

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 143 OF 2016

BETWEEN : **SIKELI MATAUNIUMA KOROISAU** of Tokatoka Vunaivi,
Saunaka village, Nadi, School Teacher.

PLAINTIFF

A N D : **SULIANA QAYA, KAVEKINI NAVEI, ORISI VARO** and
APISAI DRIU all of Tokatoka Vunaivi, Saunaka Village,
Nadi, Domestic Duties and Farmers respectively.

1ST DEFENDANTS

A N D **MOHAMMED IQBAL** of Ledrusasa, Votualevu, Nadi,
Businessman.

2ND DEFENDANTS

A N D **ITAUKEI LAND TRUST BOARD** a body corporate formed
under iTaukei Land Act Cap 134.

3RD DEFENDANTS

Appearances : Mr S Nacolawa for Plaintiff
: Non- appearance for Defendants

Date of Hearing : 20 March 2017

Date of Judgment: 20 March 2017

J U D G M E N T

Introduction

[01] The plaintiff files a writ of summons with statement of claim indorsed.
The claim arises out of breach of agreement to lease a piece of land and
the plaintiff claims:

- a) *For a declaration that the 3rd Defendant also the 1st and 2nd Defendants
are holding the land known as Vatukaka (part of) ITLTB Reference No*

6/10/40801 containing an area of 8.4261 hectares as trustees themselves and the Plaintiff.

- b) For a declaration and order that the 3rd Defendants is bound or compelled to issue the Plaintiff the lease described in part (a) above and pay the Plaintiff the sum of \$20,000.00 Twenty Thousand Dollars) as damages for breach of contract.*
- c) Further damages to the Plaintiff (to be assessed) being the amount of damages done on the said land by the 1st and 2nd Defendants in bulldozing and disturbing the surface land.*
- d) General Damages.*
- e) Such further or other relief that may seem just and proper to this Honourable court.*
- f) Costs on Solicitor Client indemnity basis.*

[02] When filing the action, the plaintiff also filed an application for interim injunction to restrain the first defendants and the second defendant ('the defendants') from among other things bulldozing or doing development work at the subject land. The court granted the injunction sought. The defendants applied to court to discharge the injunctive orders. The court refused to discharge and dismissed the application to discharge the injunctive orders granted in favour of the plaintiff.

[03] The defendants failed to file their statement of defence within the time allowed for doing so. However, the defendants filed the statement of defence on 3 February 2017. The court struck out the statement of defence filed by the defendants on the ground that it was filed out of time in the absence of the leave of the court. The plaintiff filed his writ of summons on 14 July 2016. The same was served on the defendants on 21 July 2016. The defendants filed the statement of defence on 3 February 2017 without obtaining the leave of the court. The writ of summons with statement of claim indorsed was served on the

defendant on 21 July 2016. The last day for the defendants to file their defence was 3 August 2016. A defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledgement of service of the writ or after the statement of claim is served on him, whichever, is the later (See O.18, r.2. (1), High Court Rules).

[04] The third defendant also did not file statement of defence within the time allowed to do so.

[05] The plaintiff filed a notice of motion pursuant to Order 19, Rules 6 and 7 of the High Court Rules ('HCR') to enter judgment against the defendants in respect of the claim as he would be entitled to enter. Accordingly, the matter was taken up for formal proof.

[06] At the formal proof, the plaintiff gave evidence in support of his claim. Basically, the plaintiff confirmed the evidence on the affidavit of his father sworn 27 January 2017 and filed in support of the interlocutory application.

Background

[07] The brief background facts as stated on the statement of claim are as follows:

7.1 The Plaintiff is a member of Tokatoka Vunaivi, Mataqali Vunaivi of Saunaka village, Nadi is suing the Defendants for breaching his contractual agreement to lease a piece of his own Tokatoka land properly described as Vatukaka (part of) containing an area of 8.4621 hectares, ITLTB No 6/10/4081.

7.2 The 1st Defendants are also members of Tokatoka Vunaivi, Mataqali Vunaivi of Saunaka village, Nadi are sued for interfering and continuously meeting with the 3rd Defendant in order to stifle, suffocate and suppress the lease application of the Plaintiff.

- 7.3 The 2nd Defendant is sued for being an accomplice with the 1st Defendants in stifling and suppressing the lease of the Plaintiff by bulldozing the leasehold area applied for without any knowledge by the Plaintiff.
- 7.4 The 3rd Defendant is sued for its deliberate breach of its duty as Trustee to the beneficial Plaintiff and through his contractual agreement with the Plaintiff to issue him a lease, while at the same time separately meeting with the 1st Defendants to do away with the lease application of the Plaintiff.
- 7.5 The Plaintiff initially and formally applied for his lease, Agricultural Lease application on or about April/May 2015 to the 3rd Defendant.
- 7.6 On the 18th day of May 2015, the 3rd Defendant through its Manager Ema Natadra made an offer of a Lease Contract under the Landlord and Tenant Act Cap 270 calling for the payment of the said offer.
- 7.7 That the above consideration was revised downward from \$7,689.95 to \$2,700.00 on the 3rd September, 2015, on learning that the Plaintiff is a member of the landowning Tokatoka Vunaivi, whose lease in the subject land in question herein.
- 7.8 Upon payment of the said consideration the 3rd Defendant on the 1st day of July 2016 issued the Plaintiff the confirmation of his lease acceptance.
- 7.9 That as far as the contractual agreement for the said lease is concerned – it was signed, sealed and delivered, the contract is now in existence and only formalization is left to take its courses.

- 7.10 That in about the same time or late June 2016, the 1st Defendants together with 2nd Defendant after consulting with the 3rd Defendant started to clear or bulldoze the subject land without any knowledge or consent from the Plaintiff or his family.
- 7.11 That on discovering that the 1st and 2nd Defendant were clearing and bulldozing the subject land, the Turaga ni Koro – the Plaintiff's father confronted the 1st Defendants and asked them to leave as the Plaintiff had already applied to lease the land.
- 7.12 The 1st and 2nd Defendants did not heed nor did they want to listen to the Turaga ni Koro who is not only the father of the Plaintiff but also a member of Tokatoka Vunaivi – fellow members with the Plaintiff and 1st Defendants.
- 7.13 Knowing their unwillingness to listen to the true status of the said land, the Turaga ni Koro reported the matter to the police to their Officer in Charge Makutu who took them to a place to talk things over and resolve the dispute.
- 7.14 Unwilling and unbending in their resolve, the 1st and 2nd Defendants were adamant to continue their bulldozing and earthworks on the said land.
- 7.15 On the 4th July 2016, the Plaintiff's parents met with the Manager of the 3rd Defendant Board were clearly told in no uncertain terms that:
- (i) ITLTB Officer Mika was instructed to go and stop the 1st and 2nd Defendants bulldozing the land.
 - (ii) Plaintiff's parents to take the lease documents to Navua where the Plaintiff is teaching to execute his lease document.

- (iii) Sikeli's lease would now prevail since all the legal paper works have now been completed.

7.16 On the 5th July 2016, the Manager Ela Manuku against his own words told the Plaintiff's parents that:

- (i) The signed lease documents by the plaintiff will not be signed by the 3rd defendant.
- (ii) Two acres of the plaintiff's land will now be allotted to the Plaintiff.
- (iii) The rest of the land will be for Development lease.

7.17 The 3rd Defendant in breach of his agreement and/or undertaking instructed the 1st and 2nd Defendants to continue the development by bulldozing the land.

7.18 The Plaintiff says that the Defendants are *estopped* from denying the rights and/or claims of the Plaintiff as referred to in paragraphs 5-17 herein and further the action of the 3rd Defendant to deny and/or reject the claims of the Plaintiff is a fraud and/or unconscionable conduct on his part by allowing the 1st and 2nd Defendants to develop the land by perpetrating fraud on the Plaintiff and/or fraudulently becoming the developer of the said land by defeating the rights and/or title of the Plaintiff.

7.19 Accordingly the Defendants are holding the said land as trustees for themselves and the Plaintiff herein.

7.20 Alternatively, the Plaintiff says that the offer and acceptance have been duly completed by both 3rd Defendant and himself and accordingly the Plaintiff is seeking specific performance of the contract with damages.

The Evidence

[08] The plaintiff relies upon the affidavit sworn by his father and filed in the interlocutory application. The affidavit evidence states:

- a) That in about April or May 2015 the Plaintiff formally applied for his lease with the 3rd Defendant by paying the requisite fees of \$54.50 to the 3rd Defendant at Namaka Office, Nadi.
- b) That on the 18th day of May 2015 the 3rd Defendant through its Manager South Western Ema Natadra responded to the said application with the offer of the said lease applied for by the Plaintiff (MKT 2).
- c) That the said offer mentioned herein above gave the total consideration of the said offer to be \$7,689.95.
- d) That the said offer gave a time limit of 6 weeks upon which the Plaintiff/Applicant to the consideration.
- e) That the above consideration of \$7,689.95 was revised downward to \$2,700.00 the proper amount which the Plaintiff paid the 3rd Defendant as consideration of his offer with the first payment of \$1,500.00 – paid on 3rd September 2015 (MTK 3).
- f) That upon the payment of the said consideration the 3rd Defendant on the 1st day of July 2016 issued the Plaintiff the acceptance of his offer and confirmation of his lease acceptance stating in details the ITLTB Reference No. 6/10/40801, the term of years of the lease which is 30 years and the said detail were passed on the Board's Conveyancing Department (MTK 4).
- g) That on the said acceptance letter of the offer the Turaga ni Koro Mosese Takubu Koroisau affixed his stamp on it, sealing the contract for lease once and for all.
- h) That as far as the Plaintiff is concerned the contract had been concluded and formalization is now a mere formality.
- i) That apart from the above, on the 29th June 2016 the Plaintiff was issued with another document stating the various payments to be made such as Lease rental and Premium

amounting to \$603.86 and \$596.14 respectively making the total conceding to \$2,700.00 (MTK 5).

- j) That on the 4th July 2016 the Turaga ni Koro, the deponent herein after consulting the 3rd Defendant Manager was sent together with the lease printed documents to Navua for the Plaintiff's to sign the lease documents (MTK 6).
- k) That at about the same time or late June 2016, the 1st and 2nd Defendants with the approval of the 3rd Defendant were bulldozing the subject land for land development by the family of the 1st Defendants MTK 7).

The Issue

[09] At the trial, Mr Nacolawa counsel for the plaintiff confined the claim to the declaration only. Accordingly, two issues arise for determination by the court:

- 9.1 Whether the plaintiff is entitled to the declaration that the 3rd Defendant is holding the subject land for themselves and the plaintiff.
- 9.2 Whether the plaintiff is entitled to hold the subject land and apply for lease for the same.

Discussion and Decision

[10] The plaintiff made an application to iTLTB for a lease of the subject land for sugarcane cultivation. The iTLTB by its letter dated 18 May 2015 offered a lease for the subject land under the Agricultural Landlord and Tenant Act ('ALTA') for a period of 30 years commencing 1 July 2015 (see: 'MTK2'). The offer was valid for six months. The plaintiff accepted the offer and made necessary payments within the time frame set out by iTLTB (see: 'MTK'3 & MTK4).

[11] After the payment, iTLTB by its letter dated 1 July 2016 confirmed that the iTaukei lease (TLTB Ref: 6/10/40801; Area: 8.4261 Hectares) is leased to the plaintiff for a term of 30 years with effect from 1 July 2015 ('MTK4'). The letter reads:

“ ...

This to confirm that the above iTaukei lease (TLTB Ref: 6/10/40801; Area: 8.4261) is leased to SIKELI MATAUNIUMA KOROISAU (plaintiff) for a term of Thirty (30) years with effect from 1st July, 2015.

The lessee has paid the Processing and Documentation fee that was levied to them by the Board for the Agricultural Lease. His title is now in process for conveyancing purposes.

...”

[12] Offer and acceptance between iTLTB and the plaintiff have already been completed. This forms a valid binding agreement between the parties.

[13] An Instrument of Tenancy was drawn up for execution. The plaintiff has signed it, whereas iTLTB is yet to sign and formalize the lease. The iTLTB's Conveyance Department needs to undertake this formality.

[14] The plaintiff gave clear and unchallenged evidence at the formal proof hearing. He also produced the relevant documents in support of his claim. I accept his evidence and the documents he tendered in court.

Conclusion

[15] On the evidence and the documents adduced in court, I would answer both the issues affirmatively. Accordingly, the plaintiff is entitled to judgment in his favour. Consequently, he is entitled to the declarations he is seeking with costs, which I summarily assess at \$2000.00.

The Result

1. There will be judgment in favour of the plaintiff.

2. The plaintiff is entitled to the declaration that the 3rd defendant is holding the subject land for themselves and for the plaintiff.
3. The plaintiff is entitled to hold the subject land and to apply for lease for the same.
4. The 3rd defendant will pay summarily assessed costs of \$2000.00 to the plaintiff.

M H Mohamed Ajmeer 20/3/17

M H Mohamed Ajmeer

JUDGE

At Lautoka

20 March 2017

