

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION

Civil Action No. 11 Of 2014

BETWEEN: MACUATA TIKINA HOLDINGS LIMITED a limited liability company having its registered office at Ground Floor, Ratu Raobe Building, Nanuku Street, Labasa.

PLAINTIFF

AND: THE ESTATE OF RATU AISEA KOTONIVERE aka RATU AISEA CAVUNAILOA KATONIVERE

1<sup>st</sup> DEFENDANT

ADI SERA KATONIVERE of Labasa, Administratrix of the estate of Ratu Aisea Katonivere

2<sup>nd</sup> DEFENDANT

To: 1. THE ESTATE OF RATU AISEA KATONIVERE aka RATU AISEA CAVUNAILOA KATONIVERE  
2. ADI SERA KATONIVERE

Appearances: Mr. Valenitabua for the Plaintiff  
No Appearance for the Defendants

Date of Judgment: 22 August 2014

---

## JUDGMENT

---

1. The writ of Summons was filed on 7 March 2014 claiming the following reliefs.
  1. *Special damages of \$129,798.62.*
  2. *General Damages to be assessed.*
  3. *ALTERNATIVELY that Judgment be entered against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and that they be ordered to re-pay the Plaintiff the sum of \$129,798.62 from the 1st Defendant Estate funds or further in the ALTERNATIVE that the 2<sup>nd</sup> Defendant, as Administratrix be ordered to transfer Crown Lease No.2957 being Lot 54 Muanikau Subdivision (L.D No. 4/16/3274) to the Plaintiff.*
  4. *Interest pursuant to the Law Reform (Miscellaneous Provisions) (Death and Interest) Act, Cap 71.*
  5. *Costs.*
  6. *Any other relief or remedy that this Honorable Court may deem fit and necessary. "*
2. The judgment by Default was sealed on 13<sup>th</sup> May 2014 and the default Judgment and Summons for Assessment of damages were served on the Defendants Solicitors on the 20 May 2014. The affidavit of service was filed 11<sup>th</sup> August 2014.
3. When the Summons for Assessment of Damages came up before the Learned Master on 18 August 2014 it was referred to me for hearing and was taken up at 2.30pm on 18 August 2014.

4. At the hearing, Mr. S. Valenitabua Counsel for the Plaintiff stated that since the default Judgment being obtained Interim Injunction orders made on 14 March 2014 to be vacated and to direct the Registrar to release the sum of \$5000 deposited as security for costs. Accordingly Injunction orders made on 14 March 2014 are dissolved and direct the Deputy Registrar of this Court to release the \$5000 deposited as security for costs.
5. When the summons for Assessment of damages dated 13<sup>th</sup> May 2014 was taken up for hearing two witnesses gave evidence on behalf of the Plaintiff.

### **Evidence**

- 5.1 Isikeli Vulikomoala Relationship Manager ANZ Bank was called as a witness. He stated the vouchers pertaining to the transaction were destroyed as a general practice of the Bank after 7 years he is giving evidence on the statements obtained from the Banks back up Information system which was obtained on instructions given by him to the Information Technology Department. I believe his evidence in this regard and state any Bank has their own procedure for destruction of the documents pertaining Banking transaction on a specified period of time ranging from 6 to 7 years unless the customer or competent Court request them to preserve such information.
- 5.2 The witness in his evidence stated the Plaintiff have issued a cheque for \$129,798.62 (Transaction code 35) which was credited to the Bank's Cheque Reconciliation Account with the instructions from the Plaintiff to issue the 3 managers cheques and to make a direct payment to the Fiji Development Bank account maintained at ANZ Bank. The Bank Statement for the period 24/05/2006 to

27/07/2006 was rendered by the witness marked P1 and the Cheque Reconciliation Account was rendered by the witness marked as P2.

- 5.3 The witness stated as appearing in P2 the following payments was made.
- a) Sun Insurance manager's cheque for \$5,580.00.
  - b) Commissioner of Inland Revenue Manager's cheque for \$27,718.00.
  - c) Asco Motors Manager's cheque for \$49,300.00.
- The balance sum of \$47,200 was credited to Fiji Development Bank Account.
- 5.4 Answering to the question raised by the Court the witness stated he cannot state for what transaction the said payments were made for the reason that the supporting vouchers were destroyed.
- 5.5 Navindra Sen Pillay Senior Relationship Manager, Fiji Development Bank in his evidence stated that he wish to tender documents generated by the Computer. The vouchers were destroyed. Receipt No. 351091 dated 23/06/2006 was tendered marked as P3 which states \$47200 was received from the Plaintiff Company for the credit of the Account of Ratu Aisea C. Katonivere. The witness stated the said payment was for a loan account of Ratu Aisea it could have been an Agricultural or Home or business loan. Transaction code stated in the receipt is for a loan payment. Mortgage Document No. 36586 was tendered which was cancelled on 11<sup>th</sup> July 2006 pertaining to Title C.L.2957 Lot 54 Muanikau Subdivision (L.D. 4/16/3274) where the proprietor was Ratu Aisea Cavunailoa Katonivere. The Mortgage Document 365/86 was tendered marked as P4.

5.6 The statement of loan account from 01/01/2006- 31/12/2006 was tendered marked as P5 which detailed the appropriation of \$47200 was effected on 23/06/2006 and stated that the Loan Capital of \$46631 was recovered on 23/06/2006, interest of \$252.85 was recovered on 30/06/2006, security fee of \$230.50 was recovered on 4/07/2006 Bank fee of \$60 was recovered on 1/08/2006 and a refund of \$25.49 was made on 22/08/2006.(as per P5)

5.7 The witness also tendered the Crown Lease No. 2957 marked as P6 where the memorial states Transfer was done favoring Ratu Aisea Cavunailoa Katonivere on 6/07/94 and the Transmission by Death was effected on 26/09/2013 in favour of Adi Sera Katonivere. (the 2<sup>nd</sup> Defendant)

6. Analysis and assessment of damages.

6.1 Considering the evidence led before the Court, I conclude the following:

1) The plaintiff had given instructions to ANZ Bank to make the following payments out of the \$129,798.62 from the Account of the Plaintiff

- a) Sun Insurance \$5580.
- b) Commissioner of Inland Revenue \$27718
- c) Asco motors \$49300
- d) Fiji Development Bank \$47200

6.2 The Plaintiff had claimed \$129,798.62 as specific damages on the basis that the said payments were made for the benefit of the deceased Ratu Aisea Cavunailoa Katonivere. However the

Plaintiff's evidence placed before this Court only proves the sum of \$47200 was used to pay the loan of late Ratu Aisea Cavunailoa Katonivere obtained from Fiji Development Bank to discharge the Mortgage of the Crown Lease No.2957 which had now benefitted the Defendant who is the transferee.

- 6.3 However the Plaintiff failed to establish before this Court the other payments made to Sun Insurance, Commissioner General of Inland Revenue and Asco Motors were payments made for the liabilities of the late Ratu Aisea.
- 6.4 In the circumstances I award special damages of \$47200 to the Plaintiff.
- 6.5 The Plaintiff's funds were utilized to pay the loan of the Defendant as such. The Plaintiff had lost income from the said sum of \$47200 since 23/06/2006 accordingly. I award interest of the rate of 6% per annum from 23/06/2006 up to the date of this Judgment which is calculated as follows.

$$\frac{6}{100} \times \$47200 = \frac{2832}{365} = \$7.75 \text{ per day}$$

From 23/06/2006 up to 22/08/2014 = 2980 days x 7.75=\$23,095

- 6.6 There is no any ground for this Court to use its discretion to award any General damages.

Accordingly I award the Plaintiff:

Special damages	-	\$47200
Interest	-	<u>\$23095</u>
		<u>\$70295</u>

Accordingly I make the following orders.

- a) The Defendant's are ordered to pay \$70,295 as special damages.
- b) The Defendants are ordered to pay interest as the rate of 6% per annum on \$47,200 up to the date of full settlement of \$70,295.00.
- c) No order for Costs.

Date: 22 August 2014



  
**C. Kotigalage**  
**JUDGE**