

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

CIVIL ACTION NO. HBC 167 OF 2015

BETWEEN : **MOHAMMED RAFIQ** of Vitogo, Lautoka, Farmer. **PLAINTIFF**

AND : **ITAUKEI LAND TRUST BOARD** a body corporate having its registered office at Mana Street, Lautoka. **FIRST DEFENDANT**

AND : **TEG REDDY, SANDEEP REDDY AND KUMAR SAMI REDDY** and all illegal occupants of Vitogo, Lautoka, Farmers. **SECOND DEFENDANT**

Appearances : The plaintiff in person
Ms E. Raitamata for the first defendant
No appearance for the second defendants

Date of Hearing : 9 August 2018

Date of Judgment : 9 August 2018

J U D G M E N T

[01] The plaintiff brought this action against the defendants seeking among other things vacant possession of the land in question and costs of the proceedings. His claim arises out of an encroachment of the portion of the land (about 1500m²) of which he (the plaintiff) is the registered proprietor. The iTLTB, the first defendant has granted a 30-year lease to the plaintiff in 2002. Ms Raitamata of counsel for the first defendant confirms issuance of the lease to the plaintiff which covers 10A and 1R of agricultural land.

- [02] The second defendants neither filed an acknowledgment of service nor a statement of defence. The iTLTB, the first defendant also did not file a defence. However, they only filed an acknowledgement of service.
- [03] The writ of summons has been duly served on the second defendants and the unnamed occupants of the encroached property. The plaintiff has filed an affidavit of service in proof thereof. I am satisfied that the plaintiff has duly served the writ of summons on the second defendants including the unnamed occupants.
- [04] The matter was taken up for hearing, where only the plaintiff gave evidence in support of his claim and tendered three documents marked as 'P/Ex1' – 'P/Ex 3'.
- [05] The plaintiff states in evidence that he is the registered proprietor of the property by virtue of the lease ('P/Ex-1') and the second defendants and some others unknown to him had encroached on a portion of the land and causing nuisance. He asks an order for vacant possession of the encroached portion of the land (approximately 1500m²) from the second defendants and the unnamed occupants and costs of \$1,500.00, being the costs of these proceedings. He also states he is not pushing for other relief sought in the claim.
- [06] The lease ('P/Ex-1') demonstrates that the plaintiff is the owner of the land comprised in the lease, Vitogo S/D Lot 2 on ND 5114 in the Province of Ba covering the area of 10A.1R.00P.
- [07] The plaintiff tendered a survey report prepared by Cadastral Solutions Ltd (P/Ex-2). That report clearly states that the area occupied by the squatters total to 1378m² within the environs proposed by the tenant of Lot 2 ND5114-Mr Mohammed Rafiq (the plaintiff). The report further states that one squatter home will be considered illegal (see para 4.0 of P/Ex-2).
- [08] There is nothing before the court to establish that the second defendants and other unnamed occupants have right to occupy the land in dispute.

[09] The plaintiff's evidence remains unchallenged. He gave clear and straightforward evidence which led me to accept his evidence. I would, therefore, declare that the plaintiff is the legal owner of the land in question and the second defendants and other unnamed occupants had encroached on it. I am convinced to grant the relief the plaintiff is seeking. Accordingly, I order the second defendants and other unnamed occupants to deliver up immediate vacant possession of the land in dispute to the plaintiff. I also order the second defendants and other occupants to pay the costs of \$1,500.00 to the plaintiff.

The result

1. There shall be a declaration that the plaintiff is the registered proprietor of the land depicted in the Native Lease No. 26578 more particularly described as Vitogo Subdivision Lot 2 on ND 5114 Vitogo in the Province of Ba having an area of 10 acres 1 rood and 0 perches.
2. There shall also be a declaration that the second defendants and other unnamed occupants had encroached a portion of the land (described in order 1 (above)), approximately 1500m².
3. The second defendants and other unnamed occupants shall deliver up immediate vacant possession of the encroached portion of the land to the plaintiff.
4. The second defendants and other unnamed occupants shall pay costs of \$1,500.00 to the plaintiff.

M.H. Mohamed Ajmeer
..... 2/8/19

M.H. Mohamed Ajmeer

JUDGE

**At Lautoka
9 August 2018**

