

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

Civil Action HBC No. 103 of 2014

BETWEEN : **RAJ DATT** of Wailoaloa, Nadi in the Republic of Fiji, Retired
PLAINTIFF

AND : **SUNIL DATT, RAM DATT, ANIL DATT, MANJULA WATI** all of Navakai,
Nadi in the Republic of Fiji, Supervisor, Carpenter, Driver and
Domestic Duties as four of the Administrators of the Estate of RUDRA
DATT and the Executors and Trustees of the Estate of SHEELA late of
Navakai, Nadi, in the Republic of Fiji, Domestic Duties, deceased.
1ST – 4TH DEFENDANTS

AND : **DIRECTOR OF LANDS**
5TH DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Plaintiff's Son, Ravin Datt, appeared in person as P/A Holder.
1st Defendant appeared in person
Mr. Mainavolau J., for the 5th Defendant

DATE OF HEARING : 29th June 2023

DATE OF DECISION : 27th July 2023

RULING

1. The 1st defendant , Sunil Datt , appearing in person, by his Inter-Parte Summons dated 28th February 2023 and filed on 2nd March 2023 moved this Court for the following Orders;
 - a. *“For the dissolution of Order made on the 11th day of May 2015 by MOHAMMED AJMEER in respect of Civil Action No 103 of 2014 for extension of the time of the caveat number 795964 “C” registered on the 7th day of April, 2014 against Crown Lease No. 14796.*
 - b. *There be no order for costs”.*
2. The Summons is supported by his Affidavit sworn on 28th February 2023 and filed on 2nd March 2023, together with annexures marked as “SD-1” to “SD-4”.
3. The plaintiff's Son, Raveen Datt, being the Power of Attorney holder of the Plaintiff, on 14th April 2023 filed his Affidavit in opposition sworn on 12th April 2023, together with a copy of the Petition for Leave to Appeal made to the Supreme Court against the judgment

pronounced by the Court of Appeal in ABU 0006 of 2019 affirming the judgment of the High Court of Lautoka in the substantial matter.

4. The 1st defendant in turn on 5th May 2023 filed his Affidavit in reply, subsequent to which this court heard both the parties in person on 29th June 2023. This ruling is pronounced pursuant to the said hearing.
5. As the plaintiff in his Affidavit in opposition had revealed about the pending Appeal before the Supreme Court in relation to the substantial matter, about which the 1st defendant had suppressed in his Affidavit in support, this Court at the end of the hearing on 29th June 2023, directed for a copy of the Judgment by the Supreme Court to be filed at this Court once it is pronounced. Accordingly, same has been filed on 12th July 2023, being pronounced by the Supreme Court on 30th June 2023.

Analysis

6. Perusal of the Affidavit in support reveals that the Caveat in question was registered by the plaintiff on 7th April 2014 affecting the Crown Lease no 14796 and subsequently, on the plaintiff's application the time period was extended by Mohamed Ajmeer –J, as he then was, by making the following orders on 11th May 2015.

"IT IS HEREBY ORDERED AS FOLLOWS THAT:

1. *The time has been extended as mentioned in the Notice of removal of caveat dated 28th April 2015 issued by the Registrar of Titles under NO. 812569.*
 2. *The extension is granted until further order of this court.*
 3. *The sealed order has to be served on the 1st Defendant and the Registrar of Titles forthwith". (the emphasis is mine)*
7. As per the prayers to the Inter-parte Summons hereof, what the 1st defendant is seeking from this Court, in-alias, is an Order for the **dissolution** of Order made by Mohamed Ajmeer on the 11th day of May 2015. The dissolution of an Order so made can be done only by an Appellate forum. This Court cannot dissolve or set aside its orders of this nature.
 8. The Order what the 1st Defendant could have sought from this Court is for the removal of the Caveat or not to extend the time period of it any further, if the circumstances do not demand the extension of the time period of the Caveat currently in force.
 9. As I alluded above, the 1st defendant deliberately suppressed the fact that the substantial matter is currently on Appeal before the Supreme Court and pending for the judgment on 30th June 2023.
 10. Now the judgment of the Supreme Court being pronounced on 30th June 2023, a copy of it has been provided to this Court for perusal. As per the said judgment, I observe that the Supreme Court, having granted special leave to Appeal, has allowed the Appeal of the Plaintiff hereof and set aside the judgment of the Court of Appeal dated 28th February 2020, by which the Judgment of the High Court dismissing the Plaintiff's action had been affirmed.

11. In view of the above, I find that the plaintiff has the right to have the registration of his Caveat intact till his rights, recognized by the judgment of the Supreme Court, are duly materialized.
12. Further, the position taken up by the 1st defendant in his reply Affidavit to the effect that Raveen Datt, had filed the Caveat in his personal capacity, it was not filed by the actual plaintiff of this action or by Raveen Datt, as the holder of the Power of Attorney, will not support his Application. Justice Ajmeer, seems to have made the impugned Order after duly recognizing the Plaintiff's Son, Raveen Datt, as the Power of Attorney holder of the plaintiff and accordingly extended the time period of the Caveat.
13. If the 1st defendant was of the view that Justice Ajmeer had erred in his order of extending the time period of the Caveat, the appropriate remedy for the 1st defendant was to challenge the order of Justice Ajmeer in the appropriate forum and not before this Court as I alluded in a foregoing paragraph. He could have taken up this objection before Ajmeer J.
14. Being aware of the pending Appeal before the Supreme Court, the 1st defendant deliberately suppressed it to this Court and attempted to mislead this Court to obtain an order for the cancellation of the Caveat that is in force. This is an abuse of process of this Court on the part of the 1st defendant.
15. Though, the plaintiff appeared in person through his Son Power of Attorney holder, considering the conduct of the 1st defendant and the cost the plaintiff would have incurred in preparation of Affidavit in opposition and other possible disbursements, I decide to impose a summarily assessed costs in a sum of Three Hundred Fijian Dollars (FJ\$300.00) payable by the 1st defendant unto the plaintiff.
16. Accordingly, for the above reasons, I make following orders.
 - A. The inter-parte Summons dated 28th February 2023 filed by the 1st defendant is hereby dismissed.
 - B. The 1st defendant shall pay the plaintiff a sum of \$300. 00, being the summarily assessed costs payable within 14 days.



A.M. Mohamed Mackie
Judge

At High Court Lautoka this 27th day of July, 2023.

SOLICITORS:

For the Plaintiff : In Person
For the 1st Defendants: In Person
For the 5th Defendants: Attorney General's Office