

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

**Civil Action No. HBC 111 of 2019**

**BETWEEN** : **MUKHTAR ALI** of 11 Nailuva Road, Suva and **AFRAZ ALI**  
of Lokia, Nausori

**PLAINTIFFS**

**AND** : **MUSTAK ALI** of Lot 87 Wainibuku Subdivision, 9 Miles,  
Nakasi

**DEFENDANT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Mr. S.P Gosai for the Plaintiffs  
: Defendant appeared in person

**Date of Hearing** : 31 March 2020

**Date of Judgment** : 1 April 2020

## JUDGMENT

1. The plaintiffs, by originating summons filed on 16 April 2019, sought an order for the sale of the land described as Lease No. 133954 bearing lot 87 on DP 4020 in the Wainibuku sub division in Naitasiri containing in extent 1 rood and 1.9 perches and for the proceeds of the sale to be equally shared between the parties: the two plaintiffs and the defendant. In the alternative, the plaintiffs sought an order to buy the shares of the defendant at a fair market value.
2. The Plaintiffs have moved this court in terms of section 119 of the Property Law Act 1971. The enactment provides that the court may on the request of any party, direct that the land be sold, unless the other parties, or some of them, undertake to purchase the share of the party requesting a sale, and, on such an undertaking being given, may direct a valuation of the share of the party requesting a sale<sup>1</sup>.
3. The plaintiffs and the defendant are the registered proprietors of the subject property. They have equal ownership. No party disputes the title of any other party. The affidavit in support filed by co-plaintiff, Afraz Ali, makes several claims concerning the defendant's alleged use of the property. Those claims, however, appear to be the subject of another action, HBC 243 of 2018, and have no bearing on these proceedings.
4. At the hearing, it transpired that the real dispute between the parties concerned the market value of the property. Both parties submitted that they would like to have the property sold and for equal distribution of the sale proceeds amongst them.
5. The defendant's contention, however, is that the valuation carried out on his behalf showed that the property was much more valuable than the valuation tendered on behalf of the plaintiffs. The defendant submitted that the plaintiffs' valuation had disregarded the second flat on the property, which he submitted was constructed

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<sup>1</sup> Section 119 (3) *ibid*

sometime in 2007. Responding to this, counsel for the plaintiffs submitted that although there might have been two flats, this appeared as one structure.

6. The value relied upon by the plaintiffs is \$110,000.00 while the valuation done on behalf of the defendant gives a figure of \$280,000.00. Admittedly, the plaintiffs' valuation refers to a single flat. Whether the exclusion of the second flat alone gave rise to the substantial disparity in values is not important in view of the orders to be made by the court consequent to the parties' agreement to the sale of their property rights.
7. Counsel for the plaintiffs as well as the defendant submitted to court that they would abide by a valuation carried out on a direction of the court. Both parties are in agreement that the sale proceeds should be equally divided, with each party to receive a third of the sales proceeds. Given that the parties are in agreement for the land to be sold and for the proceeds to be divided equally, an order for the sale of the property is appropriate in the circumstances of this case.
8. Therefore, I will direct the registrar of the High Court to appoint an independent valuer to carry out a valuation of the property at the expense of the parties. Once such valuation of the property is obtained, the counsel for the plaintiffs must ensure that the general directions of the court, which are specified below for the purpose of selling the property, are followed. The parties will be at liberty to purchase each other's shares subject to the directions below. All expenses with respect to the sale of the land will have to be deducted prior to the distribution of the sales proceeds to the parties.

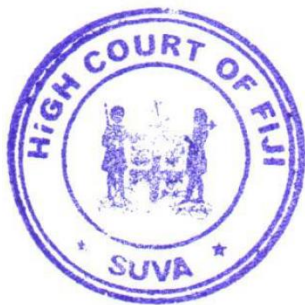
## **ORDERS**

- a. The registrar of the High Court is directed to appoint an independent valuer to carry out a valuation of the subject property.
- b. Upon receipt of the valuation, the property described as Lease No. 133954 bearing lot 87 on DP 4020 in the Wainibuku sub division shall be sold upon the following terms:
  - i. The plaintiffs shall have the first right of refusal to purchase the property. The plaintiffs or any one of them or the defendant may purchase the property at a consideration not less than the property's market value assessed by the independent valuer unless the parties agree upon a price less than such market value. If either the plaintiffs or the defendant do not purchase the property, the solicitors of the

plaintiffs are directed to advertise the property in two English national newspapers in Fiji. Thereafter, the property shall be sold to the highest offer.

- ii. The solicitors of the plaintiffs shall arrange for the preparation and execution of the instruments of conveyance. In the event of delay or default in making such arrangements, the registrar of the High Court is authorised to sign and execute the necessary instruments of conveyance. The plaintiffs' solicitors shall obtain the necessary approvals for the purpose of the conveyance.
- c. The sales proceeds are to be divided equally between the three parties i.e: the plaintiffs, Mukhtar Ali and Afraz Ali, and the defendant, Mustak Ali, after deduction of all expenses connected with the sale of the property. The solicitors of the plaintiffs are directed to ensure the proper distribution of the sales proceeds.
- d. After the sale of the land and the distribution of the sales proceeds, the solicitors of the plaintiffs are directed to submit a report relating to the sale of the property and distribution of the sales proceeds to the registrar of the High Court.
- e. The parties may apply generally.
- f. Each party shall bear his own costs.

Delivered at Suva this 1<sup>st</sup> day of April, 2020



Justice M. Javed Mansoor  
Judge of the High Court