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

Civil Action No. HBC 230 of 2000L

BETWEEN : **SAROJNI** also known as **SAROJNI LAL** also known as **SAROJNI SUCHIT** also known as **SAROJNI SAMUJ** also known as **SAROJNI SUCHIT DEVI** also known as **SAROJINI SUCHIT DEVI** of 21 Kikau Street, Samabula, Fiji, engaged in Domestic Duties and Administratrix of the **Estate of Shanti Lal Samujh** also known as **SHANTILAL** also known as **SHANTHILAL** of 21 Kikau Street, Samabula, Fiji, Deceased, Intestate.

PLAINTIFF/ 1ST RESPONDENT

AND : **NATIVE LAND TRUST BOARD** now known as **iTAUKEI LAND TRUST BOARD**, a body corporate established under the iTaukei Land Trust Board Act, Cap 134 and having its registered office at 431 Victoria Parade, Suva.

1ST DEFENDANT/APPELLANT

AND : **APISAI** and **BANSI** both of Nawaka Village, Villager and Farmer in their own capacity as members of Tokatoka Vunaboboi, Mataqali, Bua and **SUSU** also of Nawaka Village, Villager and Farmer, in his own capacity and in a representative capacity as Turaga ni Mataqali Bua, Tokatoka Vunaboboi, Nawaka Village, Nadi, Fiji.

2ND DEFENDANT/2ND RESPONDENT

Appearances : Mr P. Nayare for 1st defendant/appellant
Mr V.M. Prakash for plaintiff/ 1st respondent

Date of Hearing : 20 June 2017

Date of Judgment: 4 October 2017

J U D G M E N T

Introduction

[01] This is an appeal, with leave being granted to appeal out of time against a decision of 2 January 2015 delivered by the learned Master ["the Master"] on assessment of damages.

[02] Both the parties orally argued the appeal and in addition, they tendered their written submissions.

Grounds of Appeal

[03] The appellant challenges the assessment of damages as assessed by the Master on the following grounds:

1. *That the learned judge erred in law and in fact when he failed to appropriately consider that the 1st Respondent's enjoyment of his residence and farm had been previously interfered with by the 2nd Respondents for a period of 13 months in 1997 which resulted in substantial damages being done to the contents of the 1st Respondent's house including his building materials and his tools and equipment of trade, by the 2nd Respondents.*

2. *That the learned judge erred in law and in fact in failing to consider that the 1st Respondent did not prove that the NLTB encouraged the 2nd Defendants to take possession of 10 acres of the land in question, or*

3. *That the learned judge erred in law and in fact when he failed to take adequate consideration of the fact that the 2nd respondents and not the 1st Respondent had forcefully taken repossession of the property in 2000.*

4. *That the learned judge erred in law and in fact when he failed to adequately consider that these incidents of interference were beyond the control of the 2nd Respondent.*

5. *That the learned judge erred in law and in fact when he decided the value of the house to be $83,000.00 in view of the fact that the 1st Respondent purchased the same for only $40,000.00.*

6. *That the learned judge erred in law and in fact when he did not adequately consider that the 1st Respondent did not specifically prove as to which structures it has erected or constructed.*

7. *That the learned judge erred in law and in fact when he failed to adequately consider that the 1st Respondent did not prove that suffered any financial loss from replacing or repairing any structure on the land or any good thereon.*

8. *That the learned judge erred in law and in fact when it did not adequately consider that the 1st Respondent would not be entitled to compensation for any buildings which he erected or extended without the consent of the Board but is entitled to compensation of any buildings existing prior to him becoming the owner of the land because those buildings were there when he became owner provided did he not alter or extend them without any consent in view of the fact that the 1st Respondent has admitted that he did not have any such consent.*

9. *That the learned judge erred in law and in fact when he did not adequately consider that the 1st Respondent did not specify the tools that he has allegedly lost.*

10. *That the learned judge erred in law and in fact when he awarded damages for cane proceeds from 1968 – 1996 when the 1st Respondent purchased the said land sometime in 1986.*

11. *That the learned judge erred in law and in fact when he started calculating damages for loss of sugarcane production from $180,000.00?*

12. *That the learned judge erred in law and in fact when did take into consideration that though the 1st Respondent had labourers occupying the land in question, the 1st Respondent's sugar cane production had been decreasing since 1995 before he was first evicted from the said land in 1997 and again in 2000.*

13. *That the learned judge erred in law and in fact when he failed to take adequate consideration of the fact that the Ministry of Agriculture confirmed in writing that said land was not productive and that there was bad husbandry in cultivating the same;*

14. *That the learned judge erred in law and in fact when he calculated the damages beyond 2000 to 2006 when the lease expired only on 31st December, 2000.*

15. *That the learned judge erred in law and in fact as it should not have given the 1st Respondent compensation under ALTA.*

16. *That the learned judge erred in law and in fact when he failed to adequately assess the losses suffered on proper evidence.*

17. *That the learned judge erred in law and in fact when he failed to adequately consider that the 1st Respondent is not entitled to double damages.*

18. *That the learned judge erred in law and in fact when he awarded interest the rate of 4% from 1987;*

19. *That the Appellant reserved the right to argue and/or file revised grounds of appeal.*

The Background

[04] The brief background of the case is as follows: In July 2000, Shanti Lal, the original plaintiff (now deceased and his Estate has been substituted in his place) ("*the respondent*" in this appeal) brought the action against iTaukei Land Trust Board (TLTB), the original first defendant ("*the appellant*" in these proceedings) and the second defendants claiming damages for breach of lease and statutory duties by the TLTB and damages for trespass and conversion of goods by the second defendants.

[05] Her Ladyship Phillips, J dismissed the plaintiff's (respondent's) action against the NLTB but awarded damages against the second defendants in the sum of $20,000 which was arrived at by awarding damages of $15,000 for conversion of the plaintiff's goods which totalled to $30,000. This was reduced by $10,000 for the plaintiff's breaches of the terms of his tenancy.

[06] The plaintiff appealed this judgment to the Court of Appeal. The Court of Appeal, allowing the appeal, set aside the orders made by Phillips, J. The Court of Appeal ordered that:

> *(1) The Appeal is allowed. The orders made by the Trial Judge, Her Ladyship, Gwen Phillips, J are set aside.*
>
> *(2) The First Respondent pay to the appellant damages for breach of his entitlement to quiet enjoyment as determined by the Master.*
>
> *(3) The Second Respondent pay damages to the Appellant for trespass to land and conversion of goods as determined by the Master.*
>
> *(4) With regard to the costs of Appellant before Madam Justice Phillips each respondent pay to the appellant costs assessed at $1000 (total $2000).*
>
> *(5) With regard to the costs of the Appellant in the Court of Appeal, each Respondent pay to the Appellant costs assessed at $2000 (total $4000).*

[07] In the course of its judgment, the Court of Appeal made certain findings of facts at paras from 29 to 43. I would reproduce those for the sake of convenience:

> *29 The next issue which arises is whether the appellant is entitled to be paid compensation pursuant to the provisions of Sections 40(1) of the ALTA. That section provides as follows:*
>
> > *"40.-(1) Where the tenant of an agricultural holding has, after the commencement of this Act, made or caused or permitted to be made, thereon any of the improvements specified in the Schedule, he shall, subject as is in this Act mentioned, whether the improvement was or was not an improvement which he was required to make by the terms of his tenancy, be entitled, at the termination of the tenancy, to obtain from the landlord as compensation for the improvement such sum as fairly represents the value of the improvement to an incoming tenant:*
> >
> > *Provided that the tenant shall not be entitled to obtain compensation unless the consent or notice required to be obtained or given as specified in the Schedule has been so obtained or given and unless the tenant has, where requested by the landlord, served upon the landlord, within one month of the completion of the improvement, notice informing him of such completion."*
>
> *30 It is clear from the second paragraph of this provision and paragraph (1) of Part 1 of the **Schedule** that the erection, alteration or enlargement of buildings required for the efficient operation of the holding without the consent or notice in accordance with the **Schedule** having been obtained from the authority mentioned in the **Schedule** disentitles the lessee from payment of compensation under Section 40.*
>
> *31 It is clear from the **INSPECTION REPORT** at page 370 of the Record that on 23rd September 1970 in respect of the 10 acres of land there were existing buildings on the land and these are itemized in paragraph 6 in the handwriting of the person who made this report.*
>
> *32 Clearly, the appellant would not be entitled to compensation for any buildings which he erected or extended without the consent of the relevant person mentioned in Section 40 and the **Schedule** of the **ALTA**. However, he would be clearly entitled to compensation for any buildings which existed prior to him becoming the owner of the subject land because those buildings were there when he became the owner so long as he did not alter or extend them without any consent.*
>
> *33 There was some controversy at the trial of this matter as to whether the first respondent had proved that the structures on the subject land had been erected without consent. It seems to me that the matter was put beyond dispute when the appellant admitted that he did not have any consent as required. This is made clear by the trial judge in her judgment at paragraph [35].*
>
> *34 It is clear from the provisions of Section 9(1)(f)(i) that the lessee is entitled to enjoy quiet possession of the land so long as he has paid the rent and complied with other conditions of the lease.*
>
> *35 It seems to me that the appellant is entitled to damages for the first respondent's breach of his right to quiet enjoyment of the land and for the trespass to the land by the second respondents'*

and their conversion of the appellant's goods which included his tools of trade in the joinery business with which he was involved.

36 The damages for the breach of its obligations to give the appellant quiet enjoyment of the land, would clearly include the damages he suffered in failing to carry out his cane farm whilst he was ousted from possession of the land by the second respondents. These damages would include the loss of income from the production of sugar cane, farm animals, fruit and vegetables. They will also include damages for psychological trauma which he must have suffered when he was forcefully evicted from his land by the second respondent. These damages should be ordered against both respondents jointly and severally because the damages are common to the breach of the lease for quiet enjoyment and for trespass to land both of which disabled the appellant from farming his land.

37 As for damages in relation to the trespass and conversion committed by the second respondent, the first point which ought to be clarified is that the second named respondents were, in my view, representatives of the Mataqali Bua. It is most unlikely that they had acted for themselves. They had not only claimed rights for the Mataqali but also had defended the appellant's action and filed a counter claim alleging damage to 10 acres of Mataqali Bua's land. These matters indicate strongly that they were acting for themselves as well as for the Mataqali Bua.

38 As for damages for their trespass to land and conversion of the appellants' goods, in my view, there should be damages in favour of the appellant involving the financial loss he suffered from replacing or repairing any structure upon the land and the replacement or repair value of any goods thereon.

39 Further, there ought to be damages for the appellant against the First and Second Respondents jointly and severally for the losses he has suffered in failing to be able to use items of machinery which he purchased for the farming of his land.

40 The appellant should be awarded all costs and expenses he incurred as a result of being evicted from his land against both respondents jointly and severally.

41 The appellant should get interest on the total damages pursuant to the ***Law Reform and (Miscellaneous Provisions) (Debt and Interest) Act.***

42 In my view, the First Respondent's conduct was oppressive and incompetent. It should pay exemplary damages in the sum of $20,000.

43 The question the quantum of damages is beyond this court for determination. It will be referred to the Master for assessment on proper evidence and it is recommended to the Master that apart from some guidelines as set out by me to what damages are permissible here, the Master should rely on his own enquiries and discretion in coming to his full and final assessment between the parties. The appellant is not entitled to double damages.

[08] Following the Court of Appeal judgment, the matter came up before the Master for assessment of damages in accordance with guidance given by the Court of Appeal. The assessment was heard on 23 and 24 May

2012. The Master delivered his ruling on 2 January 2015. The Master awarded damages on the following heads:

1. Compensation for Buildings on the land: $83,000
2. Damages for TLTB's breach of Lal's right to quiet enjoyment of land: $8,000
3. Loss of income from the Production of sugar cane, farm animals, fruit and vegetables: $99,400
4. 2nd Defendant's conversion (severally): $10,000
5. 2nd Respondent's trespass: $10,000
6. Exemplary damages: $20,000
7. Interest at 4% from 1987 to date of Ruling: $138,240.00
8. Costs summarily assessed: $2,000.00

Total damages & Interest & Costs: **$370,640.00**

The Issue

[09] The issue on appeal was whether the quantum of damages assessed by the Master is disproportionate and unreasonable in the circumstances of the case.

Determination

Compensation for Buildings on the Land

[10] For the building on the land, the Master ordered that the respondent is entitled to a sum of $83,000.00. The Master in his assessment ruling at para 31 explains how he arrived at that figure. I reproduce para 31 of the Mater's ruling where he states:

"For compensation to loss of building on land, I make the following assessment:

(i) I start at the figure of $170,000 being the valuation given by Akesa Cavalevu.

(ii) *The above figure includes $10,000 for bulkstore, landscaping, fencing etc. Out of that $10,000, I deduct $7,000 and allow only a claim of $3,000. I do that because there is no evidence of the detail and scale of the landscaping and fencing done. As the fencing was not consented to by iTLTB, there should be no award given on account of the fencing. In my view, these are within Schedule 1. Hence, the $3,000 I allow is only on account of the bulkstore. This reduced the balance of $163,000.*

(iii) *I make further deduction from the sum of $163,000 on account of the remodelling of the house that would have been carried out without the prior consent of the iTLTB. It is not clear to me what percentage of this constituted the $170,000 valuation by Ms Cavalevu. However, guided by the modest valuation by Estate Officer L. Langridge, and considering the extensive remodelling done (dining room, sitting room and bedroom extensions as well as addition to washing area, terrace to lounge area and firewood cooking place), and considering the plaintiff's own evidence that he spent over $60,000 over three years on these, and doing the best that I can to arrive at a fair figure, I make a further deduction of $70,000. This further reduced the total compensable to $93,000.*

(iv) *For the record, I have taken into account that Ms Cavalevu's assessment accounts for two labourer's quarters which was valued at $30,000 and which, judging from the ITLTB inspection reports, appeared to have been in existence at the time the plaintiff bought the property. Considering that Ms Cavalevu only viewed the properties from a distance and did not closely inspect them, yet accepting that she would have relied also on photographs presented to her and from what the plaintiff himself told her, I am inclined to make a small deduction on these. Doing the best that I can, I consider $15,000 to be a reasonable figure which means that out of $93,000 I deduct a further sum of $15,000 to bring the balance of $83,000".*

[11] The appellant submits that the learned Master seeing the singular unilateral valuation presented before him that contained significant and exorbitant monetary figures ordered payable by the appellant a sum of $83,000. He should have exercised his discretion by seeking a

2nd or 3rd valuation opinion but failed to do so. The submission goes on that the figure of $83,000 assessed on account of the building should be quashed or if not significantly reduced.

[12] The respondent contends that the amount awarded of $83,000 as compensation for the buildings which the respondent was deprived of and which he had the right to remove upon expiry of the lease and which were normal buildings allowed to a farmer so he could live and cultivate and have accommodation for his labourers. In essence, he submits that the assessment for this is perfectly reasonable.

[13] It is noteworthy that the Court of Appeal in its judgment said that the respondent (Shanti Lal) is entitled to compensation for buildings which existed prior to his becoming owner of the lease (See para 32 the FCA judgment).

[14] It seems to me that the Master has placed heavy reliance on the valuation report of Cavalevu (the valuation) submitted on behalf of the respondent at the assessment of damages hearing. The valuation has been done from a distant view of the land in question and a view of the pictures of the same as well as what the respondent told her (Ms Cavalevu). Basically, the valuation is based on hearsay evidence.

[15] I accept the appellant's submission that Ms Cavalevu's conduct of the valuation for the subject property was unethical according to property valuers' code of ethics or at least governing principles and is, in fact, an unreliable valuation relied upon by the learned Master.

[16] It is apparent that the Master has accepted the valuation amount of $170,000 given in the report. This includes $130,000 for the main house, $30,000 for labourer's quarters and $10,000 for bulk store & other improvements like fencing, landscaping, flowers, hedges etc. He has taken that amount as the starting point.

[17] In regards to the valuation the Master correctly found the following vital facts:

1. *There was no (sugar) cane of the subject land when she inspected the same from a distance to prepare her report.*

The Plaintiff himself Shanti Lal confirmed the following evidence:-

2. *The supplementary valuation made by the valuer was based on a distant view of the land in question and a view of the pictures of the same as well as what he told her (Ms Cavalevu).*
3. *The valuer did not personally inspect the said land and property.*
4. *He did not have the consent of the Board to build and rent out the said quarters.*
5. *He did not obtain any consent of the Board to rent the said premises because he considered it was waste of time to approach the Board.*
6. *He rented his main house to the Korean Businessman (John) at the rate of $600 per month.*

[18] The tenant of an agricultural holding is entitled, at the termination of the tenancy, to obtain from the landlord as compensation for the improvements specified in the Schedule made or caused or permitted to be made on such agricultural land. However, he shall not be entitled to obtain compensation unless the consent or notice required to be obtained or given as specified in the Schedule has been so obtained or given and unless the tenant has, where requested by the landlord, served upon the landlord, within one month of the completion of the improvement, notice informing him of such completion (See section 40, ALTA).

[19] The Court of Appeal made the above position clear. In its judgment, the Court of Appeal said at paras 30, 31 & 32 that:

30. *It is clear from the second paragraph of this provision and paragraph (1) of Part 1 of the* ***Schedule that the erection, alteration or enlargement of buildings required for the efficient operation of the holding without the consent*** *or notice in accordance with the Schedule having been obtained from the authority mentioned in the Schedule* ***disentitles the lessee from payment of compensation under Section 40.*** *(Emphasis added)*

31. *It is clear from the* ***INSPECTION REPORT*** *at page 370 of the Record that on 23rd September 1970 in respect of the 10 acres of land there were existing buildings on the land and these are itemized in paragraph 6 in the handwriting of the person who made this report.*

32. *Clearly,* ***the appellant would not be entitled to compensation for any buildings which he erected or extended without the consent of the relevant person*** *mentioned in Section 40 and the* ***Schedule*** *of the* ***ALTA. However, he would be clearly entitled to compensation for any buildings which existed prior to him becoming the owner of the subject land because those buildings were there when he became the owner so long as he did not alter or extend them without any consent.*** *(Emphasis added)*

[20] In no uncertain terms the Court of Appeal said that the respondent would be clearly entitled to compensation for any buildings which existed prior to him becoming the owner of the subject land because those buildings were there when he became the owner so long as he did not alter or extend them without any consent.

[21] The respondent did not obtain the consent of the TLTB for alteration or extension of the buildings that were there when he purchased the land. When asked about consent for the improvement he said: "***it is waste of time to approach them (TLTB).***" It will be noted that the respondent had admitted that he did not obtain consent for any of the alterations or extensions he made to the buildings.

[22] At the assessment hearing before the Master, the respondent's evidence was that he spent a significant sum on repairs and painting of the buildings.

[23] The Master held that improvement of buildings does not include repairs and paintings.

[24] It seems to me that the respondent had done significant improvement/alterations and extensions to the buildings that were there when he purchased the land from his mother-in-law in 1985. The respondent in his evidence had stated that he renovated the concrete house which was damaged by cyclone Eric and Nigel, spending about $60,000. His daughter Joshika Sumuj had given evidence that: ***"Father had re-built house-bad condition when we moved in-had to be roofed, re-walled, extended kitchen, built inns, terrace for barbeque and a separate place-praying room."*** *(See pages 464 & 476 of the High Court Record).* The respondent's and her daughter's evidence clearly suggest that the respondent had done considerable improvement to the house under the guise of repairs and paintings. The respondent is not entitled to compensation because he had done all these improvements without the consent of the TLTB.

[25] The Master has given undue weight to the valuation done from distance. A proper valuation of a building cannot be done from distance seeing the photographs. I am of the view that the Master should have disregarded the valuation report submitted by the respondent, for it was a hearsay assessment. I now disregard that valuation.

[26] The respondent is not entitled to compensation for improvements he had done without the consent of the TLTB. The Court of Appeal opined that the respondent is entitled to compensation for the buildings that were there when he purchased the land. He purchased the land in 1985. The 1985 valuation would be the relevant valuation that must be considered compensation to the respondent. There is no valuation report for 1985. In the absence of proper valuation, I propose to exercise my discretion. I, taking all into my account, assess the damages payable to the respondent for the buildings at $55,000. I set aside the Master's assessment of damages for buildings as disproportionate and unreasonable.

Loss of income from the production of sugar cane, farm animals, fruit and vegetables

[27] Under this head the Master awarded $99,400.00 (300 tonnes @ $60/tonne) x 10 years) as damages. The Master's calculation appears at paras 50, 51 & 52 of his ruling:

> *50. The next question I ask is whether there are contingencies to be taken into account to reduce the tonnage of 300 per year? I accept the submissions of the ITLTB that dry weather conditions and the El Nino effect would have further reduced tonnage doing the best that I can, and taking into account this contingency, I reduce the award for loss of cane by $30,000 to take the balance to $150,000.*
>
> *51. For loss of vegetables, root crops and farm trees, I award a round figure of $5,000 in total taking into account the submissions of the second defendant.*
>
> *52. Hence, under this head, the total award is $145,000. Out of this, I make a further deduction of $3,000 for maintenance and expenses. That reduced the figure to $142,000. The figure is subject to the tax rate that would have been applicable then which I take to be 30% (guided by Lesavua case supra) which reduces the final figure to $99,400.*

[28] In arriving the figure in this regards, the Master has placed heavy reliance on the Cavalevu's assessment. The Master states at para 46 of his ruling:

"46. For cane proceeds, I take Ms Cavalevu assessment as my starting point which means that I accept the production figures supplied by FSC showing an average of 300 tonnes per year @ an average of $60 per tonne."

[29] The appellant submits that this is disproportionate and unreasonable on the grounds: At paragraph 40 of the Master's ruling it is noted that

from1995 onwards Shanti Lal's production has been nil due to the actions of both Defendants. In addition, it is noted in paragraph 41 of the Master's ruling that Ms Cavalevu assessed the losses based on figures given by Fiji Sugar Corporation (FSC) from 1986 – 1996.

[30] Counsel for the respondent contends that in any event, the Master's decision is reasonable and logical. This breach included damages for loss of income from his sugar cane farm, farm animals, fruit and vegetables. For this, the Plaintiff claimed $180,000.00 for sugar cane at an average of 300 tonnes of the cane for 10 years, $5,000.00 for vegetables and root crops, $7,000.00 for income from his fruit trees and $8,000.00 for sale of farm animals namely chickens and ducks. The total claim was $203,000.00, which was as assessed by the Plaintiff's Registered Valuer who had put in a valuation of the same (Exhibit 3). The Plaintiff was only awarded $99,400.00 by the Master.

[31] The Master should have disregarded the hearsay assessment submitted by the respondent. The Master heavily relied on the distance assessment, which is done seeing the photographs the respondent submitted and what he related to the valuer. The Master should have relied on his own enquiries and discretion in coming to his full and final assessment between the parties. The Court of Appeal said at para 43:

> "43. *The question the quantum of damages is beyond this court for determination. It will be referred to the Master for assessment on proper evidence and it is recommended to the Master that apart from some guidelines as set out by me to what damages are permissible here,* ***the Master should rely on his own enquiries and discretion in coming to his full and final assessment between the parties.*** *The appellant is not entitled to double damages". (Emphasis added)*

[32] At the hearing of the assessment of damages, the following facts were confirmed:

(1) There was no cane on the land in question when the Valuer (Cavalevu) inspected the same from a distance to prepare her valuation report.

(2) There was nil production of the cane for the land in question from 1997 until he was evicted from the same in 2000.

(3) The valuer did not personally inspect the land and property.

(4) The respondent rented out the two quarters built on the land at $150.00 each per month. He did not have the consent of the Board to build and rent out the quarters.

(5) He did not obtain any consent of the Board to rent out the premises because he considered it a waste of time to approach the Board.

(6) He rented his main house to the Korean Businessman (John) at the rate of $600.00 per month.

(7) In a letter dated 16 April 1999 from the Ministry of Agriculture Fisheries and Forests, (page 428 of High Court Record), Eroni Qama as Nadi Area Field Officer states at paragraph 2 that: ***"the farm has been vacated but all topsoil from the 12 acre land had been removed leaving bare soap stone exposed to sun and rain."*** He further states in paragraph 3 that: ***"the removal of the topsoil has taken away the potential use of the said land from any agricultural purposes. It is sad to see the status of the land at present with bare soap-stone which is little use for agricultural development."***

(8) *On 7 September the Ministry of Agriculture issued a certificate of Non-Practice of Good Husbandry (page 433, HC record), which states the following findings:*

a. "... (b) the tenant had vacated the land and the land has not been cultivated since then. There was no sugarcane or any other crops to be seen.

(9) *The lease expired on 31 December 2000.*

(10) The land was vacant and not even cultivated because of the effects of El Nino from 1997, three years before the expiry of the lease in question.

[33] The Court of Appeal opined that the damages for the breach of its obligations to give the appellant (respondent here) quiet enjoyment of the land, would clearly include the damages he suffered in failing to carry out his cane farming whilst he was ousted from the possession of the land by the second respondents. These damages would include the loss of income from the production of sugar cane, farm animals, fruit and vegetables. The Court of Appeal was also of the opinion that the quantum of damages is beyond this court for determination, and that the Master should rely on his own enquiries and discretion in coming to his full and final assessment between the parties.

[34] There was sufficient evidence before the Master suggesting that the respondent is not entitled to compensation for loss of income. The Master has taken 10-year multiplier in assessing the damages for loss of income. The respondent was forcefully ejected in 2000 just before the expiry of his lease, which expired in December 2000. There was established evidence before the Master that the cultivation has been abandoned three years prior to his expulsion from the land. And most importantly, the respondent had made cultivation impossible by removing the topsoil. In these circumstances, the respondent had not proved the loss of income as a result of the premature ejectment from the land. In my opinion, the Master should not have allowed compensation for loss of income. I would, therefore, set aside the Master's assessment of damages for loss of income.

Damages for TLTB's breach of Lal's right to quiet enjoyment of land

[35] The Master cites the Court of Appeal's direction in this regard at paragraph 33 of his ruling:-

"33. The Fiji Court of Appeal had directed in paragraph 36 if its decision as follows:-

"The damages for the breach of its obligations to give the appellant quiet enjoyment of the land, would clearly include the damages he suffered in failing to carry out his cane farm whilst he was ousted from possession of the land by the second respondents. These damages would include the loss of income from the production of sugar cane, farm animals, fruit and vegetables. They will also include damages for psychological trauma which he must have suffered when he was forcefully evicted from his land by the second respondent. These damages should be ordered against both respondents jointly and severally because the damages are common to the breach of the lease for quiet enjoyment and for trespass to land both of which disabled the appellant from farming his land."

[36] The Master awarded $8,000.00 to the respondent for his mental distress and inconvenience after considering the relevant facts. The Master identified the following facts:

1. *Shanti Lal was not an innocent victim in this matter and appears to have provoked the landowners (our words) by renting out two quarters built on the land at $150.00 each deliberately in breach of agriculture lease conditions.*

2. *Shanti Lal did not have the mandatory consent of the Board to build the two rented quarters.*

3. *Shanti Lal only worked on the farm during weekends and had a job as a joiner in Suva.*

4. *Shanti Lal also rented out part of the land to the police – a police post was operating illegally from the land.*

5. *Shanti Lal also illegally rented out the main house to a Korean man at $600.00 per month.*

6. *Shanti Lal also confirmed that he did not obtain the consent of the Board as he considered it a waste of time (See para 27 of the Master's ruling).*

[37] Counsel for the appellant submits that this sum is disproportionate and unreasonable and needs to be significantly reduced based on the evidence confirmed on behalf of Shanti Lal at paragraph 27 of the learned Master's ruling.

[38] The Master, having considered the relevant facts including the respondent's breach of the conditions of the lease, had arrived at the figure of $8000.00 for breach of quiet enjoyment (mental distress and inconvenience). This assessment is neither disproportionate nor unreasonable. I do not intend to disturb the Master's assessment in this regard. The appeal against this assessment has no merits.

2nd defendants' conversion (severally)

[39] Under this head, the Master awarded a sum of $10,000.00. The respondent claimed a total sum of $25,000.00. However, the Master allowed only $10,000.00. In awarding that amount, the Master had considered all the evidence and submissions made by both parties. That is, in my opinion, a fair figure to be awarded for conversion (severally). The appeal against this assessment fails.

Compensation for 2nd defendants' trespass to the land

[40] The Master granted a sum of $10,000.00 as compensation for the 2nd defendants trespass to the land. The Master had considered two separate occasions of forceful taking over of the respondent's house by the 2nd defendant. The Master has reached this figure exercising his

discretion. He was entitled to award that sum. The appeal on this assessment has no merits.

Exemplary damages

[41] The Fiji Court of Appeal held in its decision at para 42 that:

"42. In my view, the First Respondent's conduct was oppressive and incompetent. It should pay exemplary damages in the sum of $20,000.00."

[42] Having considered the judgment of the Court of Appeal, the Master correctly awarded the sum of $20,000.00 as exemplary damages for appellant's oppressive and incompetent conducts. The appeal on this award has no merits.

Interest at 4% from 1987 to date of ruling

[43] By way of interest, the Master awarded the sum of $138,240.00. He has calculated the interest at the rate of 4% from 1997 (although it is stated in the summary the interest is being calculated from 1987) to the date of the ruling (2 January 2015).

[44] The respondent is entitled to interest on the total amount of damages.

[45] At the assessment hearing, the respondent asked for interest at the rate of 6% per annum from the date of the issue of the writ of summons (14 July 2000) for the period of 12 years on the total amount awarded.

[46] The respondent is entitled to interest on the total damages pursuant to the **Law Reform and (Miscellaneous Provisions) (Debt and Interest) Act** 1935 (LRM).

[47] Section 3 of the LRM, dealing with the power of the High Court to award interest on debts or damages, empowers that the High Court may order interest at such rate as it thinks fit on the whole or any or any part or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

[48] The Master picked 4% interest rate. He was entitled to pick interest rate as he thinks. He had the discretion to do so. I do not intend to intervene the Master's discretion. However, the Master has given interest on the total amount of damages from 1997 till the date of his ruling. The court should not give interest for the wasted period although it had the power to grant interest from the date when the cause of action arose. In this case, the respondent asked the court to give interest at the rate of 6% per annum from the date of the issue of the writ of summons (14 July 2000) till the conclusion of the assessment hearing. The respondent wanted interest on the total award for the period of 12 years.

[49] I accept the appellant's submission that a sum of $138,240.00 is incorrectly awarded as interest. I accordingly set aside the Master's award of interest on the total amount of damages.

[50] I would give interest on the total amount of damages at the rate of 4% from the date of the issue of the writ of summons (14 July 2000) till the date of the Master's ruling (2 January 2015) but limited to 10 years. I have limited 10 years for the calculation of interest because both parties had contributed to the delay.

Summarily assessed costs

[51] The Master summarily assessed costs of the proceedings at $2,000.00. The costs awarded by the Master is fair and reasonable in the circumstances of the case. I decline to upset the Master's cost award. The appeal on costs fails as there is no merit on this ground.

Conclusion

[52] For all these reasons, I would allow the appeal, in part. Accordingly, the respondent is entitled to damages as follows:

Head of Damage	**Amount Awarded by Court**
Compensation for the Buildings on Land	$55,000.00
Damages for iTLTB's breach of Lal's right to Quiet Enjoyment of Land	$8,000.00
2nd defendants conversion (severally)	$10,000.00
2nd Respondent's trespass	$10,000.00
Exemplary Damages	$20,000.00
Total Damages & Interest & Costs	**$103,000.00**
Plus Costs Summarily Assessed	**$2,000.00**

[53] Interest on the total amount of the damages is to be calculated at the rate of 4% per annum from the date of issue of the writ of summons till the date of the Masters Ruling but limited to ten years.

[54] The Sum of $125,000.00 is to be deducted from the total sum of the damages payable to the respondent which the appellant paid to the respondent pursuant to my Order when granting leave to appeal.

Final Outcome

1. Appeal allowed in part.
2. Master's assessment varied.
3. Master's assessment of the damages reduced to $103,000.00.
4. The respondent is entitled to interest on the total amount of damages at the rate of 4% to be calculated from the date of the issue of the writ of summons to the date of the Master's Ruling (2 January 2015)

but limited to ten (10) years with costs of $2000.00 as assessed by the Master.

5. Master's orders set aside to that extent.
6. The sum of $125,000.00 is to be deducted from the total amount of damages payable to the respondent.
7. No order as to cost of this appeal.

.....4/10/17.....

M.H. Mohamed Ajmeer

JUDGE

At Lautoka

4 October 2017

Solicitors

For appellant: Legal Services Department, ITLTB

For Respondent: M/s Mishra Prakash & Associates, Barrister & Solicitors