

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

CIVIL ACTION NO. HBC 172 of 2017

BETWEEN : **ISHOK CHAND** of Navatu, Ba, Fiji, Cultivator.

PLAINTIFF

AND : **I TAUKEI LAND TRUST BOARD** a statutory body duly incorporated under Section 3 of the Native Land Trust Act Cap 134 Laws of Fiji.

DEFENDANT

Appearances : Mr N. Padarath for the plaintiff
No appearance for the defendant

Date of Hearing : 26 February 2018

Date of Judgment : 12 April 2018

J U D G M E N T

Introduction

[01] The plaintiff brings this claim against the defendant seeking the relief such as:

- a. Judgment for plaintiff in the sum of \$175,000.00 (One Hundred Seventy Five Thousand Dollars).
- b. An order requiring defendant to take necessary steps to issue a new lease to the plaintiff with correct area of 5.3834 Ha area together with its terms and conditions to the plaintiff.
- c. A declaration that the defendant is required to compensate plaintiff to the loss and damages that the plaintiff suffered by the defendant's mistake.

- d. Interest at 10% per annum from the date of the breach to the date of judgment under the *Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 29, Laws of Fiji* on all sums awarded.
- e. Aggravated and Punitive damages.
- f. Costs.

[02] On 18 August 2017, the writ together with statement of claim was served by registered post at P O Box 116, Suva. The plaintiff has filed an affidavit of Rajneel Karan Singh, a law clerk in proof of service. The defendant did not file either the acknowledgement or statement of defence. As a result, the plaintiff filed an *ex-parte* summons pursuant to Order 19 rule 7 of the High Court Rules and the inherent jurisdiction of the Court O. 19, r. 7 provides that:

“Default of defence: other claims

- 7.-(1) *Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.*
- (2) *Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may-*
 - (a) *if his or her claim against the defendant in default is severable from his or her claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or*
 - (b) *set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.*
- (3) *An application under paragraph (1) must be by summons or motion.*

[03] On 26 February 2018, the plaintiff’s *ex-parte* application came up for the hearing when counsel for the plaintiff, Mr Padarath advised the court that the plaintiff wishes to lead affidavit evidence. The court accordingly granted leave to lead

affidavit evidence. Subsequently, the plaintiff closed his case leading his affidavit sworn on 6 February 2018 in evidence. His affidavit annexes 8 documents marked as 'IC-1 to IC-8' In addition; the plaintiff has also filed a written submission.

The Evidence

[04] The plaintiff in his affidavit evidence states:

1. *On or about the 11th of July 2001, Instrument of Tenancy No. 7347 was issued by the Defendant in which the area of my Land was incorrectly shown as 2.4080 Ha. The Instrument of Tenancy commenced on 1st January 2001 and expires on the 31st of December 2030. Exhibited hereto and marked with letter "IC-1" is a copy of the said Instrument of Tenancy.*
2. *At all material times I was in occupation and cultivation of 5.3834 Ha of land because of the error by the Defendant lost 2.9754 ha of land.*
3. *On or about the 18th June 2013, Instrument of tenancy number 12077 was issued by the Defendant to my neighbours, being Sohan Singh and Mahendra Singh which incorrectly showed their area as 7.2155 Ha. This Instrument of Tenancy commenced on the 1st January 2013 and due to be expired on the 31st of December 2042.*
4. *At all material times Sohan Singh and Mahendra Singh were in occupation and cultivation of 4.2401 Ha of land.*
5. *Based on this representation, I on or about 22nd of August 2007, purchased the land with the consent of the Defendant. A copy of Transfer of Instrument of Tenancy NLTB No. 4/01/3615 is exhibited hereto and marked with "IC-2".*
6. *I continued occupation and cultivation of the full area of 5.3834 Ha until the year 2013 when the Singh's Lease was issued.*
7. *The Singh's were also aware that I was in occupation and cultivation and they were using an area of 4.2401.*
8. *At all material times, the Defendant had by its words and conduct represented that my Lease contained an area of 5.3834 Ha.*
9. *On 20th June 2011, the Defendant wrote to Sugarcane Growers Council Fund (SCGF) and said that the Instrument of Tenancy incorrectly shows the land area as 2.4080 ha. Exhibited hereto and marked with letter "IC-3" is a copy of the said letter.*
10. *On 14th August 2011, I wrote to the Defendant and sought assistance in resolving the trespass by the Singh's. On that same letter, a handwritten note is made by the Defendant which requires anyone concerned to stop all survey works and to carry out*

any works only in the presence of Defendant's officers. Exhibited hereto and marked with letter "IC-4" is a copy of the said letter.

11. *On 9th November 2011, the Defendant wrote to the SCGF and sought their approval that the lease be surrendered to allow issuance of a new lease document with the correct area. Exhibited hereto and marked with letter "IC-5" is a copy of the said letter.*
12. *On 14th January 2014, the Defendant wrote to the station officer Ba Police Station confirming that they have inspected the area of land and the boundary dispute between myself and Mahendra Pal Singh and they found at Ajit Singh (son of Mahendra Pal Singh) had completely damaged vegetables planted by me. This letter also attached a plan showing the area damaged. Exhibited hereto and marked with letter "IC-6" is a copy of the said letter.*
13. *On 28th August 2014, the Defendant made an application against Sohan Singh and Mahendra Singh, for a declaration that they surrender the lease issued to them because it refers to the land which has already been given to me.*
14. *The Instrument of Tenancy number 12077 was issued showing an area of 7.2155 ha, when the correct area was 4.2401 Ha. The lesser area would correlate with the defendant's actual use and occupation of the land.*
15. *The Defendant also lead evidence to show that this was a typographical error and that the situation on the land was different from what was stated in the documents issued in error. They alleged "mistake of fact".*
16. *The High Court dismissed this application. Exhibited hereto and marked with the letter "IC-7" is a copy of the Judgment.*
17. *On 9th November 2011, myself and the Defendant agreed to resolve their mistake and issuance of a new lease document with the correct area to me.*
18. *I further agreed with the Defendant to surrender the new lease in return for an issuance of a fresh lease with the correct area of 5.3834 ha. to be granted to me.*
19. *I have lost the value of the land which is in the sum of \$25,000.00. A copy of Valuation Report is exhibited hereto and marked with letter "IC-8".*
20. *After 2008 I have lost an average sum of \$10,000.00 per annum in cane proceeds for the loss of 2.97754 ha of land and therefore, I will lose \$150,000.00 by way of cane proceeds.*
21. *I humbly seek order in terms.*

[05] The plaintiff's evidence remains unchallenged. The plaintiff was not cross-examined, by the defendant. There is no affidavit in response to the plaintiff's affidavit either.

Discussion

- [06] The plaintiff's claim stems out of a mistake the defendant had done when issuing a lease to the plaintiff in respect of the land the plaintiff had been in possession and cultivation. By the defendants' mistake, the plaintiff lost 2.9754 hectare of the land.
- [07] On 11 July 2001, the defendant issued an Instrument of Tenancy No. 7347 in favour of the plaintiff in which the area of the plaintiff's land was incorrectly shown as 2.4080 instead of 5.3834 hectares of the land of which the plaintiff was in occupation and cultivation on 18 June 2013.
- [08] The plaintiff alleges that on 18 June 2013, the defendant issued an Instrument of Tenancy No. 12077 to his neighbours, Sohan Singh and Mahendra Singh (the Singhs) in which the area is shown as 7.2155 hectares whereas the Singhs were entitled to 4.2401 hectares, an area they were in cultivation and occupation.
- [09] The defendant had admitted that they had made a mistake in understating the area of the land in the lease issued to the plaintiff. The defendant in a letter dated 20 June 2011 had written to the Chief Executive Officer, Sugarcane Growers Fund, Ba (P/Ex-"IC-3") states:

"Lease Area-4/01/003615; Ishok Chand...

Current records show, as is shown on the subject Instrument of Tenancy, the land area for this lease is 2.4080 hectares.

Following a recent field inspection by our Technical Officer Savenaca Nakuta using our GPS Rover machine, it was determined that the area actually covered by this lease is 5.3834 hectares.

This is to advise that necessary amendments are being done to have this corrected and formalised.

Accordingly, we advise that any dealing or transaction related to the subject land will now bear the area 5.3834 hectares.

Thank you.

Yours faithfully,

Sgd/

Etuate Mataitini

For Manager North/Western Region"

- [10] Thereafter, the defendant wrote a letter dated 9 November 2011 (P/Ex 1C-5) to the CEO, Sugar Cane Growers Fund, Lautoka for the surrender of the Instrument of Tenancy No. 7347 (the lease issued to Singhs) back to the Board (defendant) for amendment and processing of new lease document.
- [11] In a previous action (HBA 146 of 2013) brought by the defendant seeking a declaration that the lease issued to the Singhs (Instrument of Tenancy No. 12077) be rescinded for mistake. That action was dismissed by the court (me) on the ground that the Agricultural Tribunal has jurisdiction to deal with such application under S.18 (3) of the Agricultural Landlord & Tenant Act (ALTA).
- [12] Having admitted their mistake, the defendant had failed to rectify it by issuing new instrument of tenancy to the parties indicating the correct area of the land they are entitled to, which they could have easily done by revoking the instrument of tenancy that was issued mistakenly.
- [13] The plaintiff's evidence stands unchallenged. As such, I have no hesitation to accept the plaintiff's evidence.
- [14] On the evidence and having satisfied on the balance of probability, the civil standard of proof of a claim; I find that the defendant by their mistake had caused loss to the plaintiff and that they are liable to pay damages to the plaintiff for the loss. The plaintiff suffered as a result of their mistake in that the plaintiff lost 2.9754 hectares of the land he was occupying and cultivating.

Relief

- [15] I now turn to consider the relief the plaintiff could obtain for the loss arising out of the defendant's mistake. From the plaintiff's written submissions it appears that the plaintiff had abandoned declaratory relief.
- [16] The plaintiff seeks damages in a sum of \$25,000.00 for the loss of 2.9754 hectares of land. The plaintiff has filed a valuation report dated 14 September 2015 prepared by Truemarket Valuations & Property Consultant Limited (P/Ex"1C-8") which I accept.
- [17] According to the valuation report, the value of the area of 2.408 hectares (the lease-hold interest) excluding the existing crop on the land and existing

improvements) is \$20,000.00. The plaintiff claims a sum of \$25,000.00 for the loss of 2.9754 hectares leasehold and for improvement the plaintiff did to the land. This, to me, appears to be reasonable. I would, therefore, allow the claim of \$25,000.00 for loss of leasehold of 2.9754 hectares.

Loss of Cane Proceeds

- [18] The plaintiff claims a sum of \$150,000.00 for loss of cane proceeds. The plaintiff says he was in occupation and cultivation of the entire 5.3834 hectares until 18 June 2013, the date on which the Singhs were issued with their lease. The plaintiff has calculated this claim on the basis that his lease was valid until 31 December 2030. That means loss of cane proceeds for 15 years. The Valuation Report values the existing crop on 2.408 hectares to be in the sum of \$10,000.00 on average the proceeds per hectare based on the valuation report would be $(\$10,000 \div 2.408 \text{ hectare})$ \$4,152.82. The plaintiff lost land of 2.9754. He would have cultivated it (if given) for 15 years until the expiration of the lease in 2030. The plaintiff estimates loss of cane proceeds in the sum of \$150,000.00 $(\$12,356.31 \times 15 \text{ (years)})$ less reasonable expenses for cultivation on the lost land).
- [19] As to future income, it appears to be too remote. I would, therefore, decline to allow loss of cane proceeds.

Punitive damage

- [20] I also disallowed the claim for punitive damages, for the loss incurred due to an oversight on the part of the defendant not by a deliberate act.

Costs

- [21] The plaintiff seeks cost on an indemnity basis. This is not a case for indemnity costs. As a winning party, the plaintiff is entitled to costs of these proceedings. I take all into my account and summarily assess the costs at \$1,500.00, which the plaintiff will be entitled to.

Final Results

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

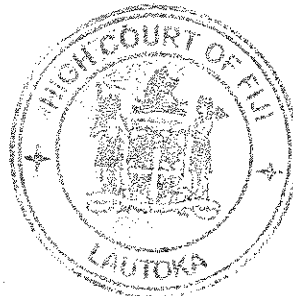
M.H. Mohamed Ajmeer

12/4/18

.....
M.H. Mohamed Ajmeer

JUDGE

**At Lautoka
12 April 2018**



Solicitors:

For the plaintiff: M/s Samuel K. Ram, Barristers & Solicitors

For the defendant: no appearance