

**IN THE HIGH COURT OF FIJI AT LABASA**  
**CIVIL JURISDICTION**

**Action No. HBC 1 of 2015**  
***(Magistrates Court Action No. 142 of 1999)***

**BETWEEN** : **FIJI SUGAR CORPORATION**

**PLAINTIFF**

**AND** : **SOHAN SINGH**

**DEFENDANT**

**BEFORE** : **Hon. Justice Kamal Kumar**

**COUNSEL** : **Mr A. Ram and Mr K. Ratule for the Plaintiff**

: **Mr A. Sen for the Defendant**

**DATE OF HEARING** : **22 - 24 June 2015**

**DATE OF JUDGMENT** : **3 June 2016**

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**JUDGMENT**

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## **Introduction**

1. This is a Magistrates Court action which had been pending in the Court System since 1999 (Labasa Magistrates Court) for almost fifteen (15) years.
2. On 22 October 2014, I delivered Ruling in respect to Appeal filed by the Defendant on 5 August 2008 (close to six years after appeal was filed), in this Court from Magistrates Court decision.
3. In my Ruling, I made following Orders:-
  - “(i) Judgments entered on 18 September 2007 in Labasa Magistrates Court Action 142 of 1999 in favour of the Appellant (Defendant) be set aside;*
  - (ii) Respondent pay Appellant’s costs of this Appeal assessed in the sum of \$1,000.00 within seven days of this Judgment;*
  - (iii) Senior Court Officer of Labasa Magistrates Court (Civil Section) to refer this matter to the Magistrate with a view to assigning urgent hearing date;*
  - (iv) Senior Court Officer to report progress of the Magistrates Court Action No. 142 of 1999 to the Chief Magistrate and Chief Registrar of High Court on a fortnightly basis until such time this matter is determined;*
  - (v) If the Magistrates Court Action No. 142 of 1999 is not heard and determined by 15 January 2015, then the Magistrates Court Action is to be transferred to Master of High Court, Labasa for the Master to assign a trial date of the said Action before a Judge of the High Court pursuant to section 33 of the Magistrates Court Act.”*
4. I note that after the above Orders this matter for reason known to the Senior Court Officer, Labasa Magistrates Court (Civil) and Judicial Officers concerned, was conveniently transferred to Master of the High Court who assigned trial date before me.

5. Before proceeding any further I express my disappointment in the way this matter was handled by Magistrates Court, Labasa and High Court, Labasa.
6. Magistrates Court matter including appeals to High Court should be dealt with and finalized within twelve (12) to eighteen (18) months maximum. Public Policy demands so.
7. I am certain that if not for the case management initiated by his Lordship the Chief Justice this matter would not have seen the light of the day until now.
8. The trial was conducted before this Court on 22, 23 and 24 June 2015 (three days).

### **Chronology of Events**

9. It is prudent to re-produce the chronology of events from the Ruling delivered on 22 October 2014.
10. On or about 26 March 1999, Plaintiff filed claim against the Defendant claiming a sum of \$2,914.00 allegedly paid to the Defendant by mistake pursuant to crop lien given by the Rudra Nand Maharaj ("**the Grower**") in favour of the Defendant when there was a prior crop lien noted with the Plaintiff in favour of Fiji Development Bank ("**FDB**") in Magistrates Court Action No. 142 of 1999 (hereinafter referred to as "**MCA**").
11. On 5 July 1999, Defendant filed Defence and Counter-Claim in person claiming a sum of \$9,086.00 plus \$1,260.00 being monies allegedly advanced by Defendant to the grower on the strength of the crop lien given in favour of the Defendant.
12. Plaintiff filed Reply to Defence and Defence to Counter-Claim.
13. MCA was listed for hearing on 9 February 2000, when it was adjourned on Plaintiff's application.

14. Since then, MCA was adjourned for mention on 7 June 2000, when it was listed for hearing on 9 August 2000, but hearing date was adjourned to 29 November 2000.
15. Hearing date of 29 November 2000, was once again vacated as the Defendant appeared by Counsel for the first time and sought adjournment.
16. MCA was listed for hearing on 14 December 2000, 26 April 2001, 18 August 2001, 30 November 2001 and 12 April 2002 but these hearing dates were vacated for some reason or the other.
17. Since then MCA has been adjourned for mention to enable parties to either gather information or agree to facts some seven (7) times, when it was listed for hearing on 17 March 2003.
18. Hearing date of 17 March 2003 was again vacated and matter was listed for hearing on 13 August 2003.
19. However, this hearing date was also vacated and MCA was re-listed for hearing on 6 October 2003.
20. On 6 October 2003, there was no appearance for and on behalf of Plaintiff and after standing the matter down until 11:05am and there still being no appearance on behalf of the Plaintiff the Learned Magistrate struck out Plaintiff's claim and Defence to Counter Claim.
21. Thereafter, Defendant formally proved his Counter-Claim and judgment was entered in favour of the Defendant for the sum of \$10,346.00 plus \$400.00 costs.
22. On 17 October 2003, Plaintiff filed Notice of Motion to set-aside the judgment and to re-instate Plaintiff's claim. The Application was opposed by the

Defendant.

23. The then Resident Magistrate Mr. S. Kumar re-instated Plaintiff's claim, but refused to set-aside Judgment entered in favour of the Defendant and stayed execution of the Judgment pending determination of Plaintiff's claim.
24. The Plaintiff appealed against the above decision to High Court and on 29 March 2006, his Lordship Justice Winter (as he then was) allowed the appeal and made following orders/directions:

***"Appeal succeeds.***

***The judgment of Magistrates Court of 7 April is quashed.***

***The application for setting aside the judgment on counter claim is granted on terms:***

- (a) The full amount of the judgment and interest at % to the 31 March 06.12% is to be paid into Court (on interest bearing account). 5% by the 30/4/06.***
- (b) Interest on the counterclaim is to run at the face rate on the crop lien until final judgment indemnity.***
- (c) A cost of the defendant are to be prepared entered and submitted to the Master for taxation by the 10th April.***
- (d) The plaintiff is to certify its case for hearing no later than the 30th April 06.***

***The original proceedings are to be referred to another magistrate for hearing. I request the Chief Magistrate arrange an urgent fixture."***

25. MCA was called on 22 January 2007, before Resident Magistrate Mr. S. Kumar, when it was adjourned to 26 February 2007, and then to 28 March 2007, for it to be called in another Court.
26. On 28 March 2007, MCA was called before Resident Magistrate Mr. P.

Lomaloma (as he then was) and was adjourned to 8 August 2007, for hearing.

27. On 8 August 2008, MCA was adjourned to 14 August 2008, for mention. According to the file note, Statement of Claim and Defence had been lost. Parties were to assist in reconstruction of the file. I have my doubts as to whether pleadings were actually lost as I have seen the original pleadings with original stamp evidencing payment of filing fees in Magistrates Court file at the time of hearing of the Appeal and prior to delivery of my Ruling on 22 October 2014.
28. On 14 August 2007, no one appeared for either party when MCA was adjourned to 21 August 2007, for mention.
29. On 21 August 2007, MCA was called before Resident Magistrate Mr A Tuilevuka (as he then was) when Counsel for the Defendant appeared and there was no appearance for the Plaintiff. On Defendant's Counsels' application MCA was adjourned to 10 September 2007, for formal proof of Defendant's counter-claim.
30. On 10 September 2007, the Resident Magistrate Mr. P.Lomaloma struck out Defence to Counter-claim and Affidavit of Muttu Sami Reddy sworn on 18 June 2003, whereupon Defendant formally proved his Counter-claim.
31. On 18 September 2007, judgment was entered against the Plaintiff in the sum of \$10,346.00 plus costs of \$200.00.
32. By Notice of Motion dated 13 November 2007, the Plaintiff moved the Court to set aside the judgment.
33. On 1 August 2008, the then Resident Magistrate set-aside the judgment and Ordered new trial before another Magistrate and ordered Plaintiff to pay costs of \$500.00.
34. Defendant appealed against the decision to set-aside the default judgment

entered on Defendant's counter-claim.

35. Appeal was adjourned to 29 January 2014, 21 February 2014, 25 February 2014, 14 March 2014 and 30 May 2014 when it was adjourned for hearing on 10 July 2014.
36. On 14 January 2014, Defendant filed Notice of Motion dated 19 December 2013 seeking following Orders:-
  - "a. That the copy in this matter be amended to include judge's notes and order of Honourable Justice Winter dated 29th March 2006.**
  - b. Upon the records being supplemented, the appeal be set down for hearing.**
37. Whilst parties filed Affidavits in respect to the above Application as directed by the Learned Master, this Application was never dealt with by the Master.
38. As a result, on 4 July 2014, Defendant filed Application by Summons dated 4 July 2014, seeking an Order that Notice of Motion dated 19 December 2013, be determined before hearing of the Appeal which Application was also listed for 10 July 2014, before me.
39. On the morning of 10 July 2014, after perusal of the Court file and with the assistance of Senior Court Officer, Mr. Rakesh Sharma, I managed to locate the file and notes of Justice Winter dated 29 July 2006 in respect to Appeal against decision of the then Learned Magistrate Mr. S. Kumar.
40. On 10 July 2014, when this matter was called for hearing I informed the Counsel that his Lordship Justice Winter's (as he then was) note was available and that it was being typed out. This matter was then stood down until 11.00am.
41. When the Court resumed, Counsel for parties were handed typed note of his

Lordship Justice Winter.

42. As a result Counsel for the Defendant sought leave to withdraw Summons dated and filed on 4 July 2014.
43. Accordingly, the Summons dated and filed on 4 July 2014, and Notice of Motion dated 19 December 2013, and filed on 14 January 2014, was dismissed and struck out with no order as to costs.

**Documentary Evidence**

44. Following documents were tendered and marked as Exhibits without any objection:-

<u>Exhibit No.</u>	<u>Description of Exhibit Tendered</u>	<u>Tendered by</u>
P1	Record of transaction (Schedule of payments)	PW2
P2	Certified True Copy of Notification No. 92/9413	PW2
P3	Certified True Copy of Crop Lien No. 96/2001	PW2
P4	Certified True Copy of Renewal of Registration of Notification No. 97/14350	PW2
P5	Growers Statement of Accounts	PW2
P6	Production details for Grower	PW2
P7	Photocopy of Notification No. 92/9413 with Plaintiff's stamp	PW2
P8	Notice of Hearsay Evidence	PW3
P9	Affidavit of Muttu Sami Reddy & Certificate	PW3
P10	Photocopy of letter dated 11 February 1999, from Gibson & Company to Defendant	PW3
P11	Photocopy of letter dated 16 February 1999, from Sam Matawalu & Associates to Plaintiff	PW3
P12	Photocopy of letter dated 16 March 1999, from	PW3



	Gibson & Company to Sam Matawalu & Associates	
P13	Photocopy of letter dated 11 May 1999, from Gibson & Company to Defendant	PW3
P14	Photocopy of letter dated 9 July 1999, from Gibson & Company to Defendant	PW3
P15	Photocopy of letter dated 16 July 1999, from Defendant to Gibson & Company	PW3
P16	Photocopy of letter dated 31 July 1999, from Gibson & Company to Defendant	PW3
P17	Photocopy of letter dated 10 August 1999, from Gibson & Company to Defendant	PW3

**Plaintiff's Case**

45. Plaintiff called four (4) witnesses.
46. Plaintiff's first was Ronald Navin Prakash, Deputy Registrar, High Court, Labasa ("**PW1**").
47. PW1 was called to produce Affidavit of Muttu Sami Reddy sworn on 5 January 2003 and filed on 18 June 2003, which was marked as MF11.
48. Plaintiff's next witness was Vijendra Singh, Accounts Officer at Plaintiff Company ("**PW2**").
49. During examination in chief PW2 gave evidence that:-
  - (i) He joined Plaintiff Company in the year 2012, as Commercial Officer in growers' affairs department and after two (2) years was promoted as Accounts Officer;
  - (ii) Plaintiff keeps records of growers and they have records for Farm No. 312/240;

- (iii) He prepared schedule of payments (“**SOP**”) (Exhibit P1) and that the first payment of \$102.00 in the schedule was made to Fiji Development Bank (“**FDB**”);
- (iv) Tendered Certified True Copy of Notification No. 92/9413 in favour of FDB as Exhibit P2;
- (v) When Crop Lien in favour of Sohan Singh was given over the same farm (Exhibit P3) he was not working for Plaintiff, but it is noted in Plaintiff’s records;
- (vi) Grower for Farm No. 312/240 is Rudra Nand Maharaj;
- (vii) Second entry on the SOP of \$1,605.00 (10/3/07) was made to FDB;
- (viii) From SOP a sum of \$5,733.00 was paid to FDB and from 13 October 1997 to 20 October 1997, debt owed to Plaintiff was deducted;
- (ix) From 2 February 1998 to 12 May 1998 a sum of \$2,914.00 was paid to the Defendant and thereafter a sum of \$3,792.00 was paid to FDB;
- (x) If Plaintiff continued to pay Defendant, Plaintiff would have paid him a further sum of \$3,792.00 as Defendant’s crop lien was to expire on 17 December 2001;
- (xi) From 8 May 2000, there was no production on the farm. Only 70.50 tonnes were harvested which was taken towards Plaintiff’s debt;
- (xii) When Notification and Crop Lien are sent to Plaintiff for noting, it goes to General Manager who refers it to the Accountant and then the Accountant refers it to the growers’ affairs department for noting.
- (xiii) FDB’s Notification (“**Notification**”) and Defendant’s Crop Lien (“**Crop Lien**”) was noted in Plaintiff’s record;
- (xiv) The Notification was signed on 17 December 1992, and was registered on 28 December 1992;
- (xv) Notification needs to be renewed every five years and it was renewed on 3 October 1997;
- (xvi) Plaintiff made three (3) payments to Defendant totaling \$2,914.00 and

these payments should have been received by FDB because those payments made in 1998 when the Notification was renewed in 1997 for five years;

- (xvii) From records held with Plaintiff information such as Statements, P41 slips and bank details are only given to the growers;
- (xviii) Anyone wanting to know about Crop Lien or Notification should search at Registrar of Titles Office;
- (xix) There is no record of any Form 122 being sent to FSC;
- (xx) Crop Lien in favour of Defendant was lodged for registration by Govind & Co., Solicitors of Labasa;
- (xxi) Crop Lien was signed on 18 December 1996, but there is no record as to when it was noted;
- (xxii) There is no obligation on Plaintiff to pay growers' debt and Plaintiff will only pay if grower harvests cane and Plaintiff is to pay grower;
- (xxiii) If Crop Lien was valid, and there was no Notification then Plaintiff would have paid Defendant \$3,792.00 upto its expiry date.

50. During cross-examination PW2 stated that:-

- (i) Payments for cane received by Plaintiff is paid to grower after deducting Plaintiff's debt;
- (ii) As far as he is concerned grower can give one Crop Lien at any time and if grower wants to give another Crop Lien then existing Crop Lien needs to be discharged;
- (iii) Plaintiff will pay another Crop Lien on priority basis;
- (iv) He knows little about this case and has records, copies of Crop Lien and Notification and growers statement;
- (v) He is aware that Plaintiff is claiming \$2914.00 from Defendant;
- (vi) In 1996/97 grower was Rudra Nand Maharaj ;
- (vii) This money should have been paid to FDB under the Notification which

was intact

- (viii) No demand has been made by FDB for the sum paid to the Defendant;
- (ix) No authority is given by FDB to FSC to demand that sum from the Defendant;
- (x) In 1998, FDB did not make any enquiries about monies owing by the Grower to FDB;
- (xi) He does not know, if grower owed any money to FDB as at 22 June 2015;
- (xii) If grower did not owe any money to FDB then the money will belong to grower and in turn the holder of Crop Lien;
- (xiii) From 2002, until date of trial he was not aware of any correspondence from Plaintiff to Defendant;
- (xiv) Plaintiff stopped paying Defendant and continued paying FDB;
- (xv) He could not tell as to whether FDB had been paid or grower continued to cultivate to pay Defendant's debt;
- (xvi) Agreed that some people by virtue of being Crop Lien holder cultivate farms themselves;
- (xvii) FDB had priority over Defendant's Crop Lien;
- (xviii) He cannot speak for growers' officers who were present at the material time and the events about giving of legal advice to the Defendant;
- (xix) You cannot tell anything in advance and monies were paid under Crop Lien because Plaintiff did not receive renewal of Notification and Plaintiff did not pursue with FDB about the renewal;
- (xx) Payment to Defendant was only made because of the Crop Lien and the amount secured under the Crop Lien was Twelve thousand dollars (\$12,000.00).

51. PW2 during re-examination did not say anything different other than what he stated during examination in chief and cross-examination.

52. Plaintiff's third witness was Mereani Lord, the Legal Counsel and Company Secretary for the Plaintiff ("**PW3**").
53. Before PW3 commenced giving evidence Counsel for the Defendant informed Court that PW3 was sitting in Court at all time and heard the evidence of PW2 and that the Court should consider the weight to be given to PW3's evidence.
54. PW3 during examination in chief gave evidence that:-
- (i) She is Company Secretary for Plaintiff and attends all meetings of Plaintiff's board and represents Plaintiff in matters authorised by CEO or the Board;
  - (ii) She came to Labasa, because of this case and her expenses for coming to Labasa from her permanent place of employment in Lautoka has been paid by Plaintiff;
  - (iii) Plaintiff's CEO and Board are aware about this case and her appearance in this case;
  - (iv) She joined Plaintiff in 2012, and as such she was not aware about Affidavit given by Muttu Sami Reddy ("**Affidavit**") but came to know from Plaintiff's file;
  - (v) From her understanding the Affidavit was taken to enable Solicitors file Defence to Counter-claim;
  - (vi) Muttu Sami Reddy does not reside in Fiji, and she had been told that he is in New Zealand and that the Solicitors tried to locate his whereabouts without success;
  - (vii) Affidavit forms part of Plaintiff's business records;
  - (viii) Notice under Section 4 of Civil Evidence Act (Exhibit P8) was given to Defendants Solicitors regarding the Affidavit which was noted;
  - (ix) Muttu Sami Reddy resigned from Plaintiff on 18 June 1999;
  - (x) If cane was supplied to Plaintiff in September 1997, October 1997 and November 1997 then FDB would be paid;

- (xi) If cane was delivered on 17 December 1997 and payment made in January 1998 then if Notification is valid then FDB would be paid;
- (xii) Commercial Officers in growers affairs section of Plaintiff note securities received, process cane details, deducts Plaintiff's debt, pays security/charge holders and deals with Court Orders regarding the farms;
- (xiii) In relation to paragraph seven (7) of the Statement of Claim she stated that growers officers section are not trained or qualified to give legal advice;
- (xiv) Growers Officers section does not know about dealing between growers and lenders or financial institutions;
- (xv) In reference to paragraph 8 of the Statement of Claim she stated that Plaintiff does not undertake to pay or guarantee growers debt;
- (xvi) It is not Plaintiff's business to give advice on validity of changes;
- (xvii) If anyone wants that advice they should go to Registrar of Titles or see a Solicitor;
- (xviii) From copy of Crop Lien it appears that it was lodged by Govind & Co.;
- (xix) Crop Lien is witnessed by Solicitor, Labasa and she believed the signature of witness solicitor is that of Mr. Singh;
- (xx) Tendered correspondence between Plaintiff's Solicitors and Defendant's Solicitors and Defendant and had them marked as Exhibits P10 to P17;
- (xxi) She did not know if anyone who was working for Plaintiff at the material time is still working;
- (xxii) Plaintiff would not know what FDB would have done before expiry of Notification;
- (xxiii) Denied that Plaintiff owed Defendant the sum of \$9,086.00 because Plaintiff is not in the business of giving legal advice to growers or third parties.

55. During cross-examination PW3 stated that:-

- (i) She was sitting inside that court when PW2 gave evidence and had opportunity to listen to his evidence;
- (ii) She joined FSC in 2012, and she came to know the difference between Crop Lien and Notification when she came to know about this case;
- (iii) There is no record that Plaintiff paid \$2,914.00 to FDB;
- (iv) After growers, deliver cane to Plaintiff and after growers' debt to Plaintiff are deducted, the balance money belongs to the grower;
- (v) The grower has the right to assign his interest by Crop Lien, Notification or Irrevocable Authority;
- (vi) The sum of \$2,914.00 was to be paid to FDB;
- (vii) Plaintiff has not suffered any loss but Plaintiff wants to rectify its mistake;
- (viii) When monies were paid to Defendant, Plaintiff did not know if Notification had been renewed;
- (ix) Notification at that time had not lapsed;
- (x) She does not have Muttu Sami Reddy's personal file and did not study his file;
- (xi) The Affidavit was prepared by Gibson & Co. on Plaintiff's instructions and there is nothing on file record from Plaintiff to Muttu Sami Reddy;
- (xii) In relation to the Affidavit she gave evidence that:-
  - (a) Reddy was not consulted by Plaintiff when Affidavit was prepared;
  - (b) Affidavit says address as Auckland New Zealand and Affidavit was prepared in Fiji but signed in Auckland New Zealand and witnessed by Mr. Maqbool Khan;
  - (c) She does not know any Maqbool Khan, Solicitor in New Zealand;
  - (d) Mr. Khan did not put his seal or any note to say that he knew Reddy or put Reddy's identification;
  - (e) No stamp has been affixed by Mr. Khan to say he is a Solicitor;

- (f) She has not verified that Affidavit either from Mr. M. Khan or Reddy;
  - (g) Was not aware about letter from Defendants Solicitors' that Reddy will be required to give evidence;
  - (h) She did not, but Plaintiff's Solicitors attempted to get in touch with Reddy;
  - (i) She did not use social media, google, facebook or twitter to find out about Reddy's whereabouts and did not know if Plaintiff's Solicitors did;
- (xiii) Whether there is a Crop Lien or charge over a farm is a factual question;
  - (xiv) She had no clue how the growers affairs section was operating in 1997/1998;
  - (xv) When Defendant was paid, the Crop Lien was valid and Notification has not lapsed;
  - (xvi) When Crop Lien is not noted Plaintiff is not obliged to pay;
  - (xvii) When monies were paid to Defendant only his Crop Lien was noted with Notification;
  - (xviii) At that time Renewal of Notification was not noted;
  - (xix) Monies paid to Defendant belonged to FDB and not Plaintiff;
  - (xx) Did not agree that monies paid to Defendant were consistent with advise given by Plaintiffs to Defendant;
  - (xxi) Did not agree that Defendant lost his Crop Lien because of advise given by Plaintiff or misrepresentation made by growers affairs officers at that time.
56. Once again, like PW2, PW3 did not say anything different in re-examination.
57. Plaintiff's fourth witness was Paula Rakai, Manager of FDB, Labasa Branch (**"PW4"**).



58. During examination in chief PW4 gave evidence that:-

- (i) Rudra Nand Maharaj (“**the Grower**”) was a client of FDB and he took a loan of \$29,500.00 in October 1992;
- (ii) The Grower did not pay the total loan due to no production and as such in 2002; his debt in the sum of \$36,000.00 was written-off;
- (iii) Notification was taken over Farm No. 312/240 on 17 December 1992, which was registered on 28 December 1992;
- (iv) Effective date of Notification is the registration date pursuant to section 25(3)(4) and (5) of Fiji Development Bank Act (“**FDB Act**”);
- (v) Normal life of Notification is five (5) years which can be extended;
- (vi) The Notification was renewed on 3 October 1997, for five (5) years which was prior to expiry of the Notification;
- (vii) If someone wants to find out if Notification has been renewed then they should search at Titles Office;
- (viii) Three months prior to expiry of Notification, letter is sent to FDB branches seeking renewal instructions and once instruction is received renewal process commences;
- (ix) FDB’s legal department send renewal request to Registrar of Titles with Notification and in this case Renewal was lodged on 3 October 1997 and registered on that date;
- (x) Effective date of renewal is date of registration;
- (xi) Once renewal is received back from Registrar of Deeds office it is sent to branches to have it noted with FSC;
- (xii) Noting by FSC is the last process.

59. During cross-examination PW4:-

- (i) Confirmed that growers debt with FDB has been written off and stated that no demand has been made by FDB on FSC;
- (ii) Agreed that if Plaintiff has no notice of renewal of Notification it is not

obliged to pay FDB;

- (iii) Agreed that Plaintiff's obligation to pay FDB will cease on expiry of Notification unless it is renewed and communicated to Plaintiff and noted;
- (iv) Agreed, that if no notice of renewal is given then Plaintiff presumes that Notification has come to an end but stated that Plaintiff has an obligation to check for renewal;
- (v) Agreed that there is no legal obligation for Plaintiff to check but it is a good idea;
- (vi) There is no record of any request from FDB to Plaintiff to seek recovery of money on its behalf.

60. During re-examination, PW4 gave evidence that:-

- (i) FDB keeps records for seven (7) years only and no longer have records for the years 1996/97;
- (ii) FDB was entitled to cane proceeds before and after 28 December 1997.

61. Plaintiff did not call any other witness.

### **Defendant's Case**

62. Defendant gave evidence himself and did not call any other witness.

63. During examination in chief Defendant gave evidence that:-

- (i) He is seventy-six (76) years old and has been engaged in the business of money lending and cinema business;
- (ii) In 1996, he was given Crop Lien by the Grower over Farm No. 312/240 to secure the sum of \$12,500.00 which Crop Lien was registered on 27 December 1996;
- (iii) Prior to taking Crop Lien he went with the Grower to FSC and enquired about existing Crop Lien and was told by the staff at Plaintiff's office that

the Crop Lien will expire in December 1997;

- (iv) In 1995, he would go to Plaintiff's office every two (2) months to check cane payment and the staff at that time knew him well;
- (v) The Grower enquired about the tonnage for his farm;
- (vi) Plaintiff's staff did not tell him about Notification but said Crop Lien will expire in December 1997;
- (vii) He then went with the Grower to Govind & Co., to prepare the documents and then loaned money to the Grower. Crop Lien was executed, stamped, registered and noted with Plaintiff;
- (viii) Plaintiff never told him that his Crop Lien was not valid;
- (ix) He received following payments from Plaintiff:-

<b><u>Date</u></b>	<b><u>Amount</u></b>
11/2/98	\$ 120.00
31/3/98	1,869.00
29/5/98	<u>925.00</u>
	<b><u>\$2,914.00</u></b>

- (x) He did not receive any further payment from Plaintiff;
- (xi) He has not received balance debt of \$9,086.00 from the Grower until date of trial and he can charge interest at 12% per annum;
- (xii) Plaintiff did not tell him about the Notification and he heard this word for the first time (at time of giving evidence);
- (xiii) Plaintiff's staff told him that he will get his money from 1998 onwards;
- (xiv) Plaintiff's staff did not tell him that FDB may renew the Notification and he will not get his money;
- (xv) If he had known that FDB would renew the Notification and he will not be entitled to monies under Crop Lien he would not have lent the money to the Grower;
- (xvi) He is claiming \$9,086.00 plus interest from Plaintiff;
- (xvii) Plaintiff's staff told him another Crop Lien is there until 1997 and he will

get his money in 1998 and he did not have any doubt on that information;

- (xviii) In reference to Reddy's Affidavit he stated that Plaintiff do give such information and that is why he lodged the Crop Lien with them;
- (xix) He does not know whereabouts of Reddy;
- (xx) Delay in this case has been caused by Plaintiff and not him and he did not gain anything by delay.

64. During cross-examination, Defendant:

- (i) In reference to Exhibit P15 (letter dated 16 July 1999 from Defendant to Plaintiffs Solicitors in reply to Plaintiffs Solicitors letter dated 9 July 1999) stated that it was given by his Solicitors and he did not understand the Notification and he heard this word today;
- (ii) Letter dated 19 July 1999, was signed by him and he accepted the document;
- (iii) In May 1999, he received Writ from Gibson & Co. and when he received the writ he did not consider meaning of Notification;
- (iv) The Defence and Counter-claim was signed and filed by him but it was prepared by his Solicitors;
- (v) Crop Lien was prepared by Mr Singh, Solicitor of Govind & Co. and that Govind & Co. was Grower's Solicitor and not his;
- (vi) Crop Lien was registered and lodged by them (Govind & Co.);
- (vii) He was taken to Mr. J. Singh, the Solicitor by the Grower;
- (viii) In response to question, as to whether he asked Solicitors to conduct search he stated that he searched personally and they (Plaintiff's staff) told him that another Crop Lien which will expire in 1997;
- (ix) He did not ask Solicitors to conduct search;
- (x) When it was put to him that he did rely on Solicitors to make valid Crop Lien, he stated that he made proper Crop Lien and asked the

Counsel what was wrong with it;

- (xi) Stated that he never conducted search at Deeds Office and when asked why he did not carry out the search, he said he had Crop Lien and that is all;
- (xii) Crop Lien was signed on 18 December 1996, and prior to that he went to Plaintiff and was informed that Crop Lien (Notification) will expire in 1997 and after one year he will get money for other years;
- (xiii) He thought his Crop Lien will expire in five (5) years and he will have it renewed in fourth year;
- (xiv) Stated that Notification (FDB charge) would expire on 17 December 2001;
- (xv) Agreed that if Grower paid FDB's debt then Notification will be discharged;
- (xvi) When asked if it was not his duty to seek advice from Solicitors and get them to do searches, he stated that he is not doing this work anymore as he was doing it before but is finished;
- (xvii) When it was put to him that no one could foretell if FDB's charge would be discharged or renewed, before one year of its expiry date he stated that he was told one year left and after that he can get the money, and he was told that at the beginning of December 1996;
- (xviii) He received three (3) payments from Plaintiff then it stopped;
- (xix) When asked that he advised Mr. Sam Matawalu to write to enquire why payment stopped he stated he never went to Matawalu;
- (xx) When he was showed Exhibit P11 he then said that he went to Matawalu and not Plaintiff;
- (xxi) When he was referred to letter dated 16 March 1999 from Plaintiff's Solicitors to Mr. Matawalu (Exhibit P12) and it was put to him that it explains Notification, he stated that it was for another case;
- (xxii) When it was put to him that letter (Exhibit P12) was not for another case but this, and was shown Exhibit P11 he stated that he cannot

remember as it was long time ago;

- (xxiii) Agreed that payment from Plaintiff to him stopped in May 1998;
- (xxiv) When asked why he did not bring forward the allegations about what Plaintiff's staff told him he stated that he was talking to the Grower, and the Grower said he would pay him;
- (xxv) When it was put to him that almost one (1) year lapsed after last payment received by him, and that he did not write any letter about Plaintiff not paying or about the allegation that Plaintiff told him that they will pay, he stated that he wrote letter and when he was asked to show the letter he stated not by him but Mr. Matawalu;
- (xxvi) When it was put to him that he only made the allegation against Plaintiff when he received the Writ he stated that his Solicitors can deal with that;
- (xxvii) When asked why he did not go to Plaintiff when monies stopped coming he stated that he went to the Grower and said that Matawalu wrote;
- (xxviii) When it was put to him that none of his letters or his Solicitors letters contains any allegation that Plaintiff said that they will pay he stated that he claimed it in the Writ;
- (xxix) When it was put to him that Writ was the first time he made the allegation he stated the lawyers wrote;
- (xxx) When it was put to him that he was negligent in conduct of his business, he stated that he is retired now and at the time giving the money he did not take legal advice but went to Plaintiff;
- (xxxi) When it was put to him that he was negligent in not searching at Registrar of Deeds office he stated that he had not been to Registrar of Deeds;
- (xxxii) When it was put to him that he made up the defence of Plaintiff advising him when he received the Writ, he stated he did go and they are not here otherwise he would have brought them as witnesses;
- (xxxiii) In response to question as to whether he discussed Plaintiff's

assurance with Mr. Jiten Singh he said no, he closed his office;

(xxxiv) When it was put to him that he said he got his Solicitors to draw up the Crop Lien he stated that him and the Grower went together;

(xxxv) Confirmed that he discussed with Mr Jiten Singh;

(xxxvi) When it was put to him that he did not ask Mr. Jiten Singh to advise him on the Notification he stated they never talked on this thing;

(xxxvii) When asked if he asked his Solicitor to search to check that it was all clear he said no, he got the information himself.

65. Counsel for the Defendant did not re-examine the Defendant.

### **Analysis of Evidence**

66. Before I proceed any further, I must state that I have not given any weight to the Affidavit of Muttu Sami Reddy for the following reasons, most of which have been raised by Defendant's Counsel:-

(i) No certificate is issued by the Solicitor witnessing the Affidavit stating that he is a Solicitor;

(ii) No certificate is issued by the Solicitor that the person who signed the Affidavit was Muttu Sami Reddy and what form of identification was produced by Muttu Sami Reddy to the Solicitor;

(iii) Solicitor has not affixed his stamp to the Affidavit, alongside Solicitors signature;

(iv) Reddy signed the Affidavit in 2003, which is almost four years after he resigned (1999). How could he then after a lapse of almost four years still recall that FDB's charge was expiring in December 1997?

67. I think it is appropriate to quote the provision of Section 24 and 25(1) (3) and (4) of **FDB Act** and Sections 3(1) and 6(1) of Crop Lien Act Cap 226.

## **Fiji Development Act**

*“S24. Subject to the provisions of this Act, any advance granted to a farmer, together with interest thereon and all costs, charges and expenses properly incurred by the Bank in making or securing the advance or preparatory or incidental to the enforcement of the security, shall, until repayment in full, subject only to any prior registered estate, interest, charge, encumbrance or right registered under the provisions of this or any other Act, be -*

*(a) a first charge upon the whole of the crops specified in the notification, whether such crops are then or are intended to be thereafter sown or grown on the land specified in the notification, and the produce of such crops or the proceeds thereof if and when sold and converted into money such crops, on severance from the land, not being deemed to be personal chattels within the meaning of the Bills of Sale Act.”*

*“S25.-(1) The Bank may, in any case where any charge is created under the provisions of this Part, cause a notification in the prescribed form, signed by or on behalf of the Bank and countersigned by the farmer, to be forwarded in duplicate to the Registrar of Titles who shall register the original thereof in the prescribed form, in a register which he shall keep for that purpose (which register shall be upon to the public on payment of the prescribed fee) and shall return the duplicate to the Bank duly endorsed with particulars of the registration.”*

*“S25.-(3) Notwithstanding any provision of the Land Transfer Act or of any other Act or any other provision of law or rule of equity, to the contrary immediately upon registration under the provisions of subsection (1), all persons dealing with the land, buildings, fixtures, chattels, crops or other property which is subject to any charge created under the provisions of this Part, shall be deemed to have notice of every such charge, and any such dealing shall, subject to the provisions of this Act, be subject to the charges created under the provisions of this Part.*

*-(4) The registration of a notification under the provisions of subsection (1) relating to any property, other than land registered under the provisions of the Land Transfer Act, shall become void unless renewed or further renewed, as the case may be, at least once in every five years.”*



### **Crop Lien Act**

*“S3.-(1)Any agreement whereby a person (hereinafter called the lienee) agrees to advance moneys or supply goods to another (hereinafter called the lienor) upon the security of the lienor’s crop or crops of agricultural produce growing or to be grown or whereby such crop or crops is or are made the security for the payment of a debt from the lienor to the lienee or for any liability undertaken by the lienee for the lienor, or for other valuable consideration, shall be in the form given in the Schedule or as near thereto as circumstances may permit, and shall be registered by the Registrar of Deeds in a separate alphabetical register to be kept for that purpose which shall be open to inspection by the public.”*

*“S6.-(1) A lien under the provisions of this Act shall continue in force for the period specified in the agreement whereby the same is created, and may be created for any period not exceeding five years, anything in the Bills of Sale Act to the contrary notwithstanding.”*

68. Plaintiff’s claim is for the sum of \$2,914.00 which Plaintiff says was paid to Defendant mistakenly believing that Defendants Crop Lien was valid and taken priority over FDB’s Notification.
69. It is undisputed evidence that:-
- (i) On 17 December 1992, the Grower executed Notification over his Farm No. 240 Wailevu Sector, in favour of FDB securing the sum of twenty nine thousand five hundred dollars (\$29,500.00) which Notification was registered on 28 December 1992, and noted with Plaintiff;
  - (ii) The Grower on 18 December 1996 executed Crop Lien in favour of the Defendant over the same Farm securing twelve thousand five hundred dollars (\$12,500.00) which Crop Lien was registered on 17 December 1996 and noted by Plaintiff;
  - (iii) FDB’s Notification expired on 27 December 1997 and after that only charge noted with Plaintiff was Defendant’s Crop Lien;
  - (iv) FDB registered renewal of its Notification on 3 October 1997;

- (v) When Plaintiff made payments to Defendant under the Crop Lien on 11 February 1998, 31 March 1998 and 29 May 1998, totaling \$2,914.00 only Defendant's Crop Lien was noted.
70. PW2 in his evidence during cross-examination stated that Plaintiff would not have paid \$2,914.00 to the Defendant if Crop Lien was not noted with Plaintiff.
71. PW4, Mr. Rakai gave evidence that FDB expects Plaintiff to pay under the Notification once it is noted by FSC.
72. Section 25(3) of FDB Act is quite clear in that any person dealing with the grower whose farm is subject to Notification or charge registered pursuant to section 25(1) of the Act shall be deemed to have notice of said charge.
73. I accept PW4's evidence that Plaintiff is only expected to act on the Notification once the Notification is noted with Plaintiff.
74. PW2 also gave evidence that once Notification is expiring, they expect Plaintiff to send money to FDB once renewal of Notification is noted by Plaintiff.
75. Hence, when Plaintiff made the payments of \$2,914.00 to Defendant, FDB did not expect Plaintiff to pay that sum to it.
76. No evidence has been produced to show that FDB has at any point in time raised the issue of payment of \$2,914.00 by Plaintiff to Defendant.
77. This clearly shows that FDB accepted the fact that Plaintiff only paid the sum of \$2,914.00 to Defendant because FDB did not have the renewal of the Notification noted by Plaintiff.
78. It was PW4's evidence that since FDB's Notification had expired and renewal was not noted by the Plaintiff, the sum of \$2,914.00 if had not been paid to the Defendant would have belonged to the Grower and/or his assignee.

79. I find that Plaintiff did not pay the sum of \$2,914.00 under any mistaken belief and as such Plaintiff's claim is to be dismissed.
80. Defendant claims the sum \$9,086.00 plus interest and costs from the Plaintiff on the ground that Plaintiff's staff informed him that FDB's Notification (which he referred to as Crop Lien) will expire on 28 December 1997 and Crop Lien which he was going to take will be valid.
81. I note that Defendant was evasive during cross-examination and kept on blaming the Plaintiff's staff for giving him the advice.
82. Defendant very well knew that those staff was no longer in Plaintiff's employment.
83. Whilst I accept Defendant's evidence that Plaintiff's staff, provided details of charges, I do not accept his evidence that the staff gave him any legal advice on validity of his Crop Lien and that he will receive payments once FDB's Notification expired on 28 December 1997.
84. I reject the Defendant's evidence that he totally relied on Plaintiff's staff advice for following reasons:-
- (i) Defendant was accompanied by the Grower to Plaintiff's office to find out details of the charges;
  - (ii) He accompanied the Grower to Messrs. Govind & Co. office for preparation and signing of Crop Lien;
  - (iii) Messrs. Govind & Co. was the common Solicitors and did not only act for the Grower;
  - (iv) When Govind & Co. prepared the Crop Lien, it was prepared to protect the interest of the lender and not the Grower;
  - (v) It is apparent that Defendant relied heavily on the Grower to the extent that when payment from Plaintiff stopped he went to see the Grower who

informed him that he will pay his debt

- (vi) No allegation has been made by Defendant and/or his lawyer when he and his Solicitors wrote to Plaintiff's Solicitors on 16 February 1999 and 11 May 1999;
  - (vii) The only time Defendant made the allegation against Plaintiff's staff was when Statement of Defense and Counter-claim was filed;
  - (viii) I find that the allegations that the Plaintiff's staff advised Defendant as to validity of his Crop Lien and that he would receive monies was an afterthought.
85. I find that Messrs. Govind & Co. acted as common Solicitors and it was their duty to ensure that Crop Lien is valid, and to carry out search at Registrar of Deeds office to check if the Grower has given any charge over the Farm.
86. It is also surprising to note that once Plaintiff stopped payment to Defendant he did not demand payment from Plaintiff or take any action until such time Plaintiff moved to recover the sum of \$2,914.00 through its Solicitor's letter dated 11 February 1999 (which is close to nine (9) months after the last payment on 28 May 1998).
87. I do not accept Defendant's evidence, that he heard the word Notification for the first time during his evidence when there is clear evidence that Notifications was mentioned in the correspondences exchanged between Plaintiff's Solicitors and Plaintiff, the Statement of Claim and Counter-claim filed by him.
88. This Court also notes that no evidence (except for the Crop Lien) has been produced in Court to show that Defendant advanced the sum of \$12,500.00 to the Grower.
89. Whilst the Defendant, said in his evidence that he gave money when Crop Lien was given no evidence in the form of copy of bank cheque, Solicitors trust account cheque or any acknowledgement from the Grower or loan agreement

was produced.

90. This Court finds that if Defendant has suffered any loss under the Crop Lien given by the Grower then he did so because of his and the common Solicitors negligence for failing to conduct searches, where they should have (i.e. Registrar of Deeds office).
91. The Defendant could have also gone to FDB, Labasa Branch with the Grower to check if FDB's debt was still outstanding and whether FDB's Notification has been renewed or would be renewed.
92. Defendant's evidence was that prior to obtaining the Crop Lien he went to Plaintiff's office with the Grower, and then he went to the Solicitors with the Grower. It is interesting to note that no evidence was given as to whether he asked the Grower if the Grower still owed monies to FDB secured by the Notification. It is also interesting to note that the Grower did not even inform the Defendant that he owed monies to FDB which will not be paid for a number of years.
93. If the Defendant as an experienced lender, advanced money to the Grower against Crop Lien over Grower's farm, without conducting search whether by himself or through his Solicitors and/or failed to make enquiries with FDB then he acted on his peril and cannot pass the blame on anyone else.
94. This Court therefore has no alternative but to dismiss the Counter-claim.

### **Costs**

95. I take into consideration that this is 1999 matter and could not be determined in Magistrates Court, trial lasted for three (3) days (including Submission); Plaintiff called four (4) witnesses whilst Defendant gave evidence himself only and the fact that both claim and counter-claim is dismissed.

**Orders**

96. I make following Orders:-

- (i) Plaintiff's claim is dismissed and struck out;
- (ii) Defendant's counter-claim is dismissed and struck out;
- (iii) Each party is to bear their own costs of this action and Labasa Magistrates Court Action No. 142 of 1999.



.....  
**K. Kumar**  
**JUDGE**

**At Suva**

**3 June 2016**

**Gibson & Company for the Plaintiff**

**Maqbool & Company for the Defendant**