

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

CIVIL ACTION NO. HBC 201 OF 2016

BETWEEN : **SHIU NARAYAN** of Nukuloa, Ba, Self-employed. **PLAINTIFF**

AND : **IROMI TOTOPA SAUKITOGA** Landowner of Lomolomo Village, Lautoka.

FIRST DEFENDANT

AND : **I-TAUKEI LAND TRUST BOARD** a corporate body duly constituted under the Native Land Trust Board Act, Cap. 134, 431 Victoria Parade, Suva.

SECOND DEFENDANT

Appearances : Ms S. Ravai for the plaintiff
The first defendant appears in person
Mr T. Duanasali for the second defendant

Date of Hearing : 13 August 2018

Date of Judgment: 25 September 2018

J U D G M E N T

Introduction

[01] The plaintiff brings this action claiming the following relief:

- a) *A declaration that the defendants have unjustly enriched themselves.*
- b) *A declaration that the second defendant is in breach of its statutory duty to process the plaintiff's application for an Instrument of Title with due diligence.*

- c) *A declaration that the plaintiff is entitled to an Instrument of Title over the said lease.*
- d) *An order that the second defendant do forthwith issue the plaintiff with a[n] Instrument of Title over the said lease.*
- e) *Damages and costs.*
- f) *Such other Order as this Honorable Court deems just and expedient*

[02] The defendants neither filed acknowledgement of service nor statement of defence. As a result, the plaintiff made an application pursuant to Order 13, Rule 5 of the High Court Rules 1988, as amended [*'HCR'*], which provides:

"Mixed claim (O 13, R 5)

5 Where a writ issued against any defendant is indorsed with 2 or more of the claims mentioned in the foregoing Rules, and no other, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he or she would be entitled to enter under those Rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any."

[03] The plaintiff seeks judgment against the defendants on the ground that the defendants have no defence to the claims. The application is supported by an affidavit of the plaintiff sworn on 16 August 2017.

[04] At the hearing, the plaintiff gave oral evidence and produced 4 documents (*'PE 1-PE 4'*) in support of his claim.

The Background

[05] The following background facts are gleaned from the statement of claim: Shiu Narayan, the plaintiff applied to the iTaukei Land Trust Board, the second defendant (*'Board'*) for a piece of residential property situated at Lomolomo,

Lautoka (*'the property'*). Iromi Totopa Saukitoga, the first defendant is the Traditional Owner of the property. The Board is the corporate body duly constituted under the Native Land Trust Board Act, Cap. 134. In May 2007, the plaintiff, at the request of the first defendant, paid to the first defendant the sum of \$3,000.00 in cash to signify his consent to the second defendant for the issuance of a residential lease and/or an agreement for a lease to the plaintiff. In July 2010, the second defendant asked the plaintiff to pay the sum of \$56.25 for a formal application for the lease. The plaintiff duly submitted the consent obtained from the first defendant to the second defendant. To date, the defendants have failed to process and/or issue the plaintiff with an instrument of title over the property. The plaintiff alleges that the defendants have unjustly enriched themselves and that by reason of the defendants conduct the plaintiff has suffered loss and damages.

The Evidence

[06] The plaintiff gave sworn evidence. His evidence was that:

- a) He applied for a residential property-about a ½ acre and came to the land in 2007.
- b) He paid \$3000.00 to Eromi, the second defendant and obtained consent for a lease. Eromi gave the consent (*'PE 1'*).
- c) Eromi took him to see the piece of land and told him to build a house. He did not build a house as he was not given legal consent from iTLTB.
- d) He took his application dated 5 July 2010 to iTLTB and paid the application fee-\$56.25 (*'PE 2'*).
- e) He cleared the weeds and informed the iTLTB about it. There were lots of mosquitoes. There were 7 feet high weeds. He planted coconut trees. They did not respond to his application. He went to iTLTB many a time for update. He could not recall how many times he visited iTLTB office for this.
- f) He went to PM's office and PM's office forwarded his complaint to iTLTB twice but nothing happened.

- g) Sometime in 2016, iTLTB told him that a lease will be issued to him but later iTLTB told him that a lease has been issued to somebody else.
- h) He said the land he was looking after for 7 years and cleared the weed has been given to somebody else.

Discussion

- [07] The plaintiff's claim is based on unjust enrichment. The defendants promised the plaintiff that a piece of land would be given to him to build a house. Relying on that promise, the plaintiff paid \$3000.00 to the land owner, the first defendant for his consent to issue a lease and cleared the land. The first defendant gave consent to the plaintiff to erect a house on the land and occupy for a period of 50 years with annual rent of \$300.00 (PE 1). According to the plaintiff, he started clearing the land after the making of payment for consent in 2007.
- [08] The second defendant, iTLTB asked the plaintiff to pay for application fee for a lease. He paid the lease application fee on 5 July 2010 as per receipt No 15200 (PE 2).
- [09] Having made payment for the consent and lease application fee, the plaintiff was reasonably expecting a lease would be issued to him. However, the second defendant failed to issue the lease to the plaintiff. Instead, the second defendant had issued a lease in respect of the land in dispute to a third party sometime in 2016. By issuing a lease to the third party, the second defendant clearly refused to issue a lease to the plaintiff having made promises that they will issue a lease to the plaintiff.
- [10] The plaintiff is seeking a mandatory order directing the second defendant to issue an instrument of title over the land in the plaintiff's name. The second defendant had granted a lease over the same land to a third party. It appears that the plaintiff claims specific performance for the grant of a lease or tenancy of the property. Specific performance as a remedy requires an exceptional case. In my view, the plaintiff's case does not fall into the exceptional case to consider specific performance remedy. Damages would be an adequate remedy for the plaintiff for breach of promises.

- [11] There is unchallenged evidence before the court that the plaintiff suffered loss and damages at the hands of the defendants. I do not find any reason to disregard the plaintiff's evidence. I accept his evidence.
- [12] The plaintiff had paid a sum of \$3000.00 to the first defendant for the consent, he paid \$56.25 to the second defendant for lease application fee and he had reasonable expectation that the land would be given to him. He had cleared the land relying on the promises given by the defendants. In the circumstances, I assess damages at \$12,000.00, which the defendants shall jointly and severally pay to the plaintiff.
- [13] I will also award costs to the plaintiff, which I summarily assess at \$1,500.00. This is also to be paid by the defendants jointly and severally.

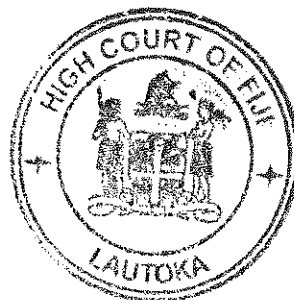
The outcome

1. There shall be judgment for the plaintiff in the sum of \$12,000.00.
2. The defendants shall jointly and severally pay the judgment sum (\$12,000.00) to the plaintiff.
3. The defendants shall also jointly and severally pay the summarily assessed costs of \$1,500.00 to the plaintiff.

M. H. Mohamed Ajmeer
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25/9/18

M. H. Mohamed Ajmeer

JUDGE



**At Lautoka
25 September 2018**

Solicitors:

For the plaintiff: M/s Fazilat Shah Legal, Barristers & Solicitors
For the second defendant: Legal Department, iTaukei Land Trust Board