

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 259 OF 2018

BETWEEN : **SISH NABI** as beneficiary in the Estate of Nabi Jan, of Votualevu Nadi, Retired.

PLAINTIFF

AND : **ABDUL AHMED AZAD NABI** as trustee in the Estate of Nabi Jan, of Kavuli, Tavua, Cultivator.

FIRST DEFENDANT

AND : **AHMED NABI** as beneficiary in the Estate of Nabi Jan, of Kavuli, Tavua, Cultivator.

SECOND DEFENDANT

AND : **FAZAL NABI** as beneficiary in the Estate of Nabi Jan, of Kavuli, Tavua, Cultivator.

THIRD DEFENDANT

AND : **GULZAR NABI** as beneficiary in the Estate of Nabi Jan, of Kavuli, Tavua, Cultivator.

FOURTH DEFENDANT

AND : **GUL NABI** as beneficiary in the Estate of Nabi Jan, of Kavuli, Tavua, Cultivator.

FIFTH DEFENDANT

Appearances : Ms Vreetika for the plaintiff
No appearance for the defendants

Date of Hearing : 31 July 2019

Date of Ruling : 31 July 2019

R U L I N G

[on *ex parte* summons]

[01] This is an *ex parte* application supported by an affidavit of the plaintiff to appoint the Deputy Registrar to execute all documents necessary to enforce the judgment delivered by the Court on 19 March 2019.

[02] The application is made under O 45, R 7 of the High Court Rules 1988, as amended. Rule 7 provides:

Court may order act to be done at expense of disobedient party (O 45, R 7)

7 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs. [Emphasis supplied]

[03] It will be noted that Rule 7 empowers the Court to appoint other person, if an order for the specific performance of a contract not complied with, to do the act required to be done under the judgment. This is in addition to punish the disobedient party for contempt.

[04] The plaintiff obtained a judgment in the nature of specific performance where the court directed the defendants to execute all papers, notes, plans and memorandums to ensure that the plaintiff is bequeathed absolutely his entitled shares in the Estate of Nabi Jan and to execute all papers signifying their approval for the proposed subdivision of the land comprised in Certificate of Title Number 17315 to be lodged by the plaintiff with the Director of Town and Country Planning subdivision only the plaintiff's entitled in the estate of Nabi Jan.

[05] The plaintiff states that the defendants had refused to sign the consent document for subdivision and to transfer his entitlement according to the judgment and they are in contempt of court for not complying with the court order.

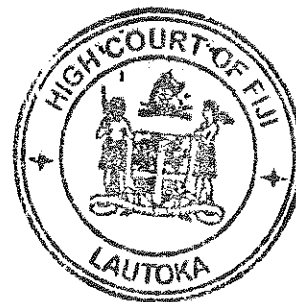
[06] Having considered the application, affidavit together with its annexures and having heard the submissions made by counsel on behalf of the plaintiff, I am satisfied that the plaintiff is entitled to make this application for the purpose of enforcement of the judgment. Accordingly, I grant orders (a) and (b) (except alternative relief) as sought in the application as are necessary to enforce the judgment of this court delivered on 19 March 2019. There will be no order as to costs.

The outcome

1. The Deputy Registrar shall be appointed and authorised to execute all papers, transfers and documents to transfer quarter (1/4) acre land from the land comprised in Certificate of Title Number 17315.
2. The Registrar of Title shall accept the transfer instrument transferring quarter acre (1/4) land to the plaintiff from the land comprised in Certificate of Title Number 17315 without the duplicate title and issue plaintiff a title for the same.
3. No order as to costs.

Hellmages
31/7/19

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M.H. Mohamed Ajmeer
JUDGE



At Lautoka
31 July 2019

Solicitors:

Patel & Sharma, Barristers & Solicitors for the plaintiff