

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Case No. HBC 220 of 2024

IN THE MATTER of Property Law Act

AND

IN THE MATTER OF an application for partition of the property compromised in Crown Lease No. 3807

BETWEEN: **RAMESH CHAND SHARMA** of Labasa, Businessman

PLAINTIFF

AND: **RAJENDRA SHARMA** of Lot 1 Vere Road, Laucala Beach Estate,
Nasinu

DEFENDANT

For the Plaintiff: Mr. Saneem

For the Defendant: Ms. Singh

Date of Hearing: 20th November 2024

Date of Ruling: 20th August 2025

RULING ON APPLICATION FOR PARTITION OF LAND

1. This action was commenced by way of Originating Summons filed on the 22nd of July 2024 seeking the following orders: -
 - (a) That the Plaintiff's share in the property compromised in Crown Lease No. 3807 and the Defendant's share in the Property be partitioned subject to any requirement of statutory and regulatory authorities in Fiji.

- (b) That the Chief Registrar of the High Court, if required, be appointed to sign all documents and do all such things as may be reasonably required in the name of the parties to complete partition.
 - (c) That the parties be at liberty to apply to the Court for further directions.
 - (d) Such further and or other reliefs as seems just and equitable to this Honourable Court.
2. The application is made pursuant to section 119 of the Property Law Act and Order 7 Rule 1 of the High Court Rules and the inherent jurisdiction of the High Court.
 3. The application is supported by the affidavit of Ramesh Chand Sharma deposed on the 17th of July 2024 and filed on the 22nd of July 2024.

The grounds for the application

4. Ramesh Chand Sharma deposes that he is one of the registered owners of the property described as CL 3807, Lot 1 on Plan M2277, formerly Nanhu Street Reserve, Labasa.
5. He owns an undivided half share in the above property with Rajendra Sharma, the Defendant.
6. The property is commercial in nature and the building constructed therein is designed to be let out to tenants. The building accommodates two shop fronts on the bottom floor, 2 large office spaces on Level 1 and 4 smaller rooms that can accommodate small offices or businesses.
7. 2 of the large offices in the said property were vacated in December 2023 and March 2024 respectively. After the tenants vacated the property, the Plaintiff claims that he spent over \$15, 000 to renovate one of the flats to bring it to market standards.
8. The tenancy for Prakash Sharma t/a Prakash Video Shop had expired in 2022 and without consulting the Plaintiff or obtaining his approval the Defendant proceeded to renew the

tenancy for an unknown period, and the rental income also remains unknown to the Plaintiff and to date he has not received his share of the same.

9. The Defendant had also made complaints to the TLTB regarding the said property and this has resulted in TLTB issuing breach letters and such actions compromises the best interests of both owners of the property.
10. He maintains that he is finding it too difficult to continue to manage the property as a co-owner.
11. In referring the matter to the TLTB this has further exacerbated his already fragile relationship with the Defendant, and it has also put the property at risk.
12. On 25 June 2024 through his solicitors Saneem Lawyers they wrote to the Defendant proposing to carry out a valuation of the property and the property can be sold on the open market to the next available offer and if in any event the Defendant wishes to purchase that share that could be discussed however there was no response from the Defendant.
13. The Plaintiff therefore seeks orders in terms of the Summons before the Court.

The Opposition to the Application

14. The Defendant filed the affidavit in opposition to the Summons by Rajendra Sharma. He deposed the affidavit in person on the 11th of September 2024, and this was filed on the 12th of September 2024.
15. He confirms that he is the owner of one undivided half share in the said property. He has acquired his undivided half share in 1994, and the Plaintiff obtained his undivided half share in 2018.
16. He deposed that the Plaintiff has entered into new tenancy agreements and rented out two spaces in the said property to Rajasthani Investments and to Lifters Finance on his own

accord from an unknown period of time without the Defendant's knowledge and consent and the rental income is unknown to him and he has not received his share of the rental proceeds.

17. He sent the Plaintiff a notice dated 16 January 2024 through Patrick Kumar Lawyers to disclose details of the two new tenants, pay 50% of the rental proceeds, disclosure of the new tenants with tenancy agreements as the sole landlord, breach of the ITLTB conditions and renovating the said property without mutual agreement.
18. He had inquired of the ITLTB on consent being granted to two new tenants to operate businesses in the said property without his consent and knowledge being the owner if half undivided share in the said property.
19. The ITLTB inspected the said building on 27 February 2024 and issued a breach notice on 4 March 2024, in respect of ITaukei Land Trust Act 1940, Clause 2 noting 3 tenants, Prakash Audio Video Centre, Rajasthani Investment and Lifters Finance as actively operating their businesses in the said property without consent to sublease first obtained.
20. He then corresponded with the Plaintiff on the Tenancy Agreement to be agreed upon and signed by both owners and subsequently the Application for Consent to Sub Lease forms to be endorsed by both parties to remedy the breach.
21. A demand notice was sent from Jiten Reddy Lawyers to the Plaintiff to remedy the breach.
22. The Plaintiff had solely entered into a tenancy agreement with Prakash Sharma t/a Prakash Audio and Video Centre in 2019 with full rent of \$2, 000 payable to him.
23. That a Notice dated 13 June 2019 was issued to the Plaintiff and Prakash Sharma on the half share of the rental proceeds payable to the Defendant. Both the Plaintiff and Prakash Sharma, through an appointment with Sarju Prasad, were advised to pay the rent equally to the co-owners.

24. The Defendant claims that he has not entered into any tenancy agreement with Prakash Sharma t/a Prakash Audio and Video Centre after the expiry of his agreement in December 2022, the Plaintiff demanded rent of \$4, 100 per month to be paid from January 2023 from the previous \$2000 per month.
25. This dispute remains unresolved to date and he has also prohibited the Defendant from carrying out any renovation or maintenance and also stopped him from entering into any tenancy agreements on his own accord.
26. The Plaintiff continued to carry out renovation and maintenance works, despite his notice to the Defendant, and he did so without the Defendant's consent. His counsel sent another notice to the Plaintiff to only do maintenance works after mutual agreement.
27. One of the two tenants vacated in December 2023. On 9 January 2024 his counsel wrote to the Town Administrator, Labasa Town Council seeking advice and consent on his intention to carry out renovation works in the vacant office.
28. The Labasa Town Council conducted inspections at the property and found that the Plaintiff had renovated the vacated office of his own accord without the Defendant's knowledge and consent.
29. The Plaintiff had done the renovation of the office space on his own accord and he was not responsible for the costs incurred.
30. The Defendant submits that the Plaintiff has consistently prevented him from speaking to the new tenants and to discuss renovation and maintenance works to be done mutually.
31. The Defendant seeks that the Court summon the two tenants Rajasthani Investments and Prakash Audio Video Centre and Lifters Finance to appear as witnesses with their tenancy agreements in this matter before any judgment is made.
32. The actions of the Plaintiff have made it difficult to work mutually through his actions and sole decisions of tenancy agreements and rental proceeds.

33. This matter was first called on the 25th of September 2024 and the Defendant appeared in person with his wife. The Court advised him to seek legal advice and to file a supplementary affidavit in order to properly place his affidavit before the Court.
34. Messrs. Kohli and Singh filed the Notice of Appointment as Solicitors on the 22nd of October 2024 and the Defendant also filed a supplementary affidavit, deposed on 21st of October 2024 and filed on 22nd October 2024.

The Supplementary Affidavit of the Defendant

35. He has been advised by his counsel that his affidavit filed on September 12 2024, would place Messrs. Kohli and Singh in a conflict situation therefore he requests that the initial affidavit be expunged from the records and the Court is invited to rely only on this supplementary affidavit.
36. He confirms that he holds an undivided half share in the property described as CL 3807, Lot 1 on Plan M2277, formerly Nanhu Street Reserve, Labasa. The Plaintiff holds the other half share of the property.
37. He denies any knowledge of the Plaintiff spending over \$15, 000 to renovate one of the flats in the property to bring it to market standards. As a co-owner he did not consent either explicitly or implicitly to the Plaintiff to carry out this renovation.
38. He does admit that two of the tenants who were occupying the large offices in the property have vacated in December 2023 and March 2024.
39. The two parties in this matter had both agreed to institute legal action to obtain vacant possession of the property and they engaged the services of Messrs. Saneem Lawyers to file this Court action. The sole reason for the Court action was to carry out renovation and maintenance works over the said property as mutually agreed by both parties.

40. In January 2024 he travelled to Labasa to discuss renovation and maintenance works over the property with the Plaintiff as well as for new tenancy agreements that the Plaintiff had entered into on his own with new tenants. The Defendant however was not able to do this as the Plaintiff forcefully pushed him and verbally abused him.
41. He did not allow him to discuss the tenancy agreement with the new tenants or to discuss renovations or maintenance works to be carried out mutually as agreed.
42. The Plaintiff through his counsel, Alvin Prakash had issued a Notice to the Defendant on 18th October 2022 stating that any renovation works carried out in the property would need to be with the mutual agreement of both parties, hence costs will not be shared and only the person conducting the renovation works will bear the costs.
43. On 8th January 2024, the Defendant engaged the services of Patrick Kumar Lawyers, and he issued a Notice to the Plaintiff specifically stating that he was not going to be liable for the renovation works and upgrading of the property. Any costs borne by the Plaintiff for renovation work done would be at his own expense.
44. On the 9th of January 2024 the Defendant again engaged the services of Patrick Kumar Lawyers to write on his behalf to the Labasa Town Council to seek advice on his intentions to carry out renovations on his property.
45. The council responded on the 22nd of January 2024 advising that they had conducted an inspection at the property and found that the Plaintiff had conducted some minor renovations.
46. The Defendant maintains that he was not consulted, nor did he consent to the renovation works being done.
47. The Defendant maintains that any current tenancies on the property and any expenses incurred by the Plaintiff are his responsibility. The Plaintiff has also been collecting rent and not sharing with the Defendant despite being given notices to share the rental income.

48. The TLTB has gotten involved and identified that these tenancies were in breach and the Plaintiff was required to remedy the breach.

49. In essence the Defendant does not oppose the partition of the property, subject to the following conditions: -

- (a) An independent valuation of the said property be carried out by a reputable valuer. As per a recent valuation carried out by the Defendant the said property is valued at \$1.6 million dollars, therefore the property is to be sold at \$1.6 million dollars at least or higher.
- (b) ITLTB breach (if any) to be paid solely by the Plaintiff and/or any legal consequences must be the responsibility of the Plaintiff solely.
- (c) Any dues (ground rent, water, electricity and rates) over the said property to be borne solely by the Plaintiff.
- (d) Renovations or maintenance costs incurred by the Plaintiff over the said property to be borne solely by the Plaintiff.
- (e) The Plaintiff to surrender the tenancy agreements of the 2 new tenants to the Defendant's solicitors.
- (f) The Plaintiff to inform the tenants regarding the partition of the property to avoid any caveats being registered on the property at the time of the sale.
- (g) Both parties to finalise a buyer of the said property within three months of sealing of the Court Order.
- (h) Within 6 months thereafter settlement of the said property to be effected.
- (i) Where there is no buyer within 6 months of the sealing of this Court Order, the partition of the property is to be cancelled.
- (j) Proceeds of sale to be deposited into the Trust Account of Messrs. Kohli and Singh Suva Trust Account.
- (k) Both parties are to bear their own costs.

The Hearing

50. The matter was then fixed for hearing on the 20th of November 2024.

51. At the hearing both parties made submissions. they advised the Court that they would rely on the oral submissions made in Court.

52. At the hearing the Plaintiff submitted that relations between the parties have deteriorated to such an extent that it is no longer feasible to continue as they are. He submits that the best solution is to have the property sold and the parties are to share equally in the proceeds.

53. The Plaintiff alternatively submits that he be given the first opportunity to buy out the Defendant's share for \$500, 000 as the Defendant has not contributed to the upkeep the property, nor has he paid his share of ITLTB consent application.

54. The Defendant agrees that the best option is for the Court to exercise its powers under section 119 (2) of the Property Law Act, to order a sale of the property. He submits that the Plaintiff must pay for his own expenses for renovating and doing maintenance on the property as he did this on his own volition without the consent of the Defendant.

55. In Atu vs Atu [1983] 29 FLR 100 (25 January 1983) the Supreme Court (now the High Court) stated as follows: -

“Section 119(1) of the **Property Law Act** provides as follows:

"Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly."

Subject to one issue Mr Knight raised which I will consider later, unless the Court sees good reason to the contrary, it is mandatory to direct sale of the property since the plaintiff's interest in the property is not less than one moiety.

A 'moiety' means a half and the issue raised by Mr Knight is that section 119 is not available to the plaintiff because he is a joint tenant and not a tenant in common entitled to a moiety or upwards of the property.

It is not necessary to enter upon a description of joint tenancies and tenancies in common because **partition of land** by the Court is available to persons having concurrent interests whether jointly or in common in a property.

Halsbury Laws of England Volume 21 first edition at p. 810 when describing the legal term "partition" says:

"The legal term 'partition' is applied to the division of lands, tenements and hereditaments belonging to co-owners and the allotment among them of the parts so as to put an end to community of ownership between some or all of them."

In a note regarding co-owners, the author says:

"The co-owners may be joint tenants, tenants in common or co-partners."

The plaintiff is entitled to an order for sale of the property unless the Court considers there are good reasons to the contrary."

56. The matter is now adjourned for Ruling.

Analysis

57. This application is made pursuant to section 119 of the Property Law Act 1971, in particular section 119, which provides: -

"In action for partition court may direct land to be sold

119 (1) Where in an action for partition the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates requests the court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale accordingly.

(2) The court may, if it thinks fit, on the request of any party interested, and notwithstanding the dissent or disability of any other party, direct a sale in any case where it appears to the court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.

(3) The court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, 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.

(4) On directing any such sale or valuation to be made, the court may give also all necessary or proper consequential directions.

(5) Any person may maintain such action as aforesaid against any one or more of the parties interested without serving the other or others, and it shall not be competent to any defendant in the action to object for want of parties, and at the hearing of the cause the court may direct such inquiries as to the nature of the land and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further considerations, provided that all persons who, if this Act had not been enacted, would have been necessary parties to the action shall be served with notice of the decree or order on the hearing, and, after that notice, shall be bound by the proceedings as if they had originally been parties to the action, and shall be deemed parties to the action, and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rules of court, apply to the court to add to the decree or order.

(6) On any sale under the provisions of this section, the court may allow any of the parties interested in the land to bid at the sale, on such terms as the court deems reasonable as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters.”

58. After considering the evidence and the submissions of counsel at the hearing, I find that the relations between the parties, who are also brothers, has deteriorated to such an extent that it is no longer feasible for them to remain as joint proprietors and a sale would be to their benefit.

59. Pursuant to section 119 (2), (3) and (4) of the Property Law Act, I make the following directions: -


(a) The parties shall obtain a current valuation of the property – 30 days to agree on the valuer and to arrange for the valuation and they shall each contribute equally to the costs of the valuation.

(b) After the valuation has been obtained, the Plaintiff shall be given the first opportunity to buy out the Defendant’s half share in the property within 3 months (90 days) from the date of the valuation.

- (c) If the Plaintiff is unable to buy out the Defendant's half share, then the property shall be advertised for sale. Both parties will also share equally in paying the costs of the advertisement.
- (d) The parties and their respective counsel will assess all bids and agree in writing to the successful bid.
- (e) The parties shall share equally in all the related costs for the Transfer of the title, including all necessary statutory consents and the costs of preparing the legal documents for transfer and any taxation or other statutory dues.
- (f) The parties will withdraw their respective claims against each other.
- (g) The parties will bear their own costs.

There is a right of appeal





Mr. Justice U. Ratuville
Puisne Judge

cc: - Saneem Lawyers
- Kohli & Singh, Suva.