

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT
LAUTOKA

Civil Action No. 115 of 2010

BETWEEN : **ARUNA PILLAY** of Lomawai, Nadroga, domestic duties
PLAINTIFF

AND : **RAVINESH REDDY AND KESHWAN REDDY** both of
Nacovi, Nadi, farmers as Executors and Trustees in the Estate of
Muttappa Reddy alias Muttappa Reddy, deceased

1ST DEFENDANT

AND : **DORSAMI NAIDU** practicing as Barristers and Solicitors under
the name style of MESSRS PILLAY, NAIDU AND ASSOCIATES
under the Legal Practitioners Decree 2009 having its offices at TJ
Investment Building, 17 Sagayam Road, Nadi.

2ND DEFENDANT

RULING

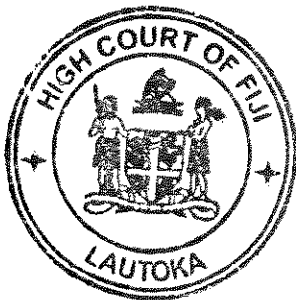
INTRODUCTION

1. On 29 November 2016, the plaintiff, Aruna Pillay filed an *ex-parte* Notice of Motion seeking the following orders:
 - (a) That the order of the Honorable Court dated 18 May 2012 in particular reference to Lots 1 and 2 of DP 9415 be varied to Lots 1 and 2 of DP 9607.
 - (b) That the time for service be abridged in the matter given that it has taken over 6 years to correct this typographical error.
 - (c) Any such or further Order that this Honorable Court may deem just and expedient in the circumstances of the matter.
2. This application is made pursuant to Order 8, Rule 2 of the High Court Rules 1988 and to the inherent jurisdiction of this court. It is supported by an affidavit of Aruna Pillay sworn on 28 November 2016.
3. By her affidavit, the plaintiff swears as follows:
 - (1) I was the Plaintiff in this proceeding which was settled on 16 May 2012 before the (then) Master Anare Tuilevuka in Chambers. The file is now disposed off and accordingly archived.

- (2) I was represented then by Natasha Khan and Associates of Lautoka while the Defendants were represented by Pillay, Naidu and Associates of Nadi.
- (3) at paragraph 2 of the said order is stated the following:
"The 1st Defendant will do all deeds and acts necessary and as provided for in the sale and purchase agreement dated 7th day of April 2006 for the transfer of Lots 1 DP 9415 Lot 2 DP 9514 (area 2014 m2 and 3033 m2 respectively) to the Plaintiff upon the Plaintiff paying the balance price of \$33,859.68 (THIRTY THREE THOUSAND EIGHT HUNDRED AND FIFTY NINE AND SIXTY EIGHT CENTS) together with interest from 1st day of January 2009 to 31st day of December 2011 amounting to \$5,078.97 (FIVE THOUSAND SEVENTY EIGHT DOLLARS AND NINETY SEVEN CENTS)
- (4) I annex as "Annexure AP-1" a copy of the said order.
- (5) DP 945 was the original parcel of land until it was subdivided into Lots 1 and 2 of DP 9607. Lot DP 9415 remains to date of which Lots 1 and Lot 2 of DP 9607 is a subset somewhat of that larger parcel of land.
- (6) as it so happened that by some reason the Lot numbers in the said order is incorrect and typographically erroneous.
- (7) this anomaly was only realized after I through my agent Joe Rajale decided to finally effect the transfer sometimes in September 2015 but was advised by the Lands Department Lautoka and Suva that Lot DP 9415 and Lot DP 9514 was erroneous and should in fact read as Lot DP 9607.
- (8) in effect the correct order should read as follows:
"The 1st Defendant will do all deeds and acts necessary and as provided for in the sale and purchase agreement dated 7th day of April 2006 for the transfer of Lot 1 DP 9607 Lot 2 DP 9607 (area 2024 m2 and 3033 m2 respectively) to the Plaintiff upon the Plaintiff paying the balance price of \$33,859.68 (THIRTY THREE THOUSAND EIGHT HUNDRED AND FIFTY NINE AND SIXTY EIGHT CENTS) together with interest from 1st day of January 2009 to 31st day of December 2011 amounting to \$5,078.97 (FIVE THOUSAND SEVENTY EIGHT DOLLARS AND NINETY SEVEN CENTS)
- (9) I have since paid out fully all monies due to the 1st Defendant under the said terms of settlement and there is no other monies owed to them by me. The 1st defendants therefore do not have any objections to the transfer of the Lots 1 and 2 of DP 9607 to me. I annex as "Annexure AP-2" a copy of confirmation letter to this effect to the Director of Lands dated 22 January 2016.
- (10) I have since contacted Natasha Khan and Associates who have written an undated letter to Pillay, Naidu and Associates consenting to the variation. That this letter was hand – delivered by Mr. Waka Naivalu, manager 3DC a company in which I have an interest based in Sigatoka. This letter remains unresponded to date possibly because they have closed their file and hold no further instructions.
- (11) I annex as "Annexure AP-3" and "Annexure AP-4" a copy of the said letter and the stamped copy of Transfer of Crown Lease respectively.
- (12) it has since been 6 years since the order was sealed and this shortcoming is by no means my fault or due to any error of judgement by me as I had relied on my former solicitors to ensure that my best interests be protected at all times for which they have been paid fully for their services.

(13) I humbly pray and seek the Honourable Court's indulgence in granting me order in terms of my application as the variation is trivial and need not necessitate legal arguments.

4. What the plaintiff is seeking essentially is to have the order made on 16 November 2012 amended to correct the legal description of the land involved.
5. I was hesitant to grant the orders *ex- parte* so I ordered that D S Naidu be given with a copy of the application. Mr. D S Naidu appeared on 24 January 2017. He does not object to the application.
6. The error alleged is a slip which can be amended under Order 20 Rule 10 of the High Court Rules 1988. I am prepared to grant order in terms of the proposed amendment having taken into account a letter dated 23 November 2016 by Divisional Land Manager Western signed by a Mrs. E. Rokorairuku which appears to me to confirm that the Director of Lands is aware of the slip and is prepared to issue leases in terms of the proposed amended Order.
7. Accordingly, I grant Order in Terms.



Anare Tuilevuka
JUDGE
25 April 2017