

**IN THE HIGH COURT OF FIJI  
WESTERN DIVISION AT LAUTOKA**

Civil Action No. HBC 10 of 2002L

**BETWEEN** : **ILIKAYA KOTO QALO** of 3 Axon Place, Sydney, Australia,  
Self Employed

**PLAINTIFF**

**A N D** : **MICHAEL FENECH** trading as Michael's Taxis and Tours of  
Narewa, Nadi, and Businessman

**DEFENDANT**

**Appearance** : Ms P Mataika for plaintiff  
: Defendant in person

**Date of Hearing** : 08 April 2016

**Date of Judgment**: 11 July 2016

## **J U D G M E N T**

### **Introduction**

[01] By writ of summons, the plaintiff initiated this action against the defendant claiming amongst other things damages in the sum of \$20,000.00 for lost caused.

[02] The defendant filed statement of defence and stated that the plaintiff's claim is frivolous and vexatious and ought to be struck out with costs. However, the defendant did not file any striking out application.

[03] The matter went on hearing. At trial, the plaintiff called three witnesses and produced six documents in support of his claim. The defendant gave evidence and he did not produce any documents. Both parties also filed written submissions.

## **Background facts**

[04] The background facts relevant to the case are as follows: Ilikaya Koto Qalo, the plaintiff a citizen of Australia was on holiday in Fiji in December, 2000. Michael Fenech, the defendant is operating a rental car business at Narewa in Nadi. In February, 2001 the Plaintiff hired a vehicle from the defendant. It was agreed that the plaintiff will pay the Defendant for the hiring by his ANZ visa card. The plaintiff hired the vehicle for F\$1659.00. The Plaintiff handed the visa card to the defendant. The Defendant then entered it into the visa machine and gave a receipt to the plaintiff acknowledging the sum of \$1659.00.

[05] The Plaintiff advertised his vehicle-DK 899 (Ford Fairmont) for sale and, according to him, received two offers for purchase at \$20,000.00. He could not complete the sale as he had to leave Fiji for Australia. He left the advertised vehicle with his mother-in-law at Votualevu, Nadi. While the vehicle was with the plaintiff mother-in-law's custody, the statement of claim states, the defendant seized it by breaking the locked gate and unlawfully detained it in his yard demanding further payment on account of hired vehicle. The defendant never returned the vehicle that he seized as security for payment. The plaintiff claims damages for wrongful act committed by the defendant and damage caused to the vehicle.

## **Evidence**

[06] The plaintiff (PW1) testified on his behalf and called two other witnesses in support of his claim.

PW1-Ilikaya Koto Qalo (The plaintiff)

[07] (a) The plaintiff said when he is in Fiji for holidays he usually resides with his Mother-in-law and his sister-in-law at Votualevu.

- (b) He also said in his evidence that he owned a vehicle DK 899 and when he is in Fiji he normally uses the private car or rental cars from different companies.
- (c) The plaintiff confirmed hiring a small car- Toyota Corolla from the defendant for three days as his vehicle had been having a bit of mechanical problem and paying for the use of the vehicle. The rental was \$120.00 a day. He then extended the days because he wanted more days to use the car. The rest of the payments were agreed through his ANZ Visa Card. He produced the visa statement and the receipts and sales dockets marked as PE1 and PE2 respectively.
- (d) He also stated that he became aware that the defendant and four of his bodyguards came home and cut the gate and removed the vehicle without any court papers. His mother-in-law and sister-in-law informed him of the seizure when he was in Australia. The plaintiff did a search at LTA and found that vehicle had been transferred to the defendant.
- (e) By demand letter written by his solicitor the plaintiff requested the defendant to return the car that was removed from the plaintiff by forcefully entering the property. The demand letter is marked as PE3.
- (f) He further stated that he was intending to sell the vehicle and he had offer for \$20,000.00.
- (g) Under cross examination the plaintiff stated that he parked the car at the airport when he take off. He denied the suggestion that he flew away without any payment for the hired car.

PW2-Elizabeth Talei

[08] PW2, the plaintiff's sister-in-law in her evidence confirmed the plaintiff had parked his vehicle at their residence. She said sometime in February 2001 when she left home with her mother-in-law the vehicle was parked at their home and when they returned the vehicle was not

there. Her cousin informed her 'the defendant and some of his guys removed the vehicle.' She also stated that the gate chain had been cut open and there was no car inside the car porch.

[09] Under cross examination she stated that she never saw the defendant cutting the chain and entering the property. She said 'we have a big compound to park the car' denying that she told the defendant to remove the car.

PW3-Susau Hazelman (LTA Officer)

[10] PW3 confirmed that, according to the LTA record, Netani Ravouvou owned the vehicle (DK 899) in 1999. He transferred the vehicle to Ilikaya Koto (the plaintiff) on 20 January 2000 and Ilikaya Koto transferred the vehicle to Michael Fenech on 24 January 2002. She marked and produced vehicle owner's history as PE-5.

DW1-Michael Fenech (the defendant)

[11] The defendant stated in evidence that he (plaintiff) took the car for rent and he never even gave \$1.00. Then his intension was to take off. The plaintiff said by his mouth the car (plaintiffs car) cannot start and his mother-in-law was telling me to take it from here, 'take the car because not even a space to hang the clothes, a small compound'.

[12] Under cross examination the defendant refused to acknowledge PW6 which were the insurance cover that was paid on the defendant's behalf by a Mr Jokove Tokomato.

## **Analysis**

[13] The plaintiff claims the sum of \$20,000.00 on lost sale of the Ford Fairmont-DK 899.

- [14] Evidence given on behalf of the plaintiff shows that the plaintiff hired a vehicle from the defendant for three days and had the hire extended for a few more days. He informed the defendant of the extension. The plaintiff's evidence clearly demonstrates that he settled the rental on his ANZ Visa Card. The Visa Statement indicates that two payments have been made to the defendant (Michael Taxis & Tour)-on 23 January 2001 \$330.75 and on 03 February 2001 \$1659.00. (See PE-2)
- [15] In his evidence the defendant confirms that the plaintiff sent the hire charges to his (defendant's) account.
- [16] It will be noted that before payments were made by Visa Card, the defendant with some men had gone into the property where the plaintiff's private car was parked, removed the vehicle, transferred and registered the same under his name. The vehicle owner's history confirms this transaction. (See PE-5)
- [17] The defendant in evidence stated that he removed the vehicle from the plaintiff's mother-in-law's house demanding payment of car rental.
- [18] It appears that there was some delay in transferring the fund to the defendant's account as the payments were made by Visa Card.
- [19] On the assumption that the plaintiff had left the country without making any payment for the hired car he used when he was in Fiji. Even if the plaintiff had left the country with the bill unsettled, the defendant ought to have sought legal means to enforce payment. Instead, the defendant having taken the laws into his hand broke open the gate, trespassed into the property, removed the plaintiff's car, transferred under his name and hired.

- [20] Under cross examination the defendant adamantly refused to accept the Sun Insurance Cover note dated 15 February 2002 obtained by a Mr Jokove Tokomato. In that cover note the defendant's name appears as interested party. (See PE-6).
- [21] All what the defendant stated in the cross examination was *'the car did not start and nothing happened to it.'*
- [22] The defendant was evasive during cross examination. He was not a credible witness.
- [23] The plaintiff gave straightforward evidence. He answered cross examination question without any hesitation. The plaintiff gave plausible evidence. The documents adduced by the plaintiff remain unchallenged. I therefore accept the plaintiff's evidence.
- [24] The plaintiff had trespassed into the premises by breaking the gate lock, removed the car, transferred it under his name and hired. By his illegal and unlawful acts the defendant had caused loss and damages to the plaintiff.
- [25] In evidence the plaintiff stated that he had intended to sell the car for \$20,000.00 and that there were three buyers who were interested to buy. I therefore hold that the plaintiff suffered loss and damages in the sum of \$20,000.00 being the value of the vehicle.
- [26] The defendant took the laws into his hand and removed the vehicle from the premises without due process. An award of damages may also be granted on the ground that the defendant has acted wrongfully in entering and removing the vehicle. The plaintiff has proved a causal link between the wrongful act and the loss suffered. The plaintiff suffers loss as a result of the defendant's wrongful act. I therefore hold that the plaintiff is entitled to an award of damages. I accordingly order the

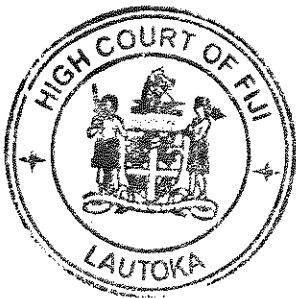
defendant to pay exemplary damages to the plaintiff in the sum of \$5,000.00.

[27] The plaintiff is entitled to cost of this action as a successful party. I, taking all into my account, summarily assess costs at \$1,500.00. The defendant will pay costs of \$1,500.00 to the plaintiff.

[28] I would decline to grant interest on the judgment sum.

**Final outcome**

- 1) There will be judgment for the plaintiff in the sum of \$25,000.00.
- 2) The defendant will pay summarily assessed costs of \$1,500.00 to the plaintiff.



*M H Mohamed Ajmeer*  
11/7/16

**M H Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**11<sup>th</sup> day of July 2016**