

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 53 of 2018

**BETWEEN** : **RAJENDRA PRASAD AUTAR** **PLAINTIFF**

**AND** : **GEORGE ACOSTA & LOATA VAKALEGACAGI** **DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF** : Mr. A Nand [Kohli and Singh]

**DEFENDANT** : Mr. R Harper [O'Driscoll & Company]

**JUDGMENT OF** : Acting Master Ms Vandhana Lal

**DELIVERED ON** : **10 June 2019**

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**JUDGMENT**

[Section 169 application for vacant possession]

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1. This is an application made under Section 169 of the Land Transfer Act for an order for vacant possession of land and premises comprised and described in the Lease No. 185380 being Lot 38 on DP Number 5086 Kalabo Industrial Subdivision containing an area of 20 perches situated in the Province of Naitasiri.

An Affidavit of Rajendra Prasad Autar has been filed in support of the application.

2. The said application is opposed by the Defendants who filed their opposition on 17 May 2018.

A reply was filed by the Plaintiff on 28 June 2018.

3. Rajendra Prasad Autar informs he is authorised by the landlord pursuant to a Power of Attorney Number 5806 made on 1 March 2017 to bring the said proceedings. The Power of Attorney has been registered with Registrar of Titles.

Raylene Shandhaya Prasad is the registered lessee of Lease Number 185380 for the Crown Land on Lot 38 on plan DP 5086 Kalabo Industrial Subdivision.

According to him, the Defendants are occupying the property as trespassers.

On his instruction his solicitors issued a notice of eviction to the Defendants on 14 November 2017. The Defendants have failed to vacate the property.

The Director of Lands is said to have given their consent. [There was no other letter annexed to the affidavit].

According to him, there was no Commercial Tenancy made in favour of the Defendant. The signatures on the tenancy agreement has been forged. No written tenancy was given to the Defendants for any period.

He does admit some money was paid in the form of rent. However the Defendants were in arrears and hence he issued the Notice.

The purported tenancy is invalid as it does not have consent of the Director of Lands.

4. According to the Defendants, the Power of Attorney was executed in Melbourne and not in proper form for registration in Fiji. Hence Rajendra Prasad Autar has no locus standi to be the Plaintiff and no authority to depose the Affidavit.

The Defendants were granted a commercial tenancy over the property in 2015 for a period of three (3) years. One of the conditions was for them to clean the previous tenant's arrears which they did.

They ran a nightclub business and had obtained all requisite licenses from liquor authorities and Nasinu Town Council.

Annexure "GA1" to the Affidavit of George Acosta is a Commercial Tenancy Agreement between Mr. Raylene Shandhya Prasad and Ons Bar.

Annexure "GA2" are copies receipts; liquor license for one year from 18 December 2015; Provisional License for Nightclubs for six (6) weeks from 18 December 2015; Business License Certificate from Nasinu Town Council dated 1 January 2016.

5. In **Park v. Registrar of Titles & Others**, a Lautoka High Court Civil Case Number 150 of 2012 delivered on 14 December 2012 Master Tuilevuka (as he was then) dealt with an application concerning declaration of a power of attorney as void and of no effect as not registered in Fiji.

He relied on the definition of Power of Attorney as provided in the Halsbury's Law of England; Fourth Edition; page 438 and quoted as follows:

*An instrument conferring authority by deed is termed a power of attorney. The person conferring the authority is termed the donor of the power, and the recipient of the authority, the donee. A power of attorney*

*is construed strictly by the courts, according to well recognized rules, regard first being had to any recitals which, showing the general object, control the general terms in the operative part of the deed.*

*General words used in conferring the power are construed as limited by reference to the special powers conferred, but incidental powers necessary for carrying out the authority will be implied. Thus, a power granted to the donee to manage certain property followed by general words giving him full power to do all lawful acts relating to the donor's business and affairs... does not necessarily include authority to indorse bills, for the general words are construed as having reference to managing the donors property for which indorsing bills may not be incidental or necessary.*

6. The Land Transfer Act in Fiji deals with the Power of Attorney. Section 118 reads:  
The registered proprietor of any land subject to the provisions of this Act, or of any estate or interest therein, may by power of attorney in the prescribed form or such other form as may be approved by the Registrar, and either in general terms or specially, authorise and appoint any person on his behalf to execute transfers of, or other dealings with, such land, estate or interest, or to sign any consent or other document required under the provisions of this Act, or to make any application to the Registrar or to any court or judge in relation thereto.
7. Pursuant to **section 119**:  
*Every power of attorney intended to be used under the provisions of this Act, or a duplicate or certified copy thereof, verified to the satisfaction of the Registrar, shall be deposited with the Registrar who shall register the same by entering in the register to be known as the "Powers of Attorney Register" a memorandum of the particulars therein contained and of the date and hour of its deposit with him.*
8. The Power of Attorney relied upon by the Plaintiff has been registered by the Registrar of Titles on 4 March 2017.  
  
Hence I find it enforceable and thus giving the Plaintiff locus standi to bring the proceedings.
9. Furthermore in this case Lease No. 185380 is a protected lease under the Provision of the now **States Land Act** [formally known as the Crown Lands Act].
10. Pursuant to **section 13** of the Act:  
(1) *Whenever in any lease under this Act there has been inserted the following clause:-*



*"This lease is a protected lease under the provisions of the Crown Lands Act"*

*(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.*

*Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing effected without such consent shall be null and void.*

11. In **Phalad v. Sukh Raj [1978] 24 FLR 170**, the Court of Appeal dealt with the issue of an agreement for sale and purchase of a Native Land where entry into possession was done prior consent being obtained from the then Native Land Trust Board.

The Court of Appeal at page 173 held:

*Section 12 places restrictions on the right of the lessee to deal with the land comprised in the lease. Any transaction which comes within the ambit of section 12, is declared unlawful unless the consent of the Board as lessor or head lessor is first had and obtained. The granting or withholding of consent is within the absolute discretion of the Board, and, in the absence of such consent, the transaction is declared to be null and void. There is thus no right in a lessee to require the Board to grant its consent and the consent must be one first had and obtained. ....*

*The cases already cited show that the Courts have held that the mere making of a contract is not necessarily prohibited by section 12. It is the effect of the contract which must be examined to see whether there has been a breach of section 12. The question then is whether, upon the true construction of the said agreement the sub-sequent acts of appellant, done in pursuance of the agreement, "alienate or deal with the land, whether by sale, transfer or sublease or in any other manner whatsoever" without the prior consent of the Board had or obtained. The use of the term "in any other manner whatsoever" gives a wide meaning to the prohibited acts. For myself have no doubt but that the true construction of the said agreement and the substantial implementation of such an*

*agreement for sale and purchase, under which possession is completely parted with to the purchaser and immediate mutual rights and liabilities are created in respect of such exclusive possession, is a breach of section 12 if done before the consent is obtained. In every respect appellant was a purchaser in possession exercising his rights as a purchaser and it matters not that his title or rights so being fully exercised are subject to a condition which might, if it be not later fulfilled, discharge the parties from further performance with consequential rights springing into effect.*

*For the argument of counsel for appellant to succeed it would be necessary to read into section 12 some words which would permit a conditional alienation or dealing with the land conditional upon the consent being later given. This would render the words in section 12 "without the consent of the Board first had and obtained" mere surplusage of no effect. Further the transaction would not be null and void but only so if the consent were not subsequently obtained. The time factor would then be elastic and not certain as the plain words indicate.*

*The words "alienate" and "deal with" as elaborated in section 12, are absolute and do not permit conditional acts in contravention. If before consent, acts are done pending the granting of consent, which come within the prohibited transactions, then the section has been breached and later consent cannot make lawful that which was earlier unlawful and null and void. This does not cut across the cases already cited which deal with the formation of the contract as co*

12. In Northern Hotels Limited v Oliver [1980] 26 FLR 93 Madhoji, J. held:

*The decisions on the effect of section 13 of the Crown Lands Act show that it is akin to that of section 12 of the Native Land Trust Act Logessa v Pachamma Fiji Court of Appeal Civil Appeal No. 59 of 1979 at page 16).*

13. In the present case the Defendants rely on a Commercial Tenancy Agreement.

There was performance on the purported tenancy agreement without first obtaining consent from the Director of Lands.

Accordingly I find the purported tenancy agreement and the Defendants gaining possession under the purported tenancy agreement is in breach of section 13 of the State Lands Act.


14. In the circumstances I am satisfied that the Plaintiff is entitled to an order under Section 169 of the Land Transfer Act.

Defendants are to give to the Plaintiff immediate vacant possession of the land and premises comprised and described in the Lease No. 185380 being Lot 38 on DP Number

5086 Kalabo Industrial Subdivision containing an area of 20 perches situated in the Province of Naitasiri.

They are further ordered to pay cost summarily assessed at \$1,000 to the Plaintiff in 14 days.



  
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**Vandhana Lal [Ms]**  
Acting Master  
At Suva.