IN THE COURT OF APPEAL, FIJI
On Appeal from the High Court at Suva

CIVIL APPEAL ABU NO. 126 OF 2023
[Suva Civil HBC No. 21 of 2020]

BETWEEN **SISILIA MEREKULA**

Appellant

AND **TAVEUNI MANAGEMENT SERVICES PTE LIMITED**

Respondent

Coram **Prematilaka, RJA**
Andrews, JA
Clark, JA

Counsel **Mr. D Sharma for the Appellant**
Mr. R. K Naidu for the Respondent

Date of Hearing : **06 February 2026**

Date of Judgment : **27 February 2026**

JUDGMENT

Introduction

[1] Mrs Merekula owns land in the Taveuni Estates in Soqulu. She was assisted in the purchase of nine lots by Mr and Mrs Menzies, a couple for whom she had been a

housekeeper for ten years. So grateful were they for her kindness and care they decided to name her as a beneficiary in their will. But when land prices in the Taveuni Estates plummeted they saw an opportunity to bring forward their goodwill (as they put it).

[2] Between November 2016 and February 2017 Mrs Merekula purchased eight vacant lots with funds the couple gave to her. The couple's intention was that Mrs Merekula should do whatever she wanted with the land. Their plan was to support her to build a property on one of the lots at some stage. To assist Mrs Merekula with the conveyancing in relation to the eight lots Mr Menzies engaged the legal services of Mr Peter Knight who had assisted Mr Menzies with his own 2004 and 2012 purchases of land.

[3] In 2018 Mr Menzies became aware of a property owner in the Estate who was interested in selling his property. Mr and Mrs Menzies decided to sponsor Mrs Merekula's purchase of the property. Once again, at Mr Menzies invitation, Mr Knight agreed to represent Mrs Merekula in the purchase of this, the ninth lot. Mr Knight's invoices were sent to Mrs Merekula, "care of" Mr Menzies, who paid the invoices.

[4] The purchase was completed in December 2018 in the joint names of Mrs Merekula and her husband. This ninth lot was distinct from the eight vacant lots Mrs Merekula had purchased in that it was developed. To this day, the couple reside in their home on this lot.

[5] It was a condition of all sale and purchase agreements in relation to land in the Taveuni Estates that the purchaser and Taveuni Estates Management Services Ltd (TMSL) sign a Deed of Covenant. TMSL is the manager of Taveuni Estates, a freehold residential community situated in the Northern Division. Under the Deeds TMSL is required to provide specified services to the purchaser and the purchaser is required to pay the annual service charge assessed on the property.

[6] Mr Menzies met Mrs Merekula's obligation to pay the required annual sum in relation to all nine lots. Then, following the purchase of the developed lot — the ninth lot — Mrs Merekula wrote to TMSL requesting termination of the Deeds of Covenant for the eight vacant properties. Payments in respect of those properties ceased from this time.

The reason she gave for terminating was that she had not received services benefits for those lots nor would she receive services for those lots in the foreseeable future.

[7] TMSL made demands for the overdue monies. On 6 February 2020, TMSL sent to Mrs Merekula eight overdue reminder notices in relation to the eight vacant lots in respect of which Mrs Merekula had purported to terminate the Deeds of Covenant.

[8] In May 2020 Mrs Merekula filed proceedings in the High Court. She sought declarations that she was entitled to terminate the Deeds of Covenant for her vacant lands and that TMSL had not provided "services benefits" under the Deeds. Mrs Merekula also sought an order that the eight Deeds be terminated. Mrs Merekula pleaded that she had paid for services benefits for each of the vacant lots but had not received service benefits "due to the land being vacant". Further, since her purchase of the residence she would "have no requirement for and shall not receive services benefits on any of the pieces of the Vacant Land in the foreseeable future".

[9] On 11 February 2021, just prior to the High Court hearing in April 2021, TMSL wrote to Mrs Merekula advising that the Board of Directors had —

> "decided not to accept any part payments from multiple lot owners who have a debt outstanding on other properties owned. The total amount owing for the annual Taveuni Estates Service Charges is **$22,931.24."**

[10] The High Court delivered its decision on 7 December 2023. The statement of claim was dismissed and the plaintiff was ordered to pay $3000 costs.[1]

The High Court Judgment

[11] The hearing in the High Court occupied approximately one and one half days. Mrs Merekula and Mr Menzies gave evidence. TMSL called Mr Knight and Mr Manasa. Mr Manasa had laboured for the company since 1988 when its name was Soqulu Plantation.

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[1] *Merekula v Taveuni Management Services Pte Ltd* [2023] FJHC 894; HBC21.2020 (7 December 2023).

[12] In his judgment delivered on 7 December 2023, His Honour noted that the defendant had not pursued its counterclaim for overdue payments. Accordingly the counterclaim was dismissed.

[13] Mrs Merekula's claim was also dismissed for the following essential reasons:

[a] The purpose of the Deed is for the performance of covenants for a beneficial purpose not only in relation to the plaintiff's land but having regard to other land in the Taveuni Estate.

[b] The service charges to be paid under the Deeds were not specifically or solely for the benefit of the plaintiff's lots but also "for the legitimate purpose of contributing to the cost of the performance of the Covenants in the Deed for the benefit of the Plaintiff's lots and the Estate". [2]

[c] The plaintiff purchased eight vacant lots, entered into Deeds of Covenant promising to pay to the defendant the service charge for the lots but says she does not require any services for the eight lots.[3]

[d] It was a condition of the Sale and Purchase Agreements that the plaintiff sign the Deeds of Covenant.

[e] It would be inequitable for the plaintiff to enjoy the benefit of being able to purchase the eight vacant lots and thereafter discard the Deeds of Covenant and her obligations under the Deeds.[4]

[f] There had been no failure on the part of the defendant. The plaintiff "cannot approbate and reprobate. The signing of the Deeds of Covenant was a condition of sale" and she could not elect to terminate the Deeds which she had executed.[5]

Grounds of Appeal

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2 At [92].
3 At [93] and [94].
4 At [96].
5 At [97] and [98].

[14] Mrs Merekula filed a notice of appeal containing 11 grounds of appeal particularised over 18 pages.

[15] At the hearing of the appeal Mr Sharma, counsel for Mrs Merekula candidly and, we consider, responsibly submitted two core points were raised by the appeal and that if the appeal did not succeed on one of the two points, it would not succeed. The two points upon which the appellant hung her hat were these:

[a] a right to terminate arose from the Deeds because if one of the services which TSML covenanted to provide under the Deeds was not being provided a right to terminate could be implied; and

[b] one of the services under the Deeds was not being provided.

What were the obligations of the parties under the Deeds of Covenant?

[16] During the hearing of the appeal, as in the High Court, there was a particular focus on the wording in the Deed of Covenant which was plaintiff's exhibit 2 at trial. This Deed was signed on 5 December 2018. This was not, however, one of the Deeds that Mrs Merekula sought to terminate. The Deed signed on 5 December 2018 concerns the land comprised in Certificate of Title 20176 on deposited plan No 4395, in other words, the residential property. Although the wording of this Deed differs only slightly from the wording of the Deeds signed in relation to the vacant lands we put this Deed to one side in our consideration of the appeal for the simple reason it is not one of the eight Deeds which Mrs Merekula sought to terminate.

[17] Details of the vacant lots to which each of the eight Deeds relates are set out below.

CT 19098	being Lot128	on DP 4395
CT 20971	being Lot2	on DP 4713
CT 21413	being Lot84	on DP 4395
CT 21415	being Lot85	on DP 4395
CT 22155	being Lot1	on DP 4805
CT 28247	being Lot127	on DP 4395
CT 28492	being Lot22	on DP 4805
CT 28493	being Lot8	on DP 4718

[18] All eight Deeds contain the following provision which was accepted to be for the benefit of the landowner:[6]

> **NOW THIS DEED WITNESSES** as follows:
>
> 1. (a) TMSL shall maintain in an orderly condition all areas designated as public open spaces in the registered survey plan containing the said land;
>
> (b) TMSL shall install a water supply system brought to a boundary of the said land for the supply of water sufficient for domestic purposes;
>
> (c) TMSL shall provide for the said land a domestic rubbish collection for the disposal of household refuse

[19] Five of the Deeds contain a clause (d) which was accepted as bestowing a right on TMSL rather than a benefit on the landowner:

> (d) TMSL shall have the right to clear undergrowth and cut grass on the Lot as long as the same shall remain unoccupied but shall not be entitled to cut down any live trees thereon.

[20] For completion it should be noted that one of the Deeds does not use the bold wording reproduced above at [18] but introduces the obligations on TMSL in a different way and also frames the obligation in relation to maintenance of open spaces differently:[7]

> 2. For the benefit of the Buyer, the obligations which must continue and do not merge upon transfer of title and ownership are as follows:
>
> (a) TMSL shall maintain in an orderly condition all areas designated as public open spaces in the registered survey plan containing the Lot and the other registered survey plans relating to Taveuni Estates;

[21] To summarise, under the Deeds (which the parties entered as a condition of the Sale and Purchase Agreements) TMSL covenanted for the benefit of the landowner:

[a] to maintain in an orderly condition areas designated as public open spaces in the registered survey plan containing the land;

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6 In three of the Deeds the word "Property" is used instead of the expression, "the said land".

7 This Deed of Covenant is in relation to CoT 20971 being Lot 2 on DP 4713, signed on 11 February 2018.

[b] to install a water supply system brought to a boundary of the property for the supply of water sufficient for domestic purposes;

[c] to provide for the property a domestic rubbish collection for the disposal of household refuse.

[22] The appellant takes the view that payment under the Deeds of Covenant "was for the provision of all services stipulated in the Deed of Covenant".[8] Simply put, the appellant's case is that all services were not provided to her; that being the case and in the absence of an express right to terminate, the Court should imply into the contract a right to terminate.

Implication of a right to terminate?

[23] Implied terms fill gaps in a contract. More commonly, implied terms are relied on to add unstated obligations to the terms the parties have expressed themselves.[9] The learned authors of Cheshire and Fifoot Law of Contract distinguish between three different kinds of implied terms:[10]

[a] universal terms – being obligations implied in all contracts;

[b] generic terms – implied in particular classes of contract, for example, a duty of reasonable care in contracts for services; and

[c] specific terms – obligations implied ad hoc in a particular contract.

[24] To imply into these Deeds a right to terminate would be to imply a specific term. A specific term may be implied if the term is necessary to give the contract business efficacy.[11] The term to be implied must be fair, that is, reasonable and equitable and it

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8 Appellant's Responding Submssions at [55].
9 NC Seddon and RA Bigwood *Cheshire and Fifoot Law of Contract* (12th Australian Ed LexisNexis, Australia 2023) at [10.36].
10 At [10.38].
11 At [10.55].

must be obvious in the sense that the parties themselves would most likely have agreed to the term had they considered the point.[12]

[25] A contract may be terminated for breach because the contract itself provides for termination in the event of breach or the contract may be terminated because the breach is sufficiently serious that the right to terminate is conferred by law.[13]

[26] Mrs Merekula wrote to Charles Stinson, Director TMSL on 6 November 2019. She requested termination of the eight Deeds in relation to the vacant lots. It was a simple request to terminate with effect from 31 December 2019. The payment for the 2020 year was due in January 2020.

[27] Through correspondence between TMSL, Mr Knight and Mr Menzies, and on the assumption Mrs Merekula had not yet paid the 2020 annual fee, she was to be asked why she did not propose to pay.

[28] Mrs Merekula replied on 27 November 2019. She said she had recently purchased a residential property for which she received and paid for service benefits. The eight vacant properties had not received service benefits nor would she receive service benefits for those lots in the foreseeable future.

[29] We turn to the mainstay of Mrs Merekula's appeal which rests on her contention that the Court should imply a term in the contract permitting her to terminate the eight Deeds of Covenant for the vacant lands because TMSL has failed to provide specified services. As we understand the appellant's position, her claim rests on the implication of a right to terminate rather than on a breach by TMSL of sufficient seriousness that it gives rise to a right conferred by the law to terminate and to sue for damages. In any event the evidence does not support a breach of the requisite degree of seriousness.

[a] Mrs Merekula's evidence in chief was that she required no services for her vacant lots but if she were to develop the land she would then be willing to pay for such services.

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12 At [10.58].
13 At [1.119]-[1.120].

[b] As to TMSL's obligation to install a water supply system Mrs Merekula's evidence was that it was installed and the house in which she lived was receiving water. In respect of the vacant lots Mrs Merekula said: "I don't require water".

[c] As to TMSL's obligation to provide a domestic rubbish collection for the disposal of household refuse, Mrs Merekula confirmed the household rubbish was collected from the residence on Mondays and Fridays. Mrs Merekula said she did not require collection from her vacant lots.

[d] Mrs Merekula also confirmed in cross examination that TMSL maintained, cleared and cleaned the V drains that ran alongside the 22-30 kilometre public road on the Taveuni Estates.[14] As well, Mrs Merekula confirmed that TMSL collected the grass, trees and green waste that lot owners of the vacant lots would clear and place outside their lots.

[30] On appeal Mr Sharma stressed that no evidence of a registered survey plan had been adduced and that Mr Manasa had confirmed there were no "public open spaces". Therefore, Mr Sharma submitted, no services had been provided to public open spaces.

[31] As this Court understands the evidence, Mr Manasa did not so much confirm there were no public open spaces but, having given evidence about TMSL's maintenance of and attention to the V drains along 22 kilometres of road, and to grass cutting along the verges on both sides of the road, he said there were no *other* public spaces on the Estate.[15]

[32] Mr Peter Knight's evidence was to similar effect. Mr Knight is a highly experienced practitioner specialising in commercial law and civil litigation. At the time of the High Court hearing he had acted for Taveuni Estates for at least 20 years. It emerged rather late in the saga that Mr Knight was an alternate director for Taveuni Estates. Mr Knight had drafted the deeds of covenant used for the sale and purchase of property in the Estates. Mr Knight's office had prepared all of the documents relevant to Mrs Merekula's purchase of the properties.

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14 Different witnesses gave different estimates of the length of the road. The estimates ranged from 22 to 30 kilometres.

15 Transcript of evidence at p 111.

[33] Mr Knight understood the "public open spaces" referenced in the Deeds as primarily including the grass verges on the sides of the roads in the Estate "and to a much lesser extent the maintenance of the area that's designated in the plan of the Estate as a nature reserve or forest or something to that effect".[16]

[34] We see no merit in the claim that there was a failure to maintain public open spaces. This aspect of the appellant's case involved a factual assertion and we are satisfied it was not proved in the High Court. While no evidence of a registered survey plan was adduced, it was for the plaintiff to prove TMSL's breach of this covenant. If the plaintiff intended to show that a designated area had not in fact been maintained, the onus was on the plaintiff to adduce evidence of the specific open spaces that TMSL was required to, but had not, maintained. Mrs Merekula's own evidence was that the areas she understood to be public open spaces were maintained.

[35] One of the grounds of appeal was that the High Court Judge erred in not giving any weight to cases that were relied on at the hearing and which showed that services contracts could be terminated. We have considered these authorities but do not consider they support the implication into these Deeds of a right to terminate in the appellant's circumstances.

[36] In *Fabsert Pty Ltd v ABB Warehousing (NSW) Pty Ltd* the parties were in dispute over a contract for services which was terminated by ABB Warehousing on one week's notice. There is a crucial distinction between that case and this. In *Fasbert,* both parties agreed that a term of termination on reasonable notice should be implied into the contract. The question before the Court concerned the reasonableness of a notice of termination.[17]

[37] In *Estate Management Services Ltd v Minami Taiheiyo Kaihatsu Kabushiki Kaisha and Pacific Harbour Resort Company Ltd* issues arose in the course of a handover of lots of land purchased by the first defendant. In respect of a claim against the first defendant for rates in relation to 31 lots, the plaintiff argued the defendant was required to pay an annual assessment even if at times specific services were not provided. The High Court

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16 Transcript of evidence at p 135.

17 *Fabsert Pty Ltd v ABB Warehousing (NSW) Pty Ltd* [2008] FMCA 1198 at [43].

disagreed. The Sale and Purchase Agreement required the first defendant to pay for the totality of the services specified in cl 12(a). The defendant was entitled to cease paying rates when the totality of services was not provided.[18]

[38] Mr Sharma drew a parallel with Mrs Merekula's situation submitting the totality of services had not been provided. A crucial distinction, however, lies in the nature of the agreement between the parties in *Kaisha*, and the agreement between the parties in this case. In *Kaisha* the parties' obligations arose from their Sale and Purchase Agreement (not a Deed of Covenant). Under Clause 12(a) of Sch C to the SPA the plaintiff—

> Agrees to provide the following services:
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> …
>
> (vi) …maintenance and repair work on the canal system *until such time as all of the said services are taken over or undertaken by the Fiji Government or by a town council board or other properly constituted authority* (the occasion of such taking over or undertaking being hereinafter in this Clause and Clause 13 hereof to as "the termination of the Vendor's services).

And under cl 12(b):

> The first defendant, as purchaser, will pay —
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> … *in respect of all the services herein before referred to in this Clause* ... to the vendor as a contribution towards the Vendor's expenses of providing the said services an annual assessment in respect of the said lot at the rate of …

[Emphases added]

[39] The Judge found the first defendant was required to pay the annual assessment for the totality of the services in cl 12(a). It was not in dispute that the plaintiff did not provide all of the services.[19] The Government had taken over the disposal of sewage and the internal road network between 1996 and 1997 but the plaintiff "did not change the structure of the services provided nor the rate charged". The Judge found the "first defendant was entitled to cease paying rates from 1996 when the totality of services was not provided".[20]

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18 *Estate Management Services Ltd v Minami Taiheiyo Kaihatsu Kabushiki Kaisha and Pacific Harbour Resort Company Ltd* [2018] FJHC 1153; HBC148.2012 26 November 2018.

19 at [21].

20 At [14].

[40] The third authority Mr Sharma relied on was *NBF Asset Management Bank v Taveuni Estates Services Ltd & Ors* where one of the issues for determination was whether water and rubbish dump lots were owned by the plaintiff or Taveuni Estates.[21] Mr Sharma identified paragraphs [198] and [199] of the judgment as being relevant and useful. There, the Court found fraudulent conduct on the part of the first defendant in obtaining the relevant certificates of title and that the first defendant held the water and rubbish lots as trustee in favour of the plaintiff.

[41] Beyond that the decision is under appeal, we agree with Mr Naidu, counsel for TMSL. In this proceeding, ownership of the water source and rubbish dump is irrelevant. The question of ownership was not raised in pleadings and we are satisfied it is not relevant to the primary issue which is whether the Court should imply into the Deeds of Covenant a term permitting Mrs Merekula to terminate.

[42] We have reached the view that the circumstances of this case do not support the implication of a right on the part of the appellant to terminate the Deeds for the reasons she relies upon.

[43] For all purchasers of vacant land in the Taveuni Estates who must, as a condition of the Sale and Purchase Agreement, sign a Deed of Covenant, TMSL's obligation to supply water and collect rubbish is hypothetical. Vacant land requires no water for "domestic purposes" and produces no "household refuse". All purchasers of land in Taveuni Estates that is undeveloped can reasonably be assumed to know and accept those basics when they enter into a SPA. As Mr Sharma put to Mr Menzies: "… I mean we all know that vacant lands don't use the water, but what's the structure like …?" [22]

[44] As with many purchasers of vacant land in the Taveuni Estates who propose to build on the land at some future point, that too was Mrs Merekula's stated long term intention. The infrastructure for the supply of water to residential estates is installed. A huge tank with one million litres capacity feeds 18 holding tanks with 22,000 litres capacity and

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21 *NBF Asset Management Bank v Taveuni Estates Services Ltd & Ors* [2018] FJHC 437; HBC543.2004 25 May 2018 at [136].

22 Transcript of evidence at p75.

pipes from the holding tanks supply the Estate. When a property is developed the owner requests TMSL to connect the property to the main pipe.

[45] The essential point is that Mrs Merekula does not require the services at present. The Deeds of Covenant are dissimilar to the contracts for services at issue in the authorities the appellant relied on. In *Kaisha* for example, the contract bound only the parties to the contract. The Deeds which purchasers of lots in the Taveuni Estates must sign contain obligations which the purchaser assumes and which run with the land in the sense that upon sale, a subsequent purchaser must sign a Deed of Covenant with Taveuni Estates. Thus the legally binding agreement is tied to the land and the obligations transfer to future owners when the land is sold.

[46] The Deeds bind each lot owner to contribute to estate rates regardless of whether the lot is vacant or improved. We agree with Mr Naidu's submission that allowing selective non-payment risks unfairly increasing the burden on compliant lot owners and undermining the commercial and legal purposes of the Deeds. Further, it is reasonably clear that in estate management schemes such as these a lot owner is not only a promisor but also a beneficiary of the arrangements to which all lot owners have subscribed for the management of the Estate. As the High Court Judge observed it would be inequitable for the appellant to enjoy the benefit of being able to purchase the eight vacant lots and thereafter discard the Deeds of Covenant and her obligation under them.

[47] Much was made of the fact that other lot owners are not paying their annual service charges. But as Mr Naidu submitted the arguments that others have failed to pay reinforces the necessity of enforcement. The argument does not lend support to the claim for the implication of a term permitting termination.

Result

[48] The appellant has not shown that the respondent breached the Deeds of Covenant let alone shown a serious breach. Nor has the appellant satisfied the Court of any other tenable justification for terminating the Deeds and her obligations under them. It follows that in the circumstances of this case, there is no proper basis for the implication of a term permitting termination of the eight Deeds of Covenant.

***Orders of the Court*:**

(1) The appeal is dismissed.

(2) The appellant is to pay costs in the sum of $5000.00 to the respondents within 21 days hereof.

Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL

Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL

COURT OF APPEAL FIJI

Hon. Madam Justice Karen Clark
JUSTICE OF APPEAL