

**BETWEEN** : **SASHI KIRAN LATA** of Nawaka, Nadi, unemployed  
**PLAINTIFF**

**AND** : **JYOTISH PRAKASH MUDALIAR** of Sanasana, Nadi, unemployed  
**DEFENDANT**

**BEFORE** : Hon. A.M. Mohamed Mackie- J.

**COUNSEL** : Mr. Krishan R. For the Plaintiff.  
Mr. Chand K. For the Defendant.

**HEARING** : On 24<sup>th</sup> July 2025. .

**W. SUBMISSIONS** : Filed by the Defendant on 24th July 2025.  
Filed by the Plaintiff 19<sup>th</sup> August 2025.  
No reply submissions filed by the Defendant.

**DATE OF RULING** : 12<sup>th</sup> December 2025

## JUDGMENT

### **A. INTRODUCTION:**

1. Before me is an Originating Summons filed by the Plaintiff on 5<sup>th</sup> September 2022, seeking the following Orders against the Defendant.
  1. *An Order for the sale of the property comprised in the Agreement for Lease iTLTB Reference No. 6/10/39718 known as Sanasana (Part of) in the Tikina of Nadi in the Province of Ba having an area of 1203 square meters (hereto to as “the subject property”);*
  2. *The Defendant to appoint a reputable valuer to carry out the valuation on the subject property;*
  3. *The subject property to be sold at the best price obtained by any of the parties and first priority be given to either party to purchase the subject property;*
  4. *The proceeds received from the sale of the subject property to be used to pay off the costs associated with the same of the subject property including the legal feeds and transfer after which proceeds are to be shared equally, however all the arrears which are pending on the subject property to be paid from the Defendant’s share of the proceeds;*
  5. *The Chief Registrar of the High Court, if required, be appointed to sign all the documents and do all such things as may be reasonably required in the name of the parties to complete the transfer of the subject property;*
  6. *The costs of this application be paid by the Defendant; and*
  7. *Any other Orders that this Honourable Court deems just and equitable.*

2. The purported originating Summons, which does not state any provision of the law under which the reliefs therein are sought, is supported by an Affidavit sworn by the Plaintiff, **Sashi Kiran Lata** on 18<sup>th</sup> August 2022 and filed along with exhibits marked and annexed as “**SL-1**” to “**SL-3**”.
3. I find that the annexure marked “SL-1” is an “**Agreement for Lease**” wherein the Plaintiff and the Defendant are, admittedly, Co-Owners of a Lease to be issued in future in respect of the property comprised in the iTLTB Reference No- 6/10/39718 known as Sanasana (part of) in the Tikina of Nadi in the province of Ba, having an area of 1203 square meters (hereinafter sometimes called and referred to as the “subject Property”).
4. As the Defendant’s attempt to obtain the services of the Legal Aid failed, his Solicitors, having filed their Notice of Appointment on 10<sup>th</sup> November 2023, filed the Affidavit in opposition on 21<sup>st</sup> December 2023, along with an annexure marked as “JPM-1”. The Plaintiff in turn filed her Affidavit in reply on 19<sup>th</sup> December 2024 after one (1) year from the date of filing the Defendant’s Affidavit in opposition.
5. Accordingly, when the matter came up for hearing on 24<sup>th</sup> July 2024, Counsel for the Plaintiff raised a preliminary objection for the appearance of the Defence Counsel citing the conflict of interest. In response, Counsel for the Defendant, having objected to same, raised the question as to whether the Plaintiff can rely on the Section 119 of the Land Transfer Act. However, the Court overruled the objection raised by the plaintiff’s Counsel for the appearance of the Defence counsel and proceeded with the hearing.
6. As the Defendant’s Solicitors had filed their written submissions at the time of the hearing, Plaintiff’s Counsel was directed to file and serve their written submissions in 28 days for the Defendant to file their reply submissions, if needed. Accordingly, Plaintiff’s submission was filed, but no reply submissions filed by the Defendant.

**B. DISCUSSION.**


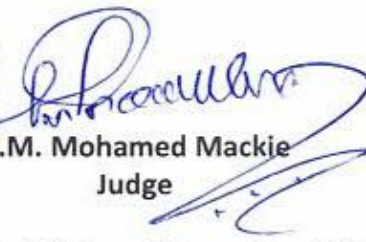
7. As alluded to by the Counsel for the Defendant, the Originating Summons does not state as to under which provision of the Law, the Application is made to obtain the reliefs sought. However, this this may not be a hurdle to proceed with the action, as it could not have caused any prejudice to the Defendant.
8. The Plaintiff’s position is that as the Agreement for Lease was written in both parties name, she is entitled for 50% of the subject property and wants to have it sold in order to share the proceeds accordingly. She moves for ancillary orders as well to implement the intended sale.
9. Plaintiff states that she being informed by the Defendant’s Mother, who is her friend, that the lease for the subject property had expired, she sent money from Canada to the Defendant in order to facilitate a new lease for the subject land in her name, and for the Defendant to make the necessary applications to the iTaukei Land Trust Board in that regard.
10. Plaintiff also states that on her return to Fiji, when she went to the Board to execute the Lease instrument, she realized that the Lease had been already prepared under her and the Defendant’s name. Although, she had intended to get the lease in her name only, since she had already paid a large sum of money around \$12,000.00 and

the Agreement had already been prepared, she consented for the Agreement for lease to be in common.

11. That she has not been allowed by the Defendant to occupy the property, as his family members are already residing therein. Her attempt to resolve the issue by making a complaint to the Police failed and her approach to the iTaukei Land trust Board also failed as the Defendant's name also there in the Agreement for Lease.
12. The Defendant in his Affidavit in opposition has taken up a position, inter alia, that the Plaintiff's acquisition of co-ownership in the subject property were contingent upon specific conditions, and has given a totally different version for the transaction took place between them. However, the Defendant has expressed his willingness to repay the contribution made by the plaintiff, which the Defendant states is only \$9,006.20.
13. On careful perusal of the averments in the affidavits and the contents of the written submissions filed, I find that there are pertinent issues that warrant the oral evidence at a formal trial, particularly as to whether the payment of money by the Plaintiff to the Defendant was a loan or intended to be the consideration for the full ownership of the subject property. Without resolving the said issue first through a formal trial, this Court cannot proceed to consider the reliefs sought by the Plaintiff in her Originating Summons.
14. The learned Plaintiff's Counsel in paragraph 2.1 of her written submissions has correctly identified such an issue to the effect "***Whether the Applicant and the proposed Defendant are joint tenants or tenants in common of the subject property***", answer to which may **also** require some oral evidence.
15. Accordingly, I decide to make the following orders;

**ORDERS.**

1. This action by way of Originating Summons is converted as a writ action.
2. The Pleadings by way of affidavits hereof will be treated as Pleadings in a Writ action.
3. The plaintiff shall file the Summons for direction.
4. There shall be no costs and both parties are to bear their own Costs.

   
A.M. Mohamed Mackie  
Judge

At the High Court of Lautoka on this 12<sup>th</sup> day of December 2025.

**SOLICITORS:**

For the Plaintiff

Legal Aid Commission.

For the Defendant

Messrs. Pillai Naidu & Associates – Barristers & Solicitors.