

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

Civil Action No. HBC 238 of 2012

**BETWEEN** : **SHAMENDRA K RAM** of 31 Saru Back Road, Lautoka,  
Self Employed and Farmer.

**PLAINTIFF**

**AND** : **SEMISI TORA** No 3 of Tore Sea Side Road, Lovu,  
Lautoka, Landowner.

**DEFENDANT**

Appearances : Plaintiff in person  
: Nacolawa & Company for the Defendant

**R U L I N G**

**INTRODUCTION**

1. There are two applications filed by the plaintiff before me now. Both relate to some interim Orders made by Mr. Justice Nawana on 26 November 2012. The Orders were made pursuant to an *ex-parte* Notice of Motion which was filed together with the writ of summons and statement of claim on 15 November 2012. Mr. Justice Nawana did direct that the Motion be served on the defendant before he dealt with it November 2012.
2. Nawana J's Orders were as follows:
  - (i) that an injunction restraining Order that the Defendant, families and/or their servant and/or their agents to stay 500 meters away from the Plaintiff, Plaintiff servants and agent and Plaintiff's farm and produce.
  - (ii) that the Plaintiff to pay \$8,000.00 (eight thousand dollars) to the Deputy Registrar of the High Court.
  - (iii) that the Restraining Order is granted only until 5<sup>th</sup> December 2012.
  - (iv) that the Defendant to file the Reply and Statement of Defence of objection on or before 5<sup>th</sup> December 2012.
  - (v) that the Plaintiff to file reply within 7 days thereafter.
  - (vi) that the matter is adjourned to 5<sup>th</sup> December 2012 before the Master.
3. It is important to note that the above orders lapsed on 05 December 2012. Thereafter, the Orders were extended from time to time. The last extension was

“purportedly” made by the then Master on **11 February 2014**. I say “purportedly” made because there is an issue as to whether that extension was made validly within the jurisdiction of the Master.

4. Order (i) above is allegedly being breached continuously by the defendant to this day. On account of the alleged breaches, the plaintiff is seeking committal orders against the defendant.
5. Order (ii) above was complied with by the plaintiff on 11 April 2013 when he paid the sum of \$8,000 into the High Court Trust Account (receipt exhibited in his affidavit). It is this sum which the plaintiff seeks to have paid back to him.
6. The Notice of Motion for Committal Proceedings was filed on 30 October 2014. The plaintiff's motion for payment filed on 15 June 2015.

### **COMMITTAL PROCEEDINGS**

7. The Motion for Committal Proceedings seeks the following Orders:
  1. That the Defendant, SEMISI TORA to stand commit to prison and/or pay fine for contempt in disobeying and/or not paying obedience to Orders of this Honourable Court of which Orders the said SEMISI TORA had noticed and are:
    - a. the Order of his Lordship made on the 26<sup>th</sup> November 2012 and extended on 7<sup>th</sup> February 2014 requiring the Defendant to comply and obey are as follows:
      - i. That an injunction restraining Order that the Defendant, families, and/or their servants and and/or their agents to stay 500 meters away from the Plaintiff, Plaintiff servants and agent and Plaintiff's farm and produce
  2. A copy of the said Order dated 11<sup>th</sup> February 2014 indorsed with the Penal Notice was personally served on the Defendant, his wife and his son at his home by a registered Bailiff and affidavit of service has been filed.
  3. The Defendant failed to comply with the Order specifically order (i).
  4. The Defendant has notice of all Orders made by this Honourable Court as stated herein above and yet disobeys or fails to obey the said Order.
  5. The Defendant to pay the Plaintiff costs incidental to this application also of issuing and execution of the orders to be made herein.
8. The supporting Statement of Committal identifies the defendant by name, his address, and also the grounds upon which the committal orders are sought. It also annexes a copy of the Order dated 11 February 2014 and a statement that the said

Order was fully served on the defendant. The statement goes on to state that the defendant is in continuous breach of the said Orders.

### **MOTION FOR PAYMENT**

9. The motion for payment seeks the following Orders:
  1. An Order that the money deposited into the Trust Account of the Court on 11<sup>th</sup> April 2013 be released to the Plaintiff.
  2. An Order for the Defendant to give vacant possession.
  
10. It is supported by an affidavit sworn by the plaintiff on 09 June 2015. By this affidavit, the plaintiff deposes that he had taken a loan from the Fiji Development Bank in order to satisfy Nawana J's Order. On 11 April 2013, he paid the sum of \$8,000 into the High Court Trust Account.
  
11. The plaintiff says he now needs the \$8,000 to develop his land and recover some loss. Otherwise, he may just refund the sum to the FDB to advance his payment and thereby reduce interest.
  
12. The plaintiff further deposes that he has had default judgement entered against the defendant in the sum of \$66, 137.15. He says that if the \$8,000 is now paid back to him, it could be offset against the default judgement entered against the defendant. This submissions seems to suggest that the \$8,000 payment was ordered to serve as security for the defendant. Hence, if in the event the defendant was to succeed in his defence of the action and be found to be entitled to the sum, that payment would simply be offset against the default-judgement sum against the defendant.
  
13. The plaintiff then proposes that the balance of \$50, 137.15 of the judgement sum can then be offset by an Order to allow the plaintiff to take possession of the defendant's land and house based on a valuation which this Court should order.

## BACKGROUND

14. The defendant was the registered lessee of some Agricultural Lease issued by *i*-TLTB under *i*-TLTB Ref No. 4/7/6547, Contract No. 19084 under ALTA Lease<sup>1</sup>.
15. At some point, the defendant and the plaintiff entered into discussions about the sale and purchase of the said land. Their understanding was that a new lease under ALTA would be issued to the plaintiff<sup>2</sup>. On 30 October 2006, the defendant and the plaintiff signed an MoU.
16. By their arrangement, some rental arrears which the defendant owed to *i*-TLTB was to be absorbed into the purchase price. Hence, the agreed purchase price of \$30,000 included a component for the defendant's rental arrears.
17. Pursuant to the arrangement, the plaintiff would pay upfront a sum to settle the *i*-TLTB arrears. It is not clear to me whether the sum he paid upfront was \$10,000 or \$14,000.
18. The balance was to be settled *vide* a loan to be taken by the plaintiff from the Sugar Cane Growers' Fund ("SCGF"). Apparently, SCGF had given some indication of its willingness to finance the balance of the purchase price. However, SCGF did so on the expectation that *i*-TLTB would issue to the plaintiff a 99-year ALTA lease. Rather, as it turned out, *i*-TLTB only issued a 50-year NALTA lease to the plaintiff instead of a 99-year ALTA lease. Consequently, SCGF would refuse to finance the balance of the purchase price. To this day, according to the defendant, the plaintiff has not settled that outstanding balance<sup>3</sup>.

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<sup>1</sup> At paragraph 5, the defendant deposes:

5. That the subject land was registered under the 1st Defendant's name under NLTB Ref No. 4/7/6547, Contract No. 19084 under the ALTA Lease.

<sup>2</sup> As the defendant deposes at paragraph 6:

6. That when the parties discussed the sale of this land from the 1<sup>st</sup> Defendant to the Plaintiff, the understanding was that a new lease under ALTA would be issued after the sale transaction is finalized.

<sup>3</sup> As the defendant deposes at paragraphs 14, 15 and 16:

14. That when the Board issued the lease, it was not a lease pursuant to ALTA but it was under NLTA on a term of 50 years – NLTB No. 4/7//500036530

15. That this was a new lease and the SCGF never accepted it as it only recognizes lease under ALTA.

16. That the issuance of the lease under the NLTA made the SCGF to renege on its loan promise and hence the balance to this day has never been paid, but the Plaintiff is free riding on the fruits of the land.

### PLAINTIFF'S & DEFENDANT'S FALLING OUT

19. SCGF's refusal to finance the balance of the purchase price would be the catalyst for the souring of the relationship between the plaintiff and the defendant. The defendant, upset at not being paid the balance of the purchase price, would begin to harass the plaintiff about it. In his affidavits, the defendant admits that his anger at not being paid the balance of the purchase price has been the reason for his attitude against the plaintiff. He deposes *inter-alia* that his **"anger will not subside if the balance is not paid"** and also that **"the Plaintiff is best advised to pay up and solve the problem"**.
20. The plaintiff however alleges that the extent to which the defendant has gone to vent out his anger has made the plaintiff's life miserable and exposes the plaintiff's family to threats of violence.
21. The plaintiff deposes that the defendant would make racial taunts and make threatening comments against him and his family whenever the plaintiff passes by the defendant's house to get to his farm. They would even go to the extent of doing their "toilet business" on the plaintiff's farm.
22. The defendant does not deny that there is bad blood between him and the plaintiff. Nor does he deny that he has been rather confrontational with the plaintiff. His problem appears to stem from the fact that the plaintiff has not paid him the balance of the purchase price pursuant to their arrangement.

### WHAT TRANSPIRED BETWEEN THE PARTIES FOLLOWING SCGF'S REFUSAL TO FINANCE THE BALANCE OF THE PURCHASE PRICE

23. The plaintiff says that when the SCGF refused to finance the balance of their agreed price, he went to the defendant and told him about it. He said the defendant told him not to worry and reassured him that he could continue to plant sugar cane and that the defendant was prepared to accept payment of the balance from 60% of the cane proceeds:

- a. The Defendant assured me not to worry and offered me to continue planting cane, give him some more cash and balance to pay in instalment of 60% from net cane proceed as agreed in our agreement clause 10 dated 30<sup>th</sup> October 2006.
- b. Therefore the new lease was accepted by the Defendant. My 1<sup>st</sup> payment of 60% due in 2007 was refused by the Defendant and he demanded the land back.
- c. So when he demanded the land back, I demanded my refund of monies paid to him and investment which he made a false promise and gave me a letter of loan application, annexed and marked 'SKR-1'.
- d. When the defendant took illegal possession of my lease and refused to refund my money, then I filed the civil case action No. 207/2007 as explained earlier in this reply.

24. It is not clear to me whether the defendant was at all agreeable to the plaintiff's above proposal. That proposal, I would think, was a reasonable one.
25. From the affidavits filed by both parties, what is clear is that the defendant would continually accost the plaintiff about the latter's non-payment of the balance of the purchase price. According to the plaintiff, the defendant even went to the extent of chasing the plaintiff out of the land. Even though – by that time, the lease was already issued in the plaintiff's name, the defendant, it appears, felt he was entitled simply because he was a member of the land owning unit. The plaintiff says that the defendant was "discriminating" the plaintiff "by his race" and would "**demand loose cash monies, cows every now and then**" which the plaintiff refused.
26. It was on account of these problems which led the plaintiff to file his first claim (civil action No. 207/2007). That claim, according to the plaintiff, was filed because the defendant was chasing him out of the land. The plaintiff says this first action was filed because he was claiming a refund of his \$14,000.00 plus the investment costs with damages in case the defendant succeeded in chasing him out.
27. That first action was struck out due to non-appearance by the plaintiff and his counsel. However, the defendant would continue to accost the plaintiff about the non-payment of the balance of the purchase price.
28. As I have said above, the plaintiff does not deny that he has been angry. He says that his anger will only subside once the balance of the purchase price is settled by

the plaintiff.

### **DEFENDANT'S AFFIDAVIT IN OPPOSITION**

29. On 17 December 2014, the defendant would file an affidavit in opposition of the Notice of Motion for Committal. He resists the application on several grounds. First, he says that the Order for which the plaintiff is seeking committal is defective and irregular and the application should, accordingly, be thrown out with costs to the defendant. He argues that - at the time the plaintiff had filed the application for committal proceedings - the Order had long lapsed and had not been extended.
30. What is clear from the records is that Nawana J had made the initial Orders in December 2012. The order was extended from 05 December 2012 to 18 February 2013. The defendant says that after 18 February 2013, there was no further extension of the order.
31. What in fact happened was that the plaintiff had filed a Motion on 24 January 2014 for a further extension of Nawana J's restraining Orders. When this application was placed before Mr. Justice Abeygunaratne, the learned Judge would note that Mr. Nawana J's Orders had already lapsed. In paragraph 11 of a Ruling which Abeygunaratne J handed down on 20 March 2014 - he noted and directed as follows:
- "the injunction granted has lapsed. Therefore Extension cannot be granted. File fresh application and move". (see para 13 of Judgment 20/03/14)*
32. As it turned out, instead of filing a fresh application before Abeygunaratne J, the plaintiff would have the same application (which had been placed earlier before Abeygunaratne J) placed before the Master<sup>4</sup>. And as it turned out, the then Master would extend the Orders of Nawana J on 07 February 2014.

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<sup>4</sup> As he deposes:

18 That on the 24<sup>th</sup> January 2014 the plaintiff made an Ex-parte Notice of Motion seeking an Order to extend the restraining Order made by Justice Nawana which has now expired to extend to 7<sup>th</sup> February 2014 was brought before Justice Abeygunaratne.

19 That the learned Judge on seeing that the said date of the Order had already expired he refused the extension of the said order stating:-

*"the injunction granted has lapsed. Therefore Extension cannot be granted File fresh application and move".  
(Attached herein is a copy of the said Judgement marked "ST 4")*

r. That the plaintiff instead of bringing his application before Justice Abeygunaratne he was made to appear before the Master Mohamed Ajmeer whose jurisdiction is lower than that of the Judge.

33. How the plaintiff was able to convince the Registry to place the same application before the Master, is not clear from the records. It appears also from the records that the Master was unaware of what had transpired earlier before Abeygunaratne J.
34. None of this is denied by the plaintiff.
35. The defendant argues that when the Master extended the Order on 07 February 2014, the Master was acting outside his jurisdiction. The defendant argues that the resultant order therefore is irregular, null and void.
36. The defendant argues that the plaintiff had misled the Master in not disclosing what had transpired before Abeygunaratne J. He refers to paragraph 20 of the Judgment of 20 March 2014.
37. The defendant also deposes in his affidavit as to why he has never complied with the Orders of Nawana J. His reason for not complying with filing a statement of defence and affidavit in opposition were due to some miscommunication problem he had with his lawyers. The defendant appears to concede that he is to blame for his lack of communication with his lawyer and his consequential inability to file the necessary documents in court<sup>5</sup>.

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*(Attached herein is a copy of the said Order marked "ST 5")*

24. That the injunction sought by the Plaintiff can only be given by the Judge as was done by Justice Nawana, but the extension of the Order can nevertheless be done by the Master as had been done by the then Mr. Tuilevuka and Mr. Ajmeer *(Attached herein are copies of the Orders marked "ST 6 (a) & (b)")*
25. That the Court clearly realised that when the Ex-parte Application for renewal was made by the Plaintiff it directed the file to the Judge who has the Jurisdiction to grant such an injunction especially when the Court knew that the Order had already expired.
26. That the learned Judge accordingly ordered that the Order for extension cannot be granted and it follows that when a fresh application is made, it should be brought back before his Lordship Abeygunaratne, but instead the plaintiff was directed to appear before the Master.
27. That the said Order made by the Master on the 7<sup>th</sup> February 2014 is therefore is irregular null and void and without an effect as it directly went against the Order of the learned Judge.
28. That it is clear and without any doubt that the jurisdiction of the Master is lower than that of the Judge, therefore the Master cannot act as a Judge in a matter which is clearly out of his jurisdiction and if he does as was in this matter, he was acting outside his jurisdiction, and the resultant order would therefore be irregular and without any effect.
29. That this is a serious matter to have the Judge and Master roles conflicting each other whose Jurisdiction are clearly spelt out, distinct and apart yet were made to overlap through the Plaintiff and others to have the matter brought before the Master.

<sup>5</sup> As the defendant deposes:

- 18 That much of the fault is not complying with orders of the Court especially on the filing of the documents in times lies with the Defendant, where the counsel has tried every effort to make him comply but without success.
- 19 That this matter was left entirely at the mercy of the plaintiff and until some months back when the Defendant resumed contact with the counsel Mr Nacolawa agreed to resume handling the matter otherwise, there would have been application for leave to withdraw as solicitor for the Defendant.



38. However, as to the restraining Order that he stays at least 500 meters away from the plaintiff, the defendant deposes that his house actually borders the plaintiff's sugar cane and that his house was already erected on its current site well before he even entered into the agreement with the plaintiff. As such, it was impractical for him to comply with this restraining Order<sup>6</sup>. In any event, the defendant insists that he is sitting on his reserve land and he cannot be relocated. He says that the Order, in that regard, must be varied.
39. The defendant says that if the matter had been heard *inter-partes*, he would have brought this fact to the attention of the court and had the Order varied accordingly<sup>7</sup>. He asks that he be given the chance to respond to the Motion filed on 26 November 2012 to get clear perspective of the matter.
40. The defendant reiterates that the plaintiff owes him the balance of the purchase price which is \$20,000. By not paying him the balance, the plaintiff has been unjustly enriched.

### ***Plaintiff's Affidavit In Reply***

41. On 12 February 2015, the plaintiff would file an affidavit in reply. He asks the Court to a site visit to the farm so the Court can see for itself all that is going on. He said he also filed a number of police reports on account of the defendant's annoying and trespassing and not letting him enjoy the freedom of land till to date. He says that the police report No. 4036/07 is relevant. He will produce the restraining Order at the time of hearing.
  - a. Since the Defendant was failing in his motive to gain financial advantage and land from me after the sugar cane was planted, he was getting aggressive.

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<sup>20</sup> That until today there are outstanding matter in the order of Justice Nawana especially the filing and serving of the motion filed on 26<sup>th</sup> November 2012 and also of the statement of Defence.

<sup>6</sup> As the defendant deposes:

<sup>30</sup> That as to paragraph 4 of the said Affidavit the Defendant says as follows the House of the Defendant was already built before the dealing in this land happened, therefore the Order of 500 meters for the Defendant to keep away is unrealistic. The Defendant should be given the chance to respond to the Motion filed on 26 November 2012 to get clear perspective of the matter.

<sup>7</sup> As the defendant deposes:

<sup>18</sup> That if the said Motion had been heard Order (i) would not have been made, it would have been varied to restraining order only without mentioning the 500 meters as the Defendant's House is bordering the Plaintiff's Sugar Cane.

- b. I reported the matter to the police where on 17<sup>th</sup> January 2013 before Police Inspector Bhagwat Dass of Lautoka Police Station he was to be charged where then he begged me to withdraw the complaint, and upon the counselling that he will not repeat to trespass in my land and not to annoy me, then I withdrew the complain to charge him.
  - c. The TLTB has also warned him for the unlawful actions, a copy of the letter dated 19<sup>th</sup> April 2007 will be presented in Court at the hearing.
42. The plaintiff says that prior to the filing of this action 238/12, the defendant had asked for a settlement after the case 207/2007 was struck out. He says that the defendant had offered to cultivate, harvest and send the cane to the mill from 2009-2011 (3 years) and that once the plaintiff has settled his \$24,000.00, the plaintiff should transfer the land back to the defendant.
43. The plaintiff says that he agreed to that arrangement “**considering his bullying and threatening and embarrassing me in front of my family and friends...**”. However, he said that the defendant lied so the plaintiff “re-took the possession of my land in 2012 and started farming where he started his same old cowardly action again”.
44. The plaintiff says that he filed the second (current) action but the defendant had twisted the story around before Justice Nawana and was telling the court that he (the defendant) was doing what he was doing because the plaintiff was not paying the defendant monies due pursuant to their arrangement. The plaintiff says that Nawana J would end up ordering him (plaintiff) to pay \$8,000.00 into court. This the plaintiff paid after having taken out a loan.
45. The plaintiff says that the defendant on the other hand has not complied or obeyed the said Court Order till to date and has neither appealed it.
46. Notably, the plaintiff, does not refute the allegation that Abeygunartne J had ordered that he file fresh injunction application after having noted that the injunction granted by Nawana J had lapsed – nor does the plaintiff deny that the Master had granted an extension even after the Order had lapsed and in spite of Abeygunaratne J’s directions. All that the plaintiff says is that the Master had

jurisdiction<sup>8</sup>. He also deposes that all that the Master was doing was to extend Nawana J's Orders, rather than making new Orders.

47. In response to the defendant's plea that his house was long constructed on the land well before their arrangement, the plaintiff deposes as follows:

If he pleads that his house is at the boarder of my land, then he should not take Law in his hands and that piece of land was given by me on grounds that he will help me and be a contract worker for my farm and took the piece of land deceiving me.

He has to proof with documents if he has any right to stay there and that if he is a real landowner.

48. The plaintiff further says that, in any event, the Orders of Nawana J were not obeyed well before any extension was made. The issue of extension and whether or not the Master had jurisdiction – are red herrings.

49. On the defendant's allegation that the plaintiff owes him money, the plaintiff deposes that if the defendant was right, the defendant should have just filed a civil claim against the plaintiff. However, instead of doing that, the defendant resorted to threats against the plaintiff and to other members of the public who might give evidence against him.

50. The plaintiff says that he was always willing to pay his balance but the defendant refused to take the payments then in 2007.

51. The plaintiff says that he has not been able to "enjoy the fruit of the land" and has been entering his land through the Police assistance and through Court Order. He says he is just trying to recover his loss of money over the years and trying to manage and revitalize the soil as it was been intoxicated/damaged due to no care taking over the years which was in unlawful possession of the defendant.

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<sup>8</sup> As he deposes:

As to paragraph 16, I believe that is the normal procedure of the Court and truly the Order has be extending only which I believe the Court Master has the power to do so, and if the Defendant was so concerned about the hearing, he should have been following the High Court rules, complying with the Orders and move the motion for hearing which is a fair result.

52. The plaintiff further says:

As to paragraph 37 (iii), I am ready to pay my balance of \$16,000.00 as per our agreement, \$8,000.00 has been paid in Court, and the Defendant should pay my \$66,137.15, the Defendant should pay me \$50,137.15 now after off-setting what I owe him.

53. The plaintiff further deposes as follows:

He is lying and was trying to threaten me away as he has been doing, he has went (sic) further and has illegally sublette (sic) a piece of my land and another i-taukei man who is his family and he is also a nuisance to me, forcefully planting cassava and is one of the suspect of burning my cane on 4<sup>th</sup> February 2015.

54. He adds that the defendant and his families, friends and agents are still giving him trouble and also disrupting his workers on his land<sup>9</sup>. Unless the defendant is removed from the land, the defendant will continue to give him trouble.

55. I observe that the default judgement in question is still in place. On 02 July 2013, Nacolawa and Company had filed a Notice of Motion under Order 14 Rule 11 of the High Court Rules 1988 seeking to set it aside. However, that application was dismissed by Master Ajmeer on 08 August 2014 with \$200 costs.

56. On 19 August 2015, the plaintiff would file a supplementary affidavit. By this

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<sup>9</sup> He deposes as follows:

On 29<sup>th</sup> October 2014, when the mill was about to close, a gang was cutting my cane where then the Defendant has scared and influenced and swore at some of the cutters and unlawfully trespassed and made threatening demand not to cut my cane. The matter was reported to the Police, report No. 16749/14.

I have given him many chances, the police and iTLTB have explained and warned him, The Commissioner Western's Officer also tried to warn him.

Due to many people crossing and trespassing my land to the Defendants house and while crossing they have been stepping and damaging my cane crops. I have put the no crossing signs at five spots and since February until May this year, my cane has been burnt five times and all sign stolen and my rear fence has been force down, police report numbers for reference: 1322/15, 889/3/15, 1209/15 and 228/15 and 583/5/15.

Due to the cane burnt on numerous occasions and taking more fertilizers on FSC account, the income has affected my TLTB ground rent as well as FDB bank repayment which I will produce at the time of the hearing.

There is community who wants to give evidence against the Defendant but is under threat he may harm them or their property as they are doing to me.

I have also informed by some the cane cutting gangs that they will not come to my farm unless the Defendant is out from there as they have also faced problem like road blocks, stopping them from harvesting etc.

Some AID agencies like Fair Trade have also informed me to sort the matter out before any help will come to me. Unless the Defendant is out of near my land, this trouble will never stop.

The Court has also given him directives and Orders to follow as well as verbal explanation in Court, it is now proven with concrete evidence that the Defendant cannot and will not change his habit of giving me loss and disturbance and annoyance and he has now continued to illegally trespassing unlawfully interfering in my farm works.

part from the above, the Defendant his families and friends and agents and unknown crowd staying with the Defendant are very annoying by staring at me, crossing the farm and produce, throwing rubbish (tins, plastic broken glass, dishes, meat bones, household/human waste etc.) in the farm and inside the crops and also doing toilet inside the crops.

affidavit, he simply regurgitates and expounds on the same pattern of behaviour that the defendant allegedly is exhibiting towards the plaintiff and the plaintiff's family and workers.

## **COMMENTS**

57. The defendant does not seriously refute the allegations that he has breached the restraining Orders of Nawana J.
58. I understand the defendant's frustration in not having been paid the balance of the purchase price. While his anger is understandable, it is not a valid excuse for his confrontational and appalling behaviour towards the plaintiff and the plaintiff's family.
59. Once the lease title was issued in the name of the plaintiff, the plaintiff thereby has the benefit of having a claim on the property which he can assert against the whole world, and in the case of an i-taukei land, the legal proprietary interest created by a valid an i-Taukei Lands Trust Board lease over such a land can, for the duration of the lease, can be asserted against an i-taukei member of the landholding unit or against the landholding unit as a whole.
60. What the defendant in this case is not entitled to do, whether as a member of the land holding unit, or whether he was the plaintiff's predecessor in title, is to trespass onto the land in question or to demand that the plaintiff vacates the land, or to accost the plaintiff about the balance of the purchase price.
61. If he is aggrieved about the balance of the purchase price, he should have filed a claim against the plaintiff to seek to recover the same.
62. I gather from the plaintiff's affidavit that he (plaintiff) had once suggested to the defendant to settle the balance of the purchase price from the cane proceeds – but that the defendant had insisted that he vacate the land.
63. As I have said, the defendant is in no position to demand that the plaintiff vacates the land. His right over the balance of the purchase price is a *right in personam*

which he should enforce by suing for payment. It is not a proprietary right which entitles him to repossession or demand that the plaintiff vacates the land.

64. Having said all that, there are a few additional comments I wish to make in relation to the applications before me.
65. The first is that I accept that the defendant's house was erected on the land where it sits, well before he even entered into negotiations with the plaintiff about the sale and purchase of the land. Whether that site is included within the plaintiff's leasehold or outside his leasehold is unclear to me. Only the evidence of a surveyor could clarify this.
66. As such, I am reluctant to use the location of the defendant's house as a basis for a finding that he was in contempt of the Orders and for a Committal Order.
67. Secondly, the consequences of a committal order are drastic in that it results in the deprivation of the liberty of a person. In my view, the Courts should be particularly guarded because of the quasi criminal nature of committal proceedings. Accordingly, even where a contemnor is clearly in contempt, committal should only be used as a last resort if there are more appropriate alternative remedies open to an applicant.
68. In this case, I think the appropriate avenue for the plaintiff to assert his rights was to sue for damages for trespass and also to lodge a police complaint for any alleged criminal trespass. If he has done so in this case, then the defendant judgment sum he has obtained should be enforced in other more appropriate enforcement proceedings.
69. Thirdly, the manner in which the plaintiff had obtained an extension of the Orders from the Master when the learned Judge Abeygunaratne had directed him to file a fresh application for restraining Orders – was simply shocking. The matter should not have been referred to the Master at all. The manner in which the plaintiff had gone about to secure the placement of the matter before the Master tantamounts to a forum shopping exercise. It was itself a display of utter disrespect to, and contemptuous of, the Learned Abeygunatne J's directions.

70. For the above reasons, I refuse to make the committal order.
71. As for the application for the release of the \$8,000 to the plaintiff, I see no reason why the said sum should continue to be held in Court. Accordingly, I hereby direct the Registry to forthwith release the said sum to the plaintiff.
72. Although I have refused to make any committal order, I am still of the view that the plaintiff is entitled to costs in having to make the applications. Accordingly, I order costs in favour of the plaintiff which I summarily assess at \$1,000 (one thousand dollars only).
73. I note that the plaintiff already has judgement entered against the defendant. This ruling effectively brings the substantive matter in this case to an end. It is now up to the plaintiff to enforce his judgement.

**ORDERS:**

- (i) Application for Committal Order refused.
- (ii) Order that the \$8000.00 held in the High Court Trust Account be released forthwith to the Plaintiff.
- (iii) Costs in favour of the Plaintiff in the sum of \$1000.00.



.....  
Anare Tuilevuka

**JUDGE**

28 September 2018