

IN THE FIJI COURT OF APPEAL

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CIVIL JURISDICTION

CIVIL APPEAL NO. 21 OF 1993

(High Court Civil Action No. 261 of 1992)

BETWEEN:

REV. SAIRUSI KAMANALAGI SOOETA  
REV. PHILIP SATYAVAN MADHAVAN  
REV. JOSEPH WHIPPY

APPELLANTS

-and-

REV. PAULA TIKOINAKAU  
REV. ERONI KAORA  
MOSESE RAKOTAVO  
NACANIELI VAKAMOCE

RESPONDENTS

Mr. D. S. Naidu for the Appellants  
Mr. A. Seru for the Respondents

Date of Hearing : 23rd November, 1993  
Date of Delivery of Judgment : 25th November, 1993

JUDGMENT OF THE COURT

It is regrettable that this matter must be determined by a Court of Law.

This appeal arises out of a claim for an injunction brought by the Trustees of the Assemblies of God of Fiji against the Trustees of the International Christian Fellowship whereby the applicants sought:-

"(a) An Order or injunction to restrain the defendants whether by themselves, their servants or agents or otherwise howsoever from entering or using and from remaining on or continuing in occupation of the said premises situated on CROWN LEASE NO. 324070 being Lot 1 on DP 7101 part of CT 18531.

(b) A declaration that the defendants whether by themselves, their Servants or agents or otherwise are not entitled to enter occupy and use the premises situated on CROWN LEASE NO. 324070 being lot 1 on DP 7101 part of CT 18331.

(c) Costs."

The application came before the Honourable Mr. Justice Saunders on 11th November 1992 when he gave certain directions as to the hearing.

The hearing eventually commenced on 4th February 1993 when the defendants by their counsel disclaimed any intention to raise fraud. The Judge's notes of that date record that counsel as saying:-

"Agree no particulars of fraud - rely on constitution of the church, an equitable title rather - question of ownership of the building - on the land."

The hearing then proceeded with oral, affidavit and documentary evidence being taken and received by the Court.

It should be recorded that the only evidence for the defendants was given through the affidavit of the first defendant. The first defendant could be described as the driving force from the defendants' point of view in all matters relevant to this application from 1972 to trial. Regrettably he was seriously indisposed at the time of the trial, confined to a wheel chair and only able to be cross examined on his affidavit by questions put and answers received by affidavit.

However this in no way militated against the defendants in the action.

The early part of His Lordship's judgment given on 17 May 1993, succinctly records the relevant facts which are well borne out by the evidence. He said:-

"The plaintiffs represent the Assemblies of God of Fiji a religious body registered as such. The defendants represent the International Christian Fellowship, another religious body registered as such. In 1969 the defendant came to Namaka, Nadi and obtained permission from one PIRTAM NAND to organize a church for the plaintiffs on Pritam's land leased from the Crown. This church became a 'sovereign assembly' as defined in the Constitution of the Assemblies of God of Fiji and the defendant became the Pastor in 1972.

Mr PRITAM NAND died and in 1979 his executors, by a form of notice being Annexure 'C' to the original Affidavit of the plaintiffs, donated the same land to the Assemblies of God of Fiji.

This document was witnessed by the defendant who was then still a Pastor in that church.

The defendant in 1980, made application for reconstruction of the building. The value was stated to be \$50,000. As a result of this application, which was granted, a church building was built of concrete and it became a permanent fixture on the land. The application to build was granted in the name of International Assemblies of God of Fiji, the name by which this "sovereign assembly" was known.

Unfortunately, the Assemblies of God of Fiji and the defendant "fell out" in 1989 and the defendant was sacked from the plaintiffs' church. He continued to run his church in the concrete building and in May 1989 registered a religious body under the name of the International Christian Fellowship

which is not affiliated to the Assemblies of God of Fiji.

Thirty-four of the members of the original church left and moved to another place where they continued to worship under the name of Nadi Airport Assembly under the umbrella of the Assemblies of God of Fiji.

The Assemblies of God of Fiji decided that they should get the church back and although a previous action in February 1991 was dismissed on the grounds that they could not produce any title to the land, they obtained a lease from the Director of Lands of the land on which the church was already built, and brought this action seeking a declaration that the defendant and his followers were not entitled to occupy the premises comprised in the lease and also seeking an injunction against the defendants, damages and any other relief.

As to the ownership of the land, the plaintiffs have a registered lease under the Land Transfer Act which by virtue of section 38 is conclusive evidence of title. No action has been taken to seek any rectification of the register nor have the defendants adduced any evidence of fraud in this action. Accordingly, the land belongs to the plaintiff church, the Assemblies of God of Fiji."

After referring to the "question of possession", His Lordship continued:-

"The land in this case is leasehold from the State. It may well be that, as against the State, the defendant has no right to be in possession, but as against the Assemblies of God of Fiji, who are really in the position of a third party, or, if may I say it, a purchaser, the defendant has a licence coupled with an interest which binds in equity the Assemblies of God of Fiji, which had full notice of it long before it applied for the lease.

It is quite clear that the Assemblies of God of Fiji knew that the church was reconstructed by donations from the International Assemblies of God of Fiji with

*the assistance of a guarantee from the Calvary Temple. The senior pastor of the Calvary Temple was at the time also the General Superintendent of the Assemblies of God of Fiji."*

Mr. Seru, who appeared for the defendants, before us in this Appeal, quite properly made no attack upon those findings of fact. As we have indicated, they were well justified by the evidence taken at the hearing.

On those findings the plaintiffs had a clear right to possession and of course to an order by way of injunction as claimed.

In their closing written submission by the defendants, they raised numerous matters by way of challenging the plaintiffs' right to bring these proceedings. These may be classed as the "technical objections" and in the events which have happened, may be ignored.

They went on to submit that they had an equitable claim which prevented the Court without more, ordering their dispossession of the land and buildings. They claimed:--

*"The plaintiffs now possess the legal title while the Defendants have an equitable claim due to their long occupation of the property. To simply decide on the legalities of the situation would bring an unjust solution. The Defendants therefore address the Court on the equitable issues upon which they rely for the Court's consideration."*

They then proceeded to attempt to justify their claim for equitable relief, as follows:-

"DEFENDANT'S ARGUMENT ON GROUNDS OF EQUITY"

Lord Denning in CRABB v. ARUN DISTRICT COUNCIL [1976] 1 Ch. 179 said "Equity comes in, true to form, to mitigate the rigours of strict law....."

If I may expand what Lord Cairns L.C. said in HUGHES v. METROPOLITAN RAILWAY CO. "it is the first principle upon which all courts of equity proceed", that it will prevent a person from insisting on his strict legal rights, whether arising under a contract, or on his title deeds or by statute, when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.....The cases show that this equity does not depend on agreement but on words or conduct.

In the Privy Council, in PLIMMER v. WELLINGTON CORPORATION (1884) 9 App. Cases 699 ".....the Court must look at the circumstances in each case to decide in what way the equity can be satisfied."

In INWARDS v. BAKER [1965] 2 QB 29 it was held that despite the legal title being in the Plaintiff's name the son of the deceased had an equity to remain in the bungalow "as long as he desired to use it as his home."

Dankwerts L. J. said "equity protects him so that an injustice may not be perpetrated".

In SIEW SOON WAH v. YONG TOONG HONG [1973] A.C. 836 the Privy Council held that there was an "equity of equitable estoppel protecting the defendant in his occupation for 30 years".

In this case the Defendants have been in occupation for 20 years.

Lord Denning said in D & G BUILDERS LTD v. REES [1966] 2 QB 617. "The harshness of the common law has been relieved. Equity has stretched out a merciful hand to help the debtor. The Courts have invoked the broad principle stated by Lord Cairns in Hughes v. Metropolitan Railway Co...... It is

worth noticing that the principle may be applied, not only so as to suspend strict legal rights, but also so as to preclude the enforcement of them".

Reverend Paula registered the International Christian Fellowship on 12.5.89 to replace the International Assembly of God after he was dropped as a minister of religion for the Assemblies of God of Fiji on 26.4.89. With that registration, the affiliation to the Assemblies of God ended. It was obvious from then on the vindictive actions of the Plaintiffs against Rev. Paula with the view of destroying him and his group by proceeding to such length as to the obtaining of the lease in the name of the Assemblies of God of Fiji. Such vindictiveness is devoid of Christian behaviour."

In our view the cases cited do not assist the defendants.

It is conceded that the erection of the buildings took place in 1982. The first defendant was at that time, the driving force in the local affairs of the church as the pastor of the Assemblies of God of Fiji. He had taken a leading role in obtaining the land for the church and no doubt in the obtaining of the funds necessary for carrying on all aspects of worship at that church. Until 1989 none would have sought to say that he and the congregation were other than hard working and earnest members of the church of the Assemblies of God of Fiji at Nadi. They were not working for themselves personally - anything they did was for the church to which they belonged as loyal members.

However when the "split" came, some of them sought to call up past favours and contend they had the right to remain in occupation as against those members loyal to their former

religious body, the Assemblies of God of Fiji. In so doing, that "some" took a different name under another calling, and alleged that the rights and privileges they had enjoyed, continued unabated until such time as they were properly compensated for their past efforts.

In support of this, the Defendant contended in writing:-

"It is respectfully submitted that in order to do justice to the Defendants, a proper valuation to the property must be obtained by the Plaintiffs and the Defendants fully compensated by the Plaintiffs prior to their vacating the land and premises. It must not be overlooked that the Defendants own all the buildings on the leased land and it is only right that they be fully compensated.

It is stressed that the Director of Lands or those in that Ministry are aware that the Defendants have built on the land and yet they issued the lease to the Plaintiffs leaving the parties to sort out the mess now faced in this action. This is an outrageous situation and the Director of Land's actions in this instance is questionable to say the least.

It is our respectful submission my Lord, in order to do justice to the parties, that your decision must take into account all these circumstances. From the Defendants point of view it is submitted that the action should be struck out for the defects in the Trustee form and lease documents as already explained at the beginning of this Submission. Should that fail, the Defendants must be properly and fully compensated before vacating the premises.

Dated this 7th day of May, 1993."

In their submission to His Lordship the defendants submitted "that in order to do justice to the defendants, a proper valuation to the property must be obtained by the plaintiffs and



the defendants fully compensated by the plaintiffs prior to their vacating the land and premises".

The non-existence of any such valuation, did not inhibit His Lordship from assessing, on the flimsiest of evidence, a figure of \$100,000.00 as compensation.

In his reasons for judgment His Lordship adopted the "equitable" approach suggested by the defendants and applied *Inwards and Ors. v. Baker* [1965] 2 QB 29. He supported this course by a finding that:-

*"The licence to the International Assemblies of God of Fiji was revoked, but the plaintiff church still had the defendant as its pastor at that time and encouraged and assisted him to reconstruct the building."*

Any reconstruction of the building was achieved in 1982 at which time, if the first defendant as its pastor at Nadi, had sought their "encouragement and assistance", such as was appropriate would doubtless have been forthcoming as indeed, it would to all of their flock.

There is just no evidence to bring the defendants' case to anything comparable with *Inward's* case where inducement and encouragement played a vital part in the expending of monies by the son on the land of the father in circumstances where equities arose.

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We have not found it necessary to examine in detail the Constitution and ByLaws of the Assemblies of God of Fiji. It need only be said that they give to the plaintiffs adequate power to "hire & fire" their pastors for good cause as they see fit. Further as "custodians of all the church property belonging to and held in the name of the Assemblies of God of Fiji", they have a duty to deal with it "as may be necessary for the propagation of its work."

In our view therefore the order of His Lordship that:-

*"The claim is dismissed with judgment for the defendants and an order that the defendants are entitled to remain in possession until their outlay fixed at an amount of \$100,000 is paid, or acceptable arrangements are made for payment or a discharge of that sum.*

*Costs of defendants to be paid by plaintiffs on the higher scale."*

must be set aside..

The order of the Court will be that the defendants and each of them, by themselves their servants and agents, be restrained from entering or using and from remaining on or continuing in occupation of the land and premises situated on Crown Lease No 324070 being Lot 1 on DP 7101 part of CT 18331.

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It remains to record that in argument before us, both counsel agreed that if the defendants should desire to claim damages or compensation from any person or persons in some other form of action, these proceedings would not act as a bar thereto.

*Michael N. Helsham*

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Mr. Justice Michael N. Helsham  
President Fiji Court of Appeal

*Moti Tikaram*

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Sir Moti Tikaram  
Resident Justice of Appeal

*E. D. Williams*

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Sir Edward Williams  
Justice of Appeal