

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

Civil Action No. **HBC 10** of 2020

**BETWEEN:**           **NAIR'S TRANSPORT COMPANY LIMITED**, a limited liability Company  
having its registered office at Wainibuku Road, 9 miles, Nasinu.  
**PLAINTIFF**

**AND:**               **THE DIRECTOR OF LANDS**, duly appointed under the Crown Lands Act,  
situated at Nasese, Suva.  
**FIRST DEFENDANT**

**AND:**               **ATTORNEY - GENERAL OF FIJI.**  
**SECOND DEFENDANT**

**BEFORE**        **:**       **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:**       **Mr. Nair D. for the Plaintiff**  
**Mr. Nawaikula P. for the Defendant**  
**Mr. Cagilaba T. for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants**

**DATE OF DECISION:** 1<sup>st</sup> August, 2025

**DECISION**

*[Issuance of Lease and Damages]*

## **Introduction**

1. The Plaintiff filed an Originating Summons coupled with an Affidavit in Support and sought for the following orders:
  - (1) That the First Defendant to perform its obligation dated 13<sup>th</sup> November, 2015 and issue the lease in respect of the land comprised as lot 81, R1679, SO 3086, Wainibuku Subdivision.
  - (2) Any further relief or orders the Court may consider appropriate in the prevailing circumstances.
  - (3) Damages.
  - (4) Costs of this application.

On the grounds:

- a. The Plaintiff had fully complied with the terms of the agreement dated 13<sup>th</sup> November, 2015 but failed to execute the lease documents.
  - b. The First Defendant acted contrary to Regulation 28 of the Crown Lands (leases and licences) Regulations [Cap 132] by not executing the lease documents.
  - c. Acted in breach of the legitimate expectation of the Plaintiff.
  - d. Further acted unfairly, unreasonably and unjustifiably.
2. Further, there was a Preliminary objection raised by the Defendants that the Relief(s) sought by the Plaintiff in its Originating Summons of 14<sup>th</sup> January 2020 cannot be granted by this Court as it would be contrary to Section 15 (1) of the State Proceedings Act 1951.
  3. The Defendants filed their Affidavit in Response to the Plaintiff's Affidavit in Support.
  4. Both parties to the proceedings furnished Court with their written submissions and argued the preliminary and the substantive issues accordingly.

## **Background**

5. The State Lease number 2064 for the property known as Lot 81, Wainibuku Subdivision comprising an area of 3 roods and 30 perches was issued to Sanguni Nair for a period of 99 years from the 1<sup>st</sup> January 1949 for residential purposes.

6. In 1992, the then lessees of the original lease agreed to a subdivision of the land comprised in the original lease to grant access for another piece of land.
7. On or about 19<sup>th</sup> February 1998, one of the lessees, Kunjan Nair requested the Department of rezoning of the land comprised in the original lease from Residential to Industrial (to be used as a Bus Depot), which was not for the Residential purpose of the original lease.
8. On or about 27<sup>th</sup> April 1998, the department informed the Plaintiff via a letter on the approval of change of the use of the land comprised in the original lease from Residential to Industrial Lease subject to the conditions stipulated therein.
  - (i) Obtain approval from Director Town and Country Planning and Public Works Department of the industrial zoning.
  - (ii) Surrender existing lease and acceptance of the fresh 99 years lease for industrial purposes,
  - (iii) Payment of leasehold Market value for change in usage to be assessed and,
  - (iv) All costs to be borne by the Lessee.
9. On 28<sup>th</sup> July 2009, the Plaintiff through Sherani and Company, agreed to surrender the original lease and request for a 99 years Lease.
10. On 3<sup>rd</sup> March 2010, the Department informed the Plaintiff that part of property was used to provide an access to Lot 2, SO 3086 and balanced area has not been approved as to survey, therefore a registered lease will be prepared and an approval notice to lease would be issued until survey Plan of the balance area is approved. The Plaintiff was accordingly provided with a letter of offer on 25<sup>th</sup> March 2010 and accepted by Plaintiff.
11. Subsequently, the Plaintiff was issued with an approval Notice of Lease to Lot 81, Wainibuku for having industrial purposes for a 99 years period on 1st January 2010.
12. The Plaintiff sought for a proper Lease from the Department. However, in 2015 the land in the approval Notice of Lease was rezoned by the Minister of Local Government for Heavy Industry to Commercial C. On 13<sup>th</sup> November 2015 issued an industrial lease for balance of Lot 81, Wainibuku to the Plaintiff for industrial purposes.
13. Plaintiff was required at all time to submit a Compilation plan (survey plan) to the department for approval, prior to issuance of proper lease for balance of Lot 81 R1679, Wainibuku Subdivision. The lease document has not yet been issued to the Plaintiff because of Plaintiff's failure to provide a Compilation plan as was required. Plaintiff was informed of these on 15<sup>th</sup> April 2016 and 14<sup>th</sup> July 2016.

14. The Plaintiff only provided a scheme plan, but was reminded to prepare a Compilation plan.
15. The Plaintiff has failed to provide a copy of the Compilation plan. Once furnished with Compilation plan and approved the Plaintiff will be issued with our Commercial Lease otherwise on their failure to provide one, the Plaintiff will then be issued for Commercial purpose.

### **Determination**

16. The first issue for this Court to deal with is "whether the Plaintiff should have obtained a consent from the Director of Land to institute the current proceedings?"
17. I direct myself to Section 13 (1) of the State Lands Act 1945 which states:

*"The interest in land subject to the action herein is a protected lease and therefore in accordance with Section 13 (1) of the State Lands Act 1945 consent should have been obtained from the Director of Lands to institute the action herein. In the current case, the necessary consent to institute the action herein from the Director of Lands in accordance with the State Lands Act 1945 has not been sought in these proceedings.*

18. The interest in land is a Protected lease and it is requirement in accordance with Section 13(1) of the State Land Act 1945. That a consent should be sought from the Director of Land in order to institute the proceedings herein.
19. Therefore, failure on the part of the Plaintiff to comply with Section 31(1) as hereinabove, makes the Plaintiff's current proceedings becomes fatal and needs to be dismissed accordingly.
20. However, I will go one step further. The Affidavit in Response deposed by Irena Nayacalevu, at paragraph 28 states that "the pre-requisites have not been complied or met by the Plaintiff for the issuance of the lease; and she reiterates paragraph 17-21 inclusive of her affidavit.

In any event, she deposed at paragraph 31 that "I further state the issuance of the lease (either proper lease or approval notice of lease) will only be for Commercial purposes as it is now rezoned as such and the Plaintiff will not be able to operate a bus depot which falls under heavy industrial purpose.

21. One of the reliefs sought in the Plaintiff's Originating Summons is seeking that the first defendant to perform its obligations dated 13<sup>th</sup> November 2015 and issue the lease in respect

of the land comprised as lot 81 R1679, SO 3086, Wainibuku Subdivision. This court is not in a position to accede to the grant of this relief.

22. Whilst bearing above in mind, upon the perusal of the file, I discover that the substantive proceedings have been filed as an Originating Summons seeking relief and orders therein, which are summarily determined by Courts.
23. The written submissions filed herein coupled with oral Arguments show that there are triable issues that needs determination on viva voce and documentary evidence.
24. For the rational as set out hereinabove, I have no alteration but proceed to Dismiss the Originating Summons together with the orders sought therein accordingly.

#### **Costs**

25. The matter proceeded to full hearing with Counsels filing affidavit and furnishing courts with their respective written submissions and argued the application orally. It was time consuming and this court granted them time to discuss the substantive issue and see if there is any further development. However, it failed and this Court then had to hear this matter and determine it accordingly.
26. The Plaintiff is therefore ordered to pay a Summarily Assessed costs of \$5,000 within 21 days' time frame to the Defendants.

#### **Orders**

- (i) The Plaintiff's Originating Summons filed on 14<sup>th</sup> January 2020 together with all orders sought therein is dismissed in its entirety.
- (ii) There is an order for summarily assessed cost of \$5,000 against the Plaintiff to be paid to the Defendants within 21 days' time frame.
- (iii) File is closed.

Dated at **Suva** this **1<sup>st</sup>** day of **August** , **2025**.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

**CC: Nilesh Sharma Lawyer, Suva**  
**Office of Attorney-General, Suva**