle the debt and the plaintiff “*believed them and allowed them time to pay the debt*”.
- j. I do not accept the reason given by the plaintiff. The plaintiff had adequate time from the first registration to finalise the alleged settlement. This explanation came up as something of an afterthought, contained as it is in a supplementary affidavit filed 9 months after the plaintiff’s formal case was filed.
- k. To my mind, the relevant section does not contemplate extensions of such prolonged periods.
- l. I decline the plaintiff’s application for extension of registration of the judgment.
- m. In my judgment, the plaintiff’s originating summons fails.
- n. I now turn to the first defendant’s application against the second defendant.
- o. The first defendant, in its notice claims “*any loss and damages and/or deprivation of land (it) sustains in this action*”, as a result of the second defendant permitting the registration of Judgment No. 754390, (the fourth registration) and refusing to cancel the second, third and fourth registrations of Judgment Nos. 725437, 738520A and 754390, despite the written request of its solicitors.

- p. Ms Vuiba, counsel for the second and third defendants pointed out that the first defendant had not obtained leave of Court to issue third party notice to the State, as required under Or 77, r.7.
- q. In my view, the provisions of Or 77, r.7 are mandatory. I decline the first defendant's claim against the second defendant .
- r. In any event, the first defendant has not established that it has suffered any damages, as a result of the second defendant's error in extending the registration of the judgment on three occasions, after the first.
- s. For completeness, I will consider the authority cited by Ms Muir, counsel for the first defendant. In support of the first defendant's claim for damages, she cited the decision of the High Court in *Prasad v Register of Titles*, [2011] FJHC 702. The facts are not comparable.
- t. In that case, an erroneous entry made by the Registrar of Titles resulted in the judgment creditor's rights on a CT being extinguished. The judgment creditor's registration of a judgment was wrongly dated by the Registrar of Titles. The judgment debtor had subsequently sold the property to a third party, who mortgaged the same to ANZ Bank. The transfer and mortgage were registered by the Registrar of Titles without being made subject to the judgment in favour of the judgment creditors.
- u. On appeal to the Supreme Court in *Star Amusements Limited v Prasad and Others*, (Civil Petition No. CBV 0005 of 2012, Court of Appeal No. ABU 0065 of 2011) it was held that the third party, as registered proprietor and ANZ Bank, as bona fide mortgagee for value, acquired their respective title and rights. In those circumstances, it was held that the judgment creditors could claim compensation from the Registrar of Titles and the Attorney General.
- v. Returning to the present case, the extensions granted by the second defendant have not caused any loss to the first defendant. The registrations have lapsed.
- w. I find illogical and unconvincing the argument of the first defendant that it has incurred legal expenses in these proceedings, as a result of the second defendant failing to cancel the fourth registration. Any extension after the first registration requires an application to be made to court.

5. **Orders**

- a. I decline the plaintiff's application to extend the registration of judgment no. 754390.
- b. I decline the plaintiff's summons
- c. I decline the first defendant's claim for damages against the second and third defendants.
- d. The plaintiff shall pay the first defendant costs summarily assessed in a sum of \$ 1000.



8<sup>th</sup> October, 2015

**A.L.B. Brito-Mutunayagam**

**Judge**