

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 144 of 2014

BETWEEN : **PRABHA WATI** as administratrix of the state of Vijay Singh of 14
Twekesbury St chipping Norton, Sydney, Australia 2170, Insurance
Broker, Deceased, Intestate.

PLAINTIFF

AND : **SATYA WATI** as administratrix of state of Shiv Charan of 83
Tavewa Avenue, Lautoka.

1st DEFENDANT

AND : **PETER JOHN RAM NARAYAN** of 83 Tavewa Avenue, Lautoka

2nd DEFENDANT

AND : **THE DIRECTOR OF LANDS** Government Buildings, Suva.

3rd DEFENDANT

AND : **ATTORNEY GENERAL**, Attorney Generals Chambers, Lautoka.

4th DEFENDANT

Mr. Anil Jatinder Singh for the Plaintiff

The first and the second Defendants are in Person

Mr. John Samson Pickering, (State Counsel), for the 3rd and 4th Defendants.

Date of Hearing :- 31st March 2015

Date of Ruling :- 12th June 2015

RULING

(A) INTRODUCTION

(1) Before me is the 3rd and 4th Defendants Summons pursuant to Order 18, Rule 18 (1) (a), (b), (c) and (d) of the High Court Rules 1988, and the inherent jurisdiction of the Court seeking the grant of following orders;

(A) *An order that the Plaintiff's Statement of Claim against the 3rd and 4th Defendants be struck out on the grounds;*

(a) *That it discloses no reasonable cause of action or defence as the case may be; or*

(b) *That it is scandalous, frivolous or vexatious; or*

(c) *It may prejudice, embarrass or delay the fair trial of the action; or*

(d) *It is otherwise and abuse of the process of the Court*

(B) *An order that the Plaintiff pays the cost to this application.*

(2) The application is supported by the affidavit of Ilaitia B.Navunisaravi, the Divisional Lands Manager, in the Department of Lands & Survey.

(3) The Plaintiff filed an Affidavit in Opposition opposing the application followed by an Affidavit in reply thereto.

(4) The Plaintiff and the Defendants were heard on the Summons.

They made oral submissions to court. In addition to oral submissions, they filed written submissions for which I am grateful.

(B) THE LAW

(1) Provisions relating to striking out are contained in Order 18, rule 18 of the High Court Rules. Order 18, rule 18 of the High Court Rules reads;

18. – (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –

(a) *it discloses no reasonable cause of action or defence, as the case may be; or*

(b) *it is scandalous, frivolous or vexatious; or*

(c) *it may prejudice, embarrass or delay the fair trial of the action; or*

(d) *it is otherwise an abuse of the process of the court;*

And may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

- (2) *No evidence shall be admissible on an application under paragraph (1) (a).*

Footnote 18/19/3 of the 1988 Supreme Court Practice reads;

“It is only plain and obvious cases that recourse should be had to the summary process under this rule, per Lindley MR. in Hubbuck v Wilkinson(1899) 1 Q.B. 86, p91 Mayor, etc., of the City of London v Homer (1914) 111 L.T, 512, CA). See also Kemsley v Foot and Ors (1952) 2KB. 34; (1951) 1 ALL ER, 331, CA. affirmed (195), AC. 345, H.L. The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable “ (Att – Gen of Duchy of Lancaster v L. & N.W. Ry Co (1892)3 Ch 274, CA). The summary remedy under this rule is only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable (see per Danckwerts and Salmon L.JJ in Nagle v Feliden (1966) 2. Q.B 633, pp 648, 651, applied in Drummond Jackson v British Medical Association (1970)1 WLR 688 (1970) 1 ALL ER 1094, (CA).

Footnote 18/19/4 of the 1988 Supreme Court Practice reads;

“On an application to strike out the statement of claim and to dismiss the action, it is not permissible to try the action on affidavits when the facts and issues are in dispute (Wenlock v Moloney) [1965] 1. WLR 1238; [1965] 2 ALL ER 87, CA).

It has been said that the Court will not permit a plaintiff to be “driven from the judgment seat” except where the cause of action is obviously bad and almost incontestably bad (per Fletcher Moulton L.J. in Dyson v Att. – Gen [1911] 1 KB 410 p. 419).”

- (3) In the case of *Electricity Corporation Ltd v Geotherm Energy Ltd* [1992] 2 NZLR 641, it was held;

*“The jurisdiction to strike out a pleading for failure to disclose a cause of action is to be sparingly exercised and only in a clear case where the Court is satisfied that it has **all the requisite material to reach a definite and certain conclusion**; the Plaintiff’s case must be so clearly untenable that it could not possibly succeed and the Court would approach the application, assuming that all the allegations in the statement of claim were factually correct”*

- (4) In the case of *National MBF Finance (Fiji) Ltd v Buli* [2000] FJCA 28; ABU0057U.98S (6 JULY 2000), it was held;

“The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual

basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court”

- (5) In **Tawake v Barton Ltd** [2010] FJHC 14; HBC 231 of 2008 (28 January 2010), Master Tuilevuka (as he was then) summarised the law in this area as follows;

“The jurisdiction to strike out proceedings under Order 18 Rule 18 is guardedly exercised in exceptional cases only where, on the pleaded facts, the plaintiff could not succeed as a matter of law. It is not exercised where legal questions of importance are raised and where the cause of action must be so clearly untenable that they cannot possibly succeed (see Attorney General –v- Shiu Prasad Halka 18 FLR 210 at 215, as per Justice Gould VP; see also New Zealand Court of Appeal decision in Attorney –v- Prince Gardner [1998] 1 NZLR 262 at 267.”

- (6) His Lordship Mr Justice Kirby in **Len Lindon –v- The Commonwealth of Australia** (No. 2) S. 96/005 summarised the applicable principles as follows:-

- a) *It is a serious matter to deprive a person of access to the courts of law for it is there that the rule of law is upheld, including against Government and other powerful interests. This is why relief, whether under O 26 r 18 or in the inherent jurisdiction of the court, is rarely and sparingly provided.*
- b) *To secure such relief, the party seeking it must show that it is clear, on the face of the opponent's documents, that the opponent lacks a reasonable cause of action ... or is advancing a claim that is clearly frivolous or vexatious...*
- c) *An opinion of the Court that a case appears weak and such that is unlikely to succeed is not, alone, sufficient to warrant summary termination... even a weak case is entitled to the time of a court. Experience teaches that the concentration of attention, elaborated evidence and arguments and extended time for reflection will sometimes turn an apparently unpromising cause into a successful judgment.*
- d) *Summary relief of the kind provided for by O.26 r 18, for absence of a reasonable cause of action, is not a substitute for proceeding by way of demurrer.... If there is a serious legal question to be determined, it should ordinarily be determined at a trial for the proof of facts may sometimes assist the judicial mind to understand and apply the law that is invoked and to do in circumstances more conducive to deciding a real case involving actual litigants rather than one determined on imagined or assumed facts.*

- e) *If, notwithstanding the defects of pleadings, it appears that a party may have a reasonable cause of action which it has failed to put in proper form, a Court will ordinarily allow that party to reframe its pleading.*
- f) *The guiding principle is, as stated in O 26 r 18(2), doing what is just. If it is clear that proceedings within the concept of the pleading under scrutiny are doomed to fail, the Court should dismiss the action to protect the defendant from being further troubled, to save the plaintiff from further costs and disappointment and to relieve the Court of the burden of further wasted time which could be devoted to the determination of claims which have legal merit.*

(7) In **Paulo Malo Radrodro vs Sione Hatu Tiakia & others**, HBS 204 of 2005, the Court stated that:

“The principles applicable to applications of this type have been considered by the Court on many occasions. Those principles include:

- a) *A reasonable cause of action means a cause of action with some chance of success when only the allegations and pleadings are considered – Lord Pearson in Drummond Jackson v British Medical Association [1970] WLR 688.*
- b) *Frivolous and vexation is said to mean cases which are obviously frivolous or vexations or obviously unsustainable – Lindley LJ in Attorney General of Duchy of Lancaster v L.N.W Ry [1892] 3 Ch 274 at 277.*
- c) *It is only in plain and obvious cases that recourse would be had to the summary process under this rule – Lindley MR in Hubbuck v Wilkinson [1899] Q.B 86.*
- d) *The purpose of the Courts jurisdiction to strike out pleading is twofold. Firstly is to protect its own processes and scarce resources from being abused by hopeless cases. Second and equally importantly, it is to ensure that it is a matter of justice; defendants are permitted to defend the claim fairly and not subjected to the expense inconvenience in defending an unclear or hopeless case.*
- e) *“The first object of pleadings is to define and clarify with position the issues and questions which are in dispute between the parties and for determination by the Court. Fair and proper notice of the case an opponent is required to meet must be properly stated in the pleadings so that the opposing parties can bring evidence on the issues disclosed – ESSO Petroleum Company Limited v Southport Corporation [1956] A.C at 238” – James M Ah Koy v Native Land Trust Board & Others – Civil Action No. HBC 0546 of 2004.*
- f) *A dismissal of proceedings “often be required by the very essence of justice to be done” – Lord Blackburn in Metropolitan – Pooley [1885] 10 OPP Case 210 at 221- so as to prevent parties being harassed and put to expense by frivolous, vexations or hopeless allegation – Lorton LJ in Riches v Director of Public Prosecutions (1973) 1 WLR 1019 at 1027”*

- (8) **In Halsbury's Laws of England Vol 37 page 322** the phrase "abuse of process" is described as follows:

"An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court."

- (9) The phrase "abuse of process" is summarized in **Walton v Gardiner (1993) 177 CLR 378** as follows:

"Abuse of process includes instituting or maintaining proceedings that will clearly fail proceedings unjustifiably oppressive or vexatious in relation to the defendant, and generally any process that gives rise to unfairness"

- (10) In **Stephenson –v- Garret [1898] 1 Q.B. 677** it was held:

"It is an abuse of process of law for a suitor to litigate again over an identical question which has already been decided against him even though the matter is not strictly res judicata."

Domer –v- Gulg Oil (Great Britain) (1975) 119 S.J 392

"Where proceedings which were viable when instituted have by reason of subsequent events become inescapably doomed to failure, they may be dismissed as being an abuse of the process of the court"

Steamship Mutual Association Ltd –v- Trollope and Colls (city) Ltd (1986) 33 Build L.R 77, C.A

"The issue of a writ making a claim which is groundless and unfounded in the sense that the plaintiff does not know of any facts to support it is an abuse of process of the Court and will be struck out"

(C) **THE FACTUAL BACKGROUND AND ANALYSIS**

It is necessary to approach the case through its pleadings. I shall set out the main assertions of the Statement of Claim.

(1) The Plaintiff in her Statement of Claim pleads *inter alia* that;

- *The Plaintiff is the widow and administratrix of the Estate of Vijay Singh, late of 14 Tewkesbury St, Chipping Norton, Sydney.*
- *Vijay Singh is the son of Shiu Charan Singh, deceased and brother of the First Defendant.*
- *The First Defendant is the administratrix of the estate of Shiu Charan Singh.*
- *By his last Will and testament, the deceased Shiu Charan Singh gave his properties to his wife for life then to the Plaintiff, First Defendant and his two children in equal shares absolutely.*
- *The deceased Shiu Charan Singh was the registered Lessee of property known as Crown Lease No. 26244, Allotment 6, section 14, Lautoka Township, part (CT 6481) situated at area of 33.7 perches.*
- *The property is centrally located in the Business District of Lautoka city, (with substantial development) and was rented out to a long standing tenant.*
- *Letters of Administration (Will) No. 47163 was granted to the First Defendant on 1st April, 2008.*
- *On 5th June, 2009, the First Defendant registered as administratrix on the title of "the property", as a result of transmission by death.*
- *The First Defendant created a mortgage in favour for her son the Second Defendant, to further defeat the share of the Plaintiff, the mortgage needed the consent of Third Defendant.*
- *The Plaintiff have caused a search of the property and discovered that the Defendant surrendered the Lease to the property on or about 8th of July, 2011, with assistance of the Third Defendant.*
- *On 13th December, 2013, the Plaintiff wrote to the Director of Lands by registered mail No. 60497, enquiring the circumstances of the surrender and the Director of Lands has not replied to the letter even though almost 8 months has elapsed.*
- *The Plaintiff believes that the decision to surrender was to circumvent informing the Plaintiff's of the proposed sale of "the property" and giving half of the entitlement and this was done with the assistance of the Third Defendant.*
- *The First Defendant created a mortgage on the property, with the assistance of her son the Second Defendant and the Third Defendant.*
- *The First and Second Defendants have colluded with the officers of the Third Defendant, to allow surrender of Lease no. 26244 and then issued new Lease to the prospective buyer.*

- *The failure of the Director of Lands to assist the Plaintiff is evidence that officer in the department assisted the First Defendant to defeat the Plaintiff's entitlement and to deprive the Plaintiffs of shares in the estate of Shiu Charan Singh.*
- *The Defendants knew that transfer of the Lease was not possible without consent of Plaintiff and they colluded and devised a scheme to defeat this by surrender of Lease and issue of new lease.*
- *The First Defendants action has deprived the Plaintiff of the lawful share in the estate and to the value of \$375,000.00.*
- *The Defendants are jointly responsible for the fraud conducted on the Plaintiff.*

(2) In her Statement of Claim, the Plaintiff seeks the following reliefs;

- (i) *Sum of \$375,000.00 being, half share of the market value of the property or half of the updated value of the property at trial.*
- (ii) *Half of all rentals collected by the Second Defendant since the death of the testator.*
- (iii) *Interest on (i) and (ii) above.*
- (iv) *A refund of all monies expended on the Second Defendant.*
- (v) *The Third and Fourth Defendants indemnify the Plaintiff for his loss.*
- (vi) *Costs on indemnity basis.*
- (vii) *Such other orders as this Honorable Court deems just and equitable.*

(3) The 3rd Defendant's argument runs, essentially as follows; (The 3rd Defendant in his affidavit deposes.....)

- (i) ***THAT*** *the 1st Defendant was the lessee of Crown Lease No. 26244 as the administratrix of the Estate of Shiv Charan Singh and a upon the surrender of the old lease a new Crown Lease Number 743760 was issued to the 1st Defendant again as the administratrix of the Estate of Shiv Charan Singh for 99 years with effect from 1st day of July 2010 with an annual rental of \$3,200.00.*
- (ii) ***THAT*** *the new Crown Lease was never given to the 1st Defendant in her personal capacity but as the administratrix.*
- (iii) ***THAT*** *the 1st Defendant herself requested to surrender the lease and sell the property. The 3rd Defendant at no time compelled the 1st Defendant to surrender the lease in favour of a new Crown Lease.*

- (iv) **THAT** to accept a surrender of a lease and issue a new lease to the same lessee is the discretion of the 3rd Defendant who has the powers to do so. The decision to surrender was neither done to circumvent any law nor a fraudulent act as all proper procedures were followed.
- (v) **THAT** all consents granted to the lessee for transfers and mortgages followed the proper procedure.
- (vi) **THAT** the 3rd Defendant does not have a duty to seek the consent of beneficiaries of estates when dealing with real and personal property of the estate.
- (vii) **THAT** the actions of the 3rd Defendant neither deprived the Plaintiff of any entitlement from the estate of Shiv Charan Singh nor were the actions of the 3rd and 4th Defendants fraudulent.
- (viii) **THAT** in fact the Plaintiff has not been deprived of any alleged claim of entitlement over the Estate of Shiv Charan Singh and can still go ahead with the same against the administratrix.
- (ix) **THAT** the Plaintiffs entire claim is against the administratrix of the Estate of Shiv Charan Singh. Further, there is no claim against the 3rd and 4th Defendants.
- (x) **THAT** the Plaintiff therefore has no reasonable cause of action against the 3rd and 4th Defendants.
- (xi) **THAT** the Plaintiffs claim is scandalous, frivolous and vexatious as it alleges fraud against parties who were neither responsible to manage the estate nor did they owe an obligation or duty to notify the Plaintiff on the dealings over the said land.
- (xii) **THAT** the Plaintiffs claim is therefore an abuse of the Court process.
- (4) In *adverso*, the Plaintiff forcefully submits that; (Counsel in his submission writes....)
- On or about 15th July, 2010 the First Defendant requested to surrender the Lease No. 26244 and new lease be issued in her name as administrator.
 - The letter of surrender made no mention of death of Vijay Singh nor did the Director of Lands make any inquiry as why the estate was not settled or why the new lease should not be in name of both beneficiaries (or this estate)
 - The Third Defendant accepted the surrender on 20th December, 2010 without any inquiries regarding Vijay Singh entitlement.
 - On 1st July, 2010 a new lease being Crown Lease No. 743760 was issued in name of First Defendant as administrator of estate of the testator.

- *The Plaintiff wrote to the Third Defendant on 13th December, 2013 seeking information about the subject Crown Leases but the Third Defendant chose not to respond.*
- *The Plaintiff filed her Writ of Summons on 27th August, 2014 after a long wait for a reply.*
- *The Third Defendant allowed the First Defendant to surrender the lease, obtain new lease and then sell lease to Third Party.*
- *The Third Defendant did not wish to provide information to the Plaintiff about the dealing in the Crown Lease.*
- *The Third Defendant had a duty of care to the Plaintiff before allowing the alienation of the Crown Lease by the First Defendant.*
- *The Third Defendant should have known of the value of the property and by consenting to the Mortgage in sum up to \$762,000.00 has demonstrated its knowledge.*
- *The sale on paper for \$280,000.00 therefore should have rang alarm bells that all was not well with this transaction.*
- *The Third Defendant was aware that there was not an onerous lease therefore before surrendering the lease, which have exercised care as to the interest of the other beneficiaries.*
- *The Third Defendant should have issued the new Lease in name of the two beneficiaries (or there estate when deceased)*
- *There is no deed of renunciation in this case. Before allowing the sale the Third Defendant should have sighted a deed of renunciation and consented to it.*
- *We submit the transfer should not have been allowed without sighting a deed of renunciation from the Plaintiff.*

(5) Before I pass to consideration of the arguments, I ought to mention one thing. The 3rd and 4th Defendants application to strike out the claim, is supported by the Affidavit of “Ilaitia N. Navunisaravi”, the Divisional Lands Manager, in the Department of Lands and Survey.

The Plaintiff filed an Affidavit in Opposition through “Dolin Shivani Sen”, the **Law Clerk** of Anil J.Singh Lawyers, the Solicitors for the Plaintiff.

The Defendants did not take any objection to the Affidavit of the **Law Clerk**. Nevertheless, this Court is bound to look into the acceptability of the Affidavit of the Law Clerk.

I must stress here that the Defendants application to strike out the claim is a contested hearing and therefore it is not appropriate for a Law Clerk to depose on behalf of the Plaintiff.

The view I have expressed is in accordance with the sentiments expressed in the following decision.

In “Rupeni Silimuana Momoivalu v Telecom Fiji Ltd”, Civil Action No:- HBC 527 of 1997, the court held;

“The habit of supporting or opposing applications to decide the rights of parties based on the information and belief of law clerks is an embarrassment to the clerk, her firm and the court file. Justice Madraiwiwi (as he then was) had this say about the practice of using law clerks in this way:

*“It is being made to clear to counsel that affidavits by law clerks were not being entertained other than in non contentious matters such as service of documents where not disputed. The most appropriate person to have sworn the affidavit in these proceedings was Mr. Joji Boseiwaqa who appeared on instructions from the plaintiff at the relevant time. The court respectfully endorses the general thrust of dicta by Lyons J in **Michael Harvey v Michael Kelly & Ray McGill**, Civil Action No. HBC 323 of 1977 about the propriety of law clerks deposing affidavits”.*

Given the above, I give no weight whatsoever to the affidavit of the Law Clerk. I say NO more on this.

(6) (A) Before I approach this case through pleadings, it is, I think necessary to mention at the outset that I assume that the facts as pleaded by the Plaintiff in her Statement of Claim are proved for the purpose of the application before me.

(B) Being acutely aware that;

(i) Fundamentally, courts are required to determine cases on merits rather than dismissing them summarily on procedural grounds,

and

(ii) It is a fundamental principle of any civilised legal system that all parties in a case are entitled to the opportunity to have their case dealt with at a hearing at which they or their representative are present and heard,

I approach the pleadings with these principles uppermost in my mind.

- (C) Moreover, I bear in mind the “**caution approach**” that the court is required to exercise when considering an application of this type.
I remind myself of the principles stated clearly in the following decisions.

In *Dev. v. Victorian Railways Commissioners* [1949] HCA 1; (1949) 78 CLR 62, 91 Dixon J said:

“A case must be very clear indeed to justify the summary intervention of the court ... once it appears that there is a real question to be determined whether of fact or of law and that the rights of the parties depend upon it, then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process.”

In *Agar v. Hyde* (2000) 201 CLR 552 at 575 the High Court of Australia observed that:

“It is of course well accepted that a court ... should not decide the issues raised in those proceedings in a summary way except in the clearest of cases. Ordinarily, a party is not to be denied the opportunity to place his or her case before the court in the ordinary way and after taking advantage of the usual interlocutory processes.”

Fiji Court of Appeal in ***A.G. v. Shiu Prasad Halka*** (1972) 18 F.L.R. 2010 said:

“The power to strike out a Statement of Claim given under Order 18 r.18 is one which is to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.”

- (7) After an in-depth analysis of the pleadings in this case, the following salient facts have to be noted;
- The subject land is a crown land.
 - In 1961 Shiv Charan Singh became the registered lessee of Crown Lease No: 26244.
 - Shiv Charan Singh died in Australia on 24th April 2003.

- The Testator (Shiv Charan Singh) by his will dated 07th March 1993 appointed his wife as Sole Executor and Trustee of his Will.
 - By his Will he gave his wife life interest to his property and upon her death the property was to go to Vijay Singh (husband of Plaintiff) and First Defendant equally.
 - The wife of the testator died on 17th June, 2007 without Probate being issued.
 - On her death Vijay Singh and the First Defendant became entitled to the Crown Lease No. 26244.
 - The First Defendant was granted Letter of Administration on 1st April, 2008.
 - On 5th June, 2009, the First Defendant registered as administratrix on the title of “the property”, as a result of transmission by death.
 - The beneficiary Vijay Singh died on 14th November, 2008.
 - On or about 15th July, 2010 the First Defendant requested the 3rd Defendant to surrender the Lease No. 26244 and new lease be issued in her name as administratrix of Shiv Charan Singh.
 - On 04th November, a new lease being Crown Lease No. 743760 was issued by the 3rd Defendant in the name of the First Defendant as administratrix of the estate of the testator, Shiv Charan Singh, before the expiration of the old lease.
 - On a subsequent day, the first Defendant applied for consent to transfer the New lease to Sigatoka Valley Spares Ltd, for a consideration of \$280,000.00.
 - The estimated value of the property is \$720,000.00.
 - The third Defendant consented to transfer the property for a consideration of \$280,000.00 on 20th December, 2011.
 - The first Defendant as the administratrix of the estate of Shiv Charan Singh transferred the lease to Sigatoka Valley Spares Ltd in consideration of the sum of \$280,000.00.
 - The first Defendant sold the property and has not accounted for the proceeds to the Plaintiff who is the Administratrix of the estate of Vijay Singh.
 - Sigatoka Valley Spares Ltd, applied for consent to mortgage in consideration of the sum of \$762,000 (estimated value of the property).

- The third Defendant consented to the mortgage on 21st May, 2012.
- On 13th December, 2013, the Plaintiff wrote to the Director of Lands by registered mail No. 60497, enquiring the circumstances of the surrender and the Director of Lands has not replied to the letter.

(8) With all of the above in my mind, I pass to consideration of the allegation of Fraud.

At this stage, I remind myself the words of Lord Selbourne LC in **“Wallingford v Mutual Society” [1880J5 DC 685;**

“With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. And here I find nothing but perfectly general and vague allegations of fraud. No single material fact is condescended upon, in a manner which would enable any Court to understand what it was that was alleged to be fraudulent.” (Emphasis Added)

The first Defendant was granted letter of Administration on 01st April 2008. A copy of last Will and Testament of Shiv Charan Singh is annexed to the letter of Administration. It indicates that the First Defendant is entitled to half Share, in the estate of “Shiv Charan Singh” and the other half share should go to Vijay Singh (late husband of the Plaintiff). The first Defendant as a Sole Administratrix was only a 50% beneficiary. On or about 29 January 2003, the Plaintiff’s late husband as attorney of Shiv Charan Singh, paid the third Defendant a sum of \$7,521.25 as rent in respect to the subject land. Therefore, the 3rd Defendant was well aware of the other beneficiary. Therefore, the third Defendant cannot deny knowledge of any proprietary interest of the other beneficiary namely the Plaintiff. Suffice it to say that the third Defendant’s suspicions were aroused when the first Defendant applied for consent to transfer the property to Sigatoka Valley Spares Limited in consideration of \$280,000.00, without sighting a deed of renunciation from the other beneficiary namely the Plaintiff. The third Defendant was well aware that the estimated value of the land is \$720,000.00, since on a subsequent day, they consented to a mortgage to Sigatoka Valley Spares Ltd in consideration of \$720,000.00. The third Defendant abstained from making inquiries in relation to the Deed of renunciation of the other beneficiary namely the Plaintiff. I am curious as to why the third Defendant consented to sell the property without a deed of renunciation from the Plaintiff. To make matters worse, the 3rd Defendant chose not to respond when the Plaintiff wrote to him seeking information regarding the lease.

Therefore, I interpose the view that, true situation had not emerged and that a full hearing is required to ascertain what had occurred between the parties.

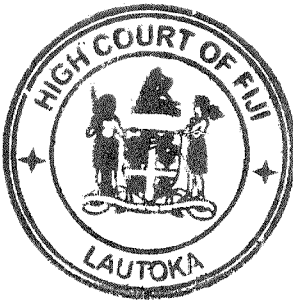
Therefore, I certainly agree with the sentiments which are expressed inferentially in the Plaintiff's submission.

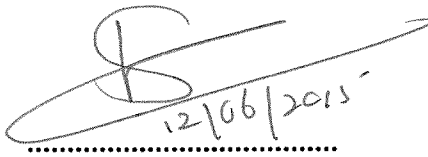
(D) CONCLUSION

Having had the benefit of written submissions for which I am most grateful and after having perused the pleadings of the Plaintiff, doing my best on the material before me, I am not hesitant to conclude that the issues in dispute between the parties in this matter can only properly be resolved by a trial, at which the parties and all relevant witnesses give evidence and the facility exists for that evidence to be tested.

(E) FINAL ORDERS

- (1) The application to strike out the statement of claim by the third and fourth Defendants is refused.
- (2) I make no order for costs.




12/06/2015

Jude Nanayakkara
Acting Master of the High Court

At Lautoka
12th June 2015