

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

CIVIL ACTION NO HBC 260 OF 2017

BETWEEN : **PANAPASA TALENIWESI** and **JASON MATAI aka PENI SIGA** of
Maqalevu Road, Nadi.

PLAINTIFF

AND : **PITA NASUKIREWA NAIDIRI** of Maqalevu Road, Nadi, Retired.

FIRST DEFENDANT

AND : **DIRECTOR OF LANDS**

SECOND DEFENDANT

Appearances : Mr E. Maopa for the plaintiff
Mr S. Nacolawa for the first defendant
Ms M. Faktoufon for the second defendant

Date of Trial : 25-27 February 2019

Date of Submission : 25 March 2019 (2nd defendant), 08 April 2019 (plaintiffs),
16 April 2019 (1st defendant)

Date of Judgment : 22 October 2019

J U D G M E N T

Introduction

[01] The plaintiff issued a writ of summons indorsed with the statement of claim against the defendants seeking the following relief:

- a) Special damages in the sum of \$620,704.00 (and continuing).
- b) General damages for fraud and misrepresentation in the sum of \$100,000.00.

- c) An order that the plaintiff has equitable right/interest to be on the property being Crown Lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 rood 24p land known as Vutisa in the District of Nadi, Province of Ba.
- d) An injunction Order restraining the defendants from interfering, dealing, removing and or evicting the plaintiff from Crown lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 rood 24p land known as Vutisa in the District of Nadi, Province of Ba.
- e) An Order that the Crown Lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 rod 24p land known as Vutisa in the District of Nadi Province of Ba registered under the defendant is obtained by fraud hence is cancelled forthwith.
- f) Cost on indemnity basis.
- g) Interest (Under Law Reform Miscellaneous Death and Interest) Cap 21.
- h) Further or any other relief the court decision is right.

[02] The action arises out of (i) misrepresentation by the first defendant; (ii) fraud against the first and the second defendants for issuance of Crown (now state) Lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 Rood and 24 perches land known as Vutisa in the District of Nadi Province of Ba to the first defendant; (iii) financial loss and (iv) equitable interest.

The facts

[03] The following are facts of the case as I have gathered from the statement of claim.

[04] Panapasa Taleniwesi, the first named plaintiff and Jason Matai aka Peni Siga, the second named plaintiff are father and son respectively.

- [05] The first defendant is the registered lessee of State Lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 rood 24 perches land known as Vutisa in the District of Nadi Province of Ba (*‘the property’*).
- [06] The lease (for the property) was effective from 1 January 2011, granted and registered unto the first defendant’s name on 12 January 2012.
- [07] Prior to 1 January 2011, the lessee on the property was the late Josefa Natau. His lease expired on 31 December 1995, being Crown Lease No. 8064 Lot 5 ND 5176 in the Tikina Nadi, Province of Ba (*‘the previous lease’*).
- [08] According to an inspection report dated 13 April 2010 and compiled by Fipe Waqalevu, Epi Turuva (the son of Josefa Natau) paid for the renewable of lease and it was recommended that renewal of lease be done first before transfer dealing to be consented later.
- [09] It is pleaded that the first plaintiff was assisting Epi Turuva financially to obtain a grant of Letter of Administration on the estate of Josefa Natau in order that the two work together to obtain a proper lease on the property. However, during the process the new lease on the property was granted on the first defendant.
- [10] Sometime in 2009, the first named plaintiff was introduced to the first defendant by a Senior Pastor of the United Pentecostal Church based in Nadi.

Representation

- [11] The plaintiffs allege that the first defendant represented to the plaintiff that he owned a piece of land at Maqalevu Nadi. The first defendant gave a written consent to the first named plaintiff and informed the Ministry of Fisheries to commence a joint venture project of prawn farming. Based on that representation, the plaintiff completed the 5 ponds and filled 3 ponds with fish and baby prawns with the assistance of the Ministry of Agriculture. The first 3 ponds when harvested, according to the plaintiffs, the gross sale would amount to \$74,088.00 for the first year.

- [12] Later the first plaintiff learned that the first defendant's representation was false and misleading.
- [13] On 5 April 2011, the first defendant applied for a new lease on the property. The application was granted and the new lease was registered under the first defendant's name on 1 January 2012, effective from 1 January 2011.
- [14] On 16 February 2012, the first defendant was registered as a sugar cane grower by the Sugar Industry Tribunal being Certificate of Registration No. 124/25040. He, the plaintiffs allege, failed to plant sugar cane on the property since the grant of the certificate.
- [15] It is also alleged that the plaintiff expended money for the construction and digging of the 5 ponds on the property and constructed a concrete dwelling house for the caretaker to look after the 5 ponds and that the Fisheries Department were assisting the plaintiff setting up the projects.
- [16] The statement of claim pleads that the plaintiff has been on the property since 2009 on the invitation and representation of the defendant.

Expenses & Losses

- [17] It is further alleged that the plaintiff has suffered financial loss through the misrepresentation and fraudulent act of the defendants. The break-down of the financial loss is as follows:

Particulars of financial loss

Expenses

<i>(i) Cost of hiring bulldozer & digging of ponds</i>	\$ 2,000.00
<i>(ii) Cost of preparation of ponds, breeding young Fish & prawns plus feeds etc (production cost)</i>	\$26,000.00

Loss

<i>(iii) Total Gross Income per annum</i>	\$74,088.00
<i>(iv) Total Gross Income for the last 8 years is <u>\$592,704.00</u> (and continuing)</i>	

Total Expenses & Loss = \$620,704.00

[18] It is on above facts the plaintiffs seek relief against the defendants.

Agreed facts

[19] At the pre-trial conference ('PTC') held between the parties, the following facts were admitted:

1. *The first defendant is the registered lessee of Crown Lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 rood 24 perches part of land known as Vutisa (the said property) in the District of Nadi Province of Ba.*
2. *The said lease was effective from 1 January 2011, for a term of 30 years and registered under the first defendant's name on 12 January 2012.*
3. *That the said property was formerly registered under the late Josefa Natau effective from 1 April 1973, for a term of 22 years and 9 months. The said lease expired on 31 December 1995, being Crown Lease No. 8064 (previous title).*
4. *The first named plaintiff was introduced to the first defendant by a senior pastor of the United Pentecostal Church sometime in 2009.*
5. *That on 5 April 2011, the first defendant applied for a new lease on the said property and such application was granted with a new lease registered unto his name.*
6. *That on 16 February 2012, the first defendant was registered as sugarcane grower by the Sugar Industry Tribunal being Certificate of Registration No. 124/25040.*

Issues to be determined

[20] The main issues to be determined by the court include:

1. *Whether the first named plaintiff was assisting Epi Turuva financially to obtain a grant of Letters of Administration on the Estate of Josefa Natau in order to work together to obtain proper lease of the said property?*

- [23] The first issue is whether the first plaintiff was assisting Epi Turuva financially to obtain a grant of Letters of Administration on the Estate of Josefa Natau in order to work together to obtain proper lease of the subject property.
- [24] It was common ground that Josefa Natau was the owner (lessee) of the subject property by virtue of a lease (Crown Lease No. 8064) issued to him to be effective from 1 April 1973, for a term of 22 years and 9 months. That lease expired on 31 December 1995(the previous lease).
- [25] PW1's evidence was that when he came to know that the first defendant was not the owner of the subject land, he approached and assisted Epi Turuva, the son of Josefa Natau to formalize the lease by way of Letters of Administration as Epi Turuva was the intended administrator of the Estate of Josefa Natau.
- [26] It has been pleaded in the statement of claim that the first plaintiff was assisting Epi Turuva financially to obtain a grant of Letters of Administration on the Estate of Josefa Natau in order that the two of them work together to obtain a proper lease on the property. However, during the process the new lease on the property was granted to the first defendant.
- [27] PW1's evidence on financially assisting Epi Turuva to formalize the lease on the subject property was straightforward. I have no reason to disbelieve his evidence on this aspect, and I am satisfied on the balance of probability that the first plaintiff had financially assisted Epi Turuva for obtaining the Letters of Administration in respect of the Estate of Josefa Natau.
- [28] Therefore, on the evidence, I find that the first plaintiff financially assisted Epi Turuva to obtain a grant of Letters of Administration over the Estate of Josefa Natau.

Whether the first defendant made representation to the plaintiff that was false and misleading?

- [29] I now turn to the main issue whether the first defendant made representation to the plaintiff that was false and misleading.
- [30] PW1 states in his evidence that: he was introduced to the first defendant by his brother-in-law that the first defendant has a piece of land at Maqalevu, Nadi

which is suitable for fish and prawn farming. He (PW1), his brother-in-law and the first defendant went to view that piece of land in Maqalevu and it was agreed to proceed with fish (tilapia) farming.

- [31] Afterwards, the subject property was inspected by the Fisheries Department and they confirmed the land was suitable for fish-tilapia farming.
- [32] The first defendant represented to the plaintiff that he is the owner of the property in question.
- [33] PW 2 also confirmed in his evidence that when he first met the first defendant in Maqalevu, Nadi DW1 introduced himself as the owner of land.
- [34] The first defendant confirms in a letter dated 1 May 2010 (PW1 confirmed receiving a copy of it) written to the Fisheries Department, Naduruloulou, Nausori (PEX1) that he is the owner of the subject land and expresses his willingness to have joint venture with Panapasa Taleniwesi in the fish and prawn farming. The letter reads:

'Maqalevu Farm Settlement

Nadi.

1st May 2010

Fisheries Department

Naduruloulou

Nausori,

TO WHOM IT MAY CONCERN

Dear Sir,

I Pita Nadiri a Cane Farmer and also the owner of the farm mentioned above, wish to make it known to the concerned, that I would like to venture out in other arms of Agriculture sector, the land in use right now is not fully utilized as part of it is not suitable for cane farming.

I am now informing the department of fisheries that I have an interested gentleman who is willing to partner me in his arm of Agriculture by the name of Mr Panapasa Taleniwesi of Kuluva Street, Newtown, Kinoya Suva and I Pita Nadiri as the owner of the said farm is willing to have a joint venture with Panapasa Talenawesi in the fish and prawn farming and in this regard, I wish to let the department concerned know that this is my letter of consent for the project to go ahead. Looking forward to your respond in near future.

Yours faithfully,

Pita Nadiri

SGD

Contacts: MB# 9375084, Easytel # 6231235'

- [35] From the above letter it appears that the first defendant gave a written consent to the plaintiff's project to go ahead and informed the Ministry of Fisheries the commencement of the joint venture project of prawn farming.
- [36] PW1 told the court that he believed what the first defendant said to him and proceeded to develop the land for fish farm at Maqalevu, and he hired a tractor to clear the top soil and digger and dug 5 ponds. He said the 5 ponds were to be shared among him-2 ponds, the first defendant-1 pond (as a gesture of giving the land) and 2 ponds for the Church. These all happened in 2009.
- [37] It will be noted that the first defendant was not the owner of the subject land sometime in 2009 and in 2010. It follows that he was not the owner of the subject land at the time when he made representation to PW1.
- [38] A lease was issued to him for the subject land on 12 January 2012 backdated January 2011.
- [39] For a claim based on misrepresentation to succeed, there must have been an unambiguous, false statement of existing fact, which induced the claimant to enter into the contract.

[40] On the evidence, I find that the first defendant had made an unambiguous false statement of existing fact to the plaintiff that he was the owner of the subject-land at the time when he was not actually so, such representation was fraudulent and that his conduct is giving rise to a claim for misrepresentation. It was fraudulent because he did not disclose the fact that he had applied for a lease for the subject-land and a decision on that application was yet to be taken by the second defendant. I also find that the first defendant's false statement of existing fact induced the plaintiff to enter into the joint venture investment project on the land spending significant amount of money.

[41] The first defendant's misrepresentation is actionable in tort. Therefore, the first defendant is liable to pay damages to the plaintiff for his misrepresentation.

[42] Damages may be available for misrepresentation in order to put the claimant into the position that it would have been in if the misrepresentation had not been made.

[43] The plaintiff claims damages in the sum of \$100,000.00 against the first defendant for his misrepresentation. There is evidence in court, which I accept, that the plaintiff cleared the land using tractor and digger, dug the 5 ponds and filled the ponds with baby tilapia with the view to generate income. I consider all these and allow a sum of \$60,000.00 to the plaintiff payable by the first defendant for his misrepresentation with interest at the rate of 6% from the date of writ of summons to the date of the judgment.

Whether any fraud was committed by the defendants during the process of the application?

[44] Another issue to be determined by the court is whether any fraud was committed by the defendants during the process of the application for lease made by the first defendant.

[45] Having found out that the first defendant was not the owner of the subject-land, the plaintiff enquired with the second defendant on the ownership of it. The second defendant had informed the plaintiff that Epi Turuva is the owner of the land and not the first defendant.

[46] Epi Turuva is the grandson of the late Josefa Natau, the lessee of the land in Maqalevu (subject-land) under Crown Lease No. 8064 (formerly farm No. 2811 CT 4205) (PE3). Epi Truruva also resides on that land.

[47] The Crown Lease No.8064 expired in December 1995.

[48] The plaintiff in his evidence said that an inspection was conducted and a report was compiled on the subject-land. The inspection report dated 13 April 2010 (PE6, pg.4) reads:

"Particulars of Lessee/Occupiers family... Lessee is deceased. Occupier is lessee's son Evi Turuva, school teacher, 27 years living in the subject land with 5 adults and 1 child.

Remarks... Mr. Turuva (Lessee's son) called into the office for payment of renewal fees and enquired on progress of the transfer (refer to p158) document that he lodged in 2008. He has been informed of the outstanding arrears to be paid off first. Mr. Turuva will get back to us about this.

Recommendation ... Recommend for renewal of lease first since renewal fees have been paid and then transfer dealing to be consented later subject to payment of arrears."

[49] It is apparent from the report that Mr Turuva has lodged a transfer document in 2008 and that it was recommended for renewal of lease first since renewal fees had been paid and then transfer dealing to be consented later subject to payment of arrears.

[50] In the meantime, it appears, the first defendant had approached the Lands Department in Lautoka and applied for issuance of a lease for the subject-land. He applied for a State Lease and paid the application fee of \$34.50 on 5 April 2011 (PE12). His application was incomplete as he did not answer questions Nos. 14, 15, 16, 20 to 24.

[51] 2DW1 said there was no inspection report compiled on the first defendant's application for lease.

[52] In his evidence, PW2 said one evening before issuance of new lease to the first defendant, Mr Wacokecoke, the Divisional Surveyor Western, came to the fish

farm in Maqalevu with the first defendant in the Lands Department vehicle looking at the map of the area spread on top of the vehicle bonnet and pointing at the boundaries of the land. When, PW2 said, he overheard them conversing in the itaukei language as he was only a few meters away from where the vehicle was parked.

- [53] 2DW1 admitted that it was unusual for the Divisional Surveyor Western to do inspection of the field. He also admitted that a lease is granted without inspection report.
- [54] The first defendant said that he has been cultivating the subject-land for more than 21 years. He has got a land adjacent to the subject-land and cultivating it. He may be cultivating his land (adjacent land) for more than 21 years. That is why the Divisional Surveyor identified the area that has been cultivated with sugar cane is to be leased to the first defendant. The plaintiff and Turuva is occupying the subject-land. There is no evidence in court that the first defendant cultivated the subject-land even though he was issued with a cane contract in 2012 (1DW1). The plaintiff has been occupying the subject-land since 2009. I do not accept the first defendant's evidence that he has been cultivating the subject-land for more than 21 years.
- [55] On the evidence, I find that the first defendant had fraudulently made the second defendant into belief that he has been cultivating the land for more 21 years. In fact, it not true. He had done so with a view to get a lease for the subject land while there was renewal of lease paid and there was recommendation for renewal be done first. I also find that first defendant got a lease for the subject-land by giving misleading and false information to the Lands Department in Lautoka. I further find that the second defendant had issued a lease to lease over the subject-land believing the first defendant misleading and/or incomplete information and/or false information, and that the lease to the first defendant had been issued improperly and/or mistakenly. The first defendant has not paid rent for the lease from the date of issuance of the lease (2012) to date. Therefore, I direct the second defendant to cancel the lease issued to the first defendant covering the subject-land.

[56] I do not find enough evidence to establish fraud against the second defendant. Therefore, I dismiss the claim that the second defendant was involved in fraud with the first defendant in issuing the lease to the first defendant.

Section 13 issue

[57] The first defendant submits that the arrangement between the first defendant and the plaintiff is *null and void* by virtue of section 13 of the State Lands Act as there was no consent of the Director of Lands to the arrangement.

[58] Section 13 declares any dealing respecting a State Land without the consent of the Director of Lands *null and void*.

[59] The first defendant is not entitled to raise the section 13 issue as I had determined that he had got the lease under his name fraudulently.

Limitation issue

[60] The second defendant had raised an issue that the plaintiff's claim is statute barred. However, they did not press this issue at the trial.

[61] In any event, the limitation period has no application to the plaintiffs' claim as they have pleaded fraud (see section 15 of the Limitation Act).

Costs

[62] As a successful party, the plaintiff is entitled to costs of these proceedings. I, take all into my account, summarily assess the costs at \$3,500.00.

The results

1. There shall be judgment in favour of the plaintiff.
2. The plaintiff shall have equitable right/interest on the property being Crown Lease No. 18766 being Lot 5 ND 5176 containing an area of 8 acres 1 rood 24p land known as Vutisa in the District of Nadi Province of Ba.

3. The first defendant shall pay general damages in the sum of \$60,000.00 to the plaintiff with 6% interest from the date of writ of summons till the date of this judgment.
4. Special damages refused.
5. Claim against the second defendant dismissed.
6. The first defendant shall pay summarily assessed costs of \$3,500.00 to the plaintiff

M.H. Mohamed Ajmeer
22/10/19

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

22 October 2019

Solicitors:

For the plaintiff: Babu Singh & Associates, Barristers & Solicitors

For the first defendant: Nacolawa & Company, Barrister & Solicitor

For the second defendant: Office of the Attorney General