

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

**CIVIL JURISDICTION**

**Civil Action No. 22 of 2017**

**BETWEEN** : **NILESH VIJAY RAM & SHALESHNI LATA CHARAN** both of  
Korovuto, Nadi and School Teachers respectively. **PLAINTIFFS**

**AND** : **JITEN KUMAR** of Nacovi Nadi, Cultivator. **1<sup>st</sup> DEFENDANT**

**AND** : **LOWERANCE ANAND NITESH** of Nacovi Nadi and  
**DIRECTOR OF LANDS** **2<sup>nd</sup> DEFENDANTS**

**Hearing** : **Monday, 25<sup>th</sup> November 2019**

**Appearances** : **(Ms) Marica Tavakuru for the plaintiffs**  
**The first defendant appeared in person**

**Ruling** : **Friday, 29<sup>th</sup> November 2019**

**RULING**

**(A) INTRODUCTION**

- (01) The matter before me stems from the plaintiffs' summons filed on 25<sup>th</sup> July 2019 seeking the grant of the following orders;
- (a) *That leave be granted to the Plaintiff to have the Sale & Purchase Agreement dated 1<sup>st</sup> June 2012 stamped at the Fiji Revenue and Customs office; and*
  - (b) *Costs of this application be costs in the cause; and*
  - (c) *That the time for service of this Summons be abridged.*
- (02) The application is made under the inherent jurisdiction of the Court. The plaintiffs' relied on the affidavit sworn by the first named plaintiff on 25.07.2019.
- (03) The first defendant opposed the application and filed an affidavit in opposition sworn on 07<sup>th</sup> November 2019. The plaintiffs filed an affidavit in reply sworn by the first named plaintiff on 21.11.2019.

The second defendants are not concerned with the summons.

**(B) THE AFFIDAVIT IN SUPPORT**

The affidavit sworn by the first named plaintiff is substantially as follows;

1. *THAT I am the first named Plaintiff in this proceeding and I am further authorised by the Second named Plaintiff to swear this affidavit on her behalf.*
2. *THAT in so far as the contents of this Affidavit are within my personal knowledge it is true and in so far as it is not within my personal knowledge, it is true to the best of my knowledge and information and belief.*
3. *THAT on the 1<sup>st</sup> of June 2012, we entered into a Sale and Purchase agreement (hereinafter "the agreement") with the First Defendant. Annexed hereto and marked with letter "NR1" is a copy of the said sale and purchase agreement.*
4. *THAT according to the said Sale and Purchase agreement we were to purchase from the First Defendant a partial piece of land having an area of 1009 square meters from all that piece of land comprised in Crown Lease No. 214939 Lot 26 on ND 3904 being the land known as Nacobi Settlement Subdivision and containing an area of 3.2299 hectares situated in the district of Nadi in the Island of Viti Levu ("the property").*
5. *THAT the consideration of the property was in the sum of \$20,000.00 (Twenty Thousand Dollars) out of which we have paid the sum of \$15,000.00 (Fifteen Thousand Dollars) to the First Defendant. Annexed hereto and marked "NR2" is a copy of the acknowledgement receipt.*
6. *THAT the First Defendant had failed to complete his legal obligations under the sale and purchase agreement and further without any notice provided to us or our solicitors, the First Defendant had applied and received the Crown Lease No. 829049 being the land known as Nacobi (part of) formerly Lot 26 ND 3904 containing an area of 1009 square meters situated in the district of Nadi in the Island of Viti Levu being Lot 2 on DP 10330.*
7. *THAT at all material times we were ready and willing to perform our outstanding obligations under the said agreement.*

8. THAT in respect of the agreement for the purchase of the property more fully set forth in the statement of claim filed in this proceedings, I say that as purchaser I am ready willing and able to complete.
9. THAT despite numerous requests by my Solicitors, the defendant refused to complete the contract and sustained possession of the said property. Annexed hereto and marked "NR3" is a copy of the notices sent by our solicitors.
10. THAT the First Defendant had similarly commenced prohibited building works on the subject property without the consent of the Department of lands in this matter. Annexed hereto and marked "NR4" is a copy of the notice to stop work by the Director of lands dated 2<sup>nd</sup> August 2016.
11. THAT we verily believe that the First Defendant has unlawfully and wrongfully, without our notice or knowledge had the said lease registered under his name from the outset the First Defendant was at all material times aware that the Plaintiffs had equitable interest in the subject property upon payment of \$15,000 (Fifteen Thousand dollars).
12. THAT I further say that I have registered my interest in respect of the subject property of the Crown Lease by lodging a Caveat claiming an equitable interest in the Land the subject of the Lease. The Caveat No. 830699 is registered in favour of the Plaintiffs. Annexed hereto and marked "NR5" is a copy of Caveat as registered as a notation on the title.
13. THAT First Defendant in his letter dated 4<sup>th</sup> February 2019 offered to settle the claim and has admitted that he stands liable and accountable for not transferring the subject property. Annexed hereto and marked "NR6" is a copy of letter dated 4<sup>th</sup> February 2019.
14. That the first defendant has similarly failed to file any statement of defence in this proceedings.
15. THAT the First Defendant has not been attending to this Court proceeding and in the circumstances he will not be prejudicial in any way whatsoever by the application to have the documents stamped.
16. THAT due to an oversight and inadvertence on the part of my then solicitors, the said Sale and Purchase Agreement was not duly stamped in terms of Section 100 of the Stamp Duties Act.
17. THAT we humbly seek leave of this Honourable Court to have the sale and purchase agreement dated 1<sup>st</sup> June 2012 duly stamped.

18. THAT I pray to this Honourable Court for order in terms herein.

(C) THE AFFIDAVIT IN RESPONSE

The first defendant swore an affidavit in response which is substantially as follows;

1. I am the 1<sup>st</sup> Defendant in the above action.
2. THAT in so far as the contents of this Affidavit are with my personal knowledge it is true and in so far as it is not within my personal knowledge and information and belief.
3. THAT as to the contents of paragraph 3 of the said Affidavit of the Plaintiff I say that prior to entering into the sale and purchase agreement I had informed the Plaintiff that I have already sold the piece of land to Mr Lorance Anand Nitesh. Attached and annexed is a copy of the Sales and Purchase made between myself and Mr Lorance Anand Nitesh dated 14<sup>th</sup> January 2004 marked "JK1".
4. THAT furthermore because of some communication error I assumed that Mr Nileshe does not want the land anymore and I had again sold it to the Plaintiff.
5. THAT I agree to the contents of paragraph 4 and further say that the same description is for the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant Sale and Purchase dated the 14<sup>th</sup> day of January 2004.
6. THAT I admit the contents of paragraph 5 is also admitted.
7. THAT I deny the contents of paragraph and say that upon the new lease being prepared by the Director of Lands I was advised by them that the lease needs to come under my name and then I have to transfer it unto the names of the new buyers. It was told to me that it is the procedure.
8. THAT as to paragraph 7 I say that even before this litigation had begun I had informed the Plaintiff that since the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant has already constructed his house on the subject land. I wanted to settle the matter by giving him a sum of \$20,000.00 or another piece of land to which the Plaintiff never reached and filed this claim and placed a Caveat on the land.
9. THAT as to paragraph 8 I say that I had from the very beginning indicated to the Plaintiff that since the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant has

*already constructed and he was my first buyer, I can give him back his money that he has paid me.*

10. *THAT as to paragraph 9 I say that I had received only one Notice sometimes in December 2016 after which I had consulted many lawyers and Crown Land and Police, who all had told me that I cannot transfer to the Plaintiff as the first buyer the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant was already in occupation of the Land and had also paid me for it prior to the Plaintiff.*
11. *I admit the contents of paragraph 10 but further say that it was not me who was doing the construction but the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant.*
12. *THAT I deny the allegation and further say that all parties concerned had knowledge that who was the first buyer of the property and the Plaintiff was the second. I had informed the Plaintiff that I had sold the same piece of Land to the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant sometimes in 2004 and had received money for it. The Plaintiff did not wish to settle the matter and wanted to go to court to seek damages and had verbally informed my neighbours that he will claim around \$200,000.00 Dollars.*
13. *THAT in regards to paragraph 12 I say that the Plaintiff's interest in the land from the very beginning was secondary because of the mere reason that I had informed the Plaintiff prior to receiving any money from him that I have already sold this piece of land but the Plaintiff in greed of more money never wanted to agree to my settlement when the disputed began.*
14. *THAT I admit the contents of paragraph 13 of the said Affidavit and repeat myself that this was a mistake and I at the time of entering into the second Sales and Purchase was minded that the 1<sup>st</sup> Named 2<sup>nd</sup> Defendant did not want the said piece of Land. But after he began to construct on the said land I had informed the Plaintiff that I will return your money and pay you extra \$5000.00 but the Plaintiff did not agree to me and wanted 2 blocks of Land instead.*
15. *THAT I deny the rest of the paragraphs and say that the Sales and Purchase entered into was never consented to my any governing body of this nation. That because of the Plaintiff's greediness and stubbornness I am stuck in between as to what to do, because when I try to refund the money he says that he wants that piece of land only and is coming up with ridiculous amounts of money's to be paid him.*
16. *THAT I object to the Sales and Purchase being stamped for the Plaintiff because this is the second Sales and Purchase that was made*

*and the Plaintiff knows that, as I want to put an end to this litigation and finish all this.*

17. *THAT the Plaintiff didn't seek any concern from any governing body and the consideration his talking about I am ready to refund it but I object to the Sales and Purchase being stamped.*
18. *THAT it is not now only that I am informing the Plaintiff of my wishes but I had relied to him the same sometimes in 2015.*

**(D) AFFIDAVIT IN REPLY**

In reply, the first named plaintiff says as follows in his affidavit sworn on 21.11.2019.

1. *THAT I am the first named Plaintiff in this action and I am duly authorised by the second named Plaintiff to depose this Affidavit on her behalf.*
2. *THAT I depose this Affidavit from my personal knowledge of the matters contained in this Affidavit or, where matters are not known to me personally, I have ascertained their truth by reference to its sources.*
3. *THAT I deny the contents of paragraph 3 of the first defendant's Affidavit in response (hereinafter referred to as the said affidavit) as the first defendant at the time of signing the Sale and Purchase Agreement never informed us that he had initially sold the subject land to the first named second defendant until the year 2015 when I had noticed the first named second defendant constructing a wooden shelter on the said subject property.*
4. *THAT I cannot comment on the contents of paragraph 4 of the said Affidavit as I am unaware of the same.*
5. *THAT in reply to paragraph 7 of the said Affidavit, at no time at all were we or our Solicitors informed and/or notified by the first defendant with regards to this advice he received from the Director of Lands about a new lease being issued in the first defendant's name prior to transferring the same to us. I reiterate that the first defendant had failed to complete his legal obligations under the Sale and Purchase Agreement dated 1<sup>st</sup> June 2012 (hereinafter referred to as the said Agreement).*
6. *THAT paragraph 8 of the said Affidavit is denied and I reiterate paragraph 3 above. Further to this, we have not defaulted in our*

obligations under the said Agreement and repeat paragraph 7 of my Affidavit in Support filed on 25<sup>th</sup> July 2019. In fact, what the first defendant states in his Affidavit in Opposition is contrary to what was indicated in his former solicitor's letter dated 20<sup>th</sup> June 2015 whereby the Agreement made with the first named second defendant on 14<sup>th</sup> January 2004 was terminated by him due to the first named second defendant's breach of the agreement. Attached hereto and marked as annexure "NR1" is a copy of the said letter by Rams Law.

7. THAT paragraph 9 of the said Affidavit is denied and again I reiterate paragraph 3 and 6 above.
8. THAT in reply to paragraph 10, my Solicitors caused a notice dated 19<sup>th</sup> December 2016 to be served to and was received by the first defendant and there was also another Notice that was served to the first defendant by my former Solicitor's Babu Singh & Associates on 4<sup>th</sup> August 2015. However, as to the rest of the contents of paragraph 10, I have no knowledge of the same and therefore cannot comment on it. Annexed hereto and marked as annexure "NR2" is a copy of the letter dated 4<sup>th</sup> August 2015.
9. THAT further to the above, on 2<sup>nd</sup> August 2016 the first Defendant received a letter from the office of the second named second defendant to stop building works commenced on the said property as the same was being done without the consent of the second named second defendant. There was nothing in the said letter from the office of the second named second defendant nor anything from the Police for that matter about the transfer to me and my wife not being possible as the subject property has already been sold to the first named second defendant. Thus, the first defendant is fabricating the facts of this case to cover his fraudulent act. Annexed hereto and marked as annexure "NR3" is a copy of the said letter dated 2<sup>nd</sup> August 2016.
10. THAT as to paragraph 11 of the said Affidavit, the first defendant cannot approbate and reprobate as he has clearly admitted that prohibited building works were commenced on the subject property without the consent of the Department of Lands. In fact, annexure "NR3" above clearly shows that the Stop Work Notice from the Director of Lands was addressed to the first defendant as the registered lessee of the said property.
11. THAT in reply to paragraph 12, I do not want to settle the matter and have chosen instead to seek redress from this Court because of the first defendant's fraudulent act. Further to this, I again reiterate that I am unaware of any previous dealings that the first defendant had with the first named second defendant until the year 2015 when I noticed the

*first named second defendant constructing a wooden shelter on the subject property.*

12. *THAT further to the above, earlier this year, that is, sometimes in February and March of this year, the first defendant had made a proposal for settlement and I had responded to the same requesting that one of the empty residential Lots (either Lot 1 or 4) be given to me as an alternative to Lot 2 which the first defendant is now claiming to have already sold to the first named second defendant. Annexed hereto and marked as annexure "NR4" is a copy of email exchanged between us and our Solicitors.*
13. *THAT in response to paragraph 13, I have an equitable interest on the subject property and have lodged a Caveat to protect my said interest. Additionally, my interest on the subject property is not secondary as alluded to by the first defendant and I was never informed of any prior dealing made by the first defendant regarding the same piece of land at the time of signing the said agreement and was at the time a bona fide purchaser.*
14. *THAT in response to paragraph 14, the first defendant has admitted to being liable and accountable for his fraudulent acts in not transferring the subject property to me and my wife.*
15. *THAT the first defendant has clearly stated in his Affidavit that at the time of entering into the Agreement with us he was aware that the first named second defendant did not want the subject property and further to this annexure "NR1" which is a letter from Rams Law dated 20<sup>th</sup> June 2015 which clearly stipulates that the said Agreement between the first defendant and the first named second defendant has been terminated due to the first named second defendant's breach of the same agreement.*
16. *THAT in response to paragraph 15, consent application together with the transfer documents were lodged by my former solicitors to Lands Department on 12<sup>th</sup> June 2012 when the first defendant renege on his obligations under the said Agreement by obtaining a new Lease in his name. Annexed hereto and marked as annexure "NR5" is a copy of the said letter.*
17. *THAT in response to paragraphs 16, 17 and 18, I have been advised by my Solicitors that the reason provided by the first defendant as to not consenting to the stamping of the said Agreement is misconceived as it is at the discretion of this Court to make such an order and I am of the view that my substantive claim has substantial merits that deserves to be determined by this Honourable Court in terms of the two agreements that the first defendant has made with both me and*



*the first named second defendant for the purchase of the subject property.*

18. *THAT in addition to this, I have also been advised by my Solicitors that the Sale and Purchase Agreement between the first defendant and the first named second defendant which the first defendant has clearly consented to being stamped has already been terminated and/or revoked by the first defendant thus if anything it is our Sale and Purchase Agreement which should be ordered for stamping so we can proceed further in determining the merits of this matter in the interest of justice to all parties.*
19. *THAT given the above, I pray that this Honourable Court in the interest of justice grant orders for the stamping of the said Agreement which I through my Solicitors undertake to abide by and have the same done at the earliest.*

(E) DISCUSSION

- (01) This is an application by the plaintiffs seeking leave of the court to have the Sale and Purchase Agreement dated 01.06.2012 be stamped (late stamp) at the Fiji Revenue and Customs Office.
- (02) On the 01<sup>st</sup> June 2012, the plaintiffs' (Purchasers) entered into a Sale and Purchase Agreement with the first defendant (Vendor) to purchase the land comprised in Crown Lease No:- 214939, Lot 26, ND. 3904 known as Nacobi Settlement Subdivision containing an area of 3.2299 hectares.
- (03) The consideration of the property was \$20,000.00 out of which the plaintiffs have paid a sum of \$15,000.00 to the first defendant.
- (04) The plaintiffs say that they were ready and willing to perform their obligations under the contract and allege that the first defendant refused to complete the contract by transferring the subject lot to the plaintiffs. The plaintiffs further allege that after the expiry of Crown Lease No:- 214939, the first defendant has taken out a fresh lease on the same D.P. No:- 10330 described in Crown Lease No:- 829049.
- (05) The plaintiffs seek specific performance of the agreement by the first defendant.
- (06) It is pertinent to note section 41 of the Stamp Duties Act which provides:

*'Except as aforesaid no instrument executed in Fiji or relating (where soever executed) to any property situate or to any matter or thing done or to be*

*done in any part of Fiji shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful or available in law or equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.'*

According to section 41 of the Stamp Duties Act, no instrument executed in Fiji shall be given in evidence unless it is duly stamped in accordance with the law in force at the time when it was first executed.

The Sale and Purchase Agreement is not stamped and as such is not admissible under section 41 of the Stamp duties act (Cap 205).

The court has discretion to order document to be stamped (**late stamping**) under section 100(2) of the Stamp Duties Act which provides;

*(2) But if any such document is through mistake or inadvertence received, filed or used without being properly stamped, the court in which the same is so received, filed or used may, if it thinks fit, order that the same be stamped, and thereupon such document shall be as valid as if it had been properly stamped in the first instance.*

- (07) The plaintiffs' seek an order of the court to stamp the Sale and Purchase Agreement. The first defendant opposed the application. The objection is;

*THAT I object to the Sales and Purchase being stamped for the Plaintiff because this is the second Sales and Purchase that was made and the Plaintiff knows that, as I want to put an end to this litigation and finish all this.*

With respect, I cannot agree.

- (08) The powers of the court appear to be sufficiently wide to enable the omission to be rectified without the necessity of rejecting the document which was not duly stamped.

No doubt it is of importance that the proper duty should be paid on all instruments which are to be given in evidence but where the matter is open to remedy it is preferable that the duty be paid with any due penalty so as to enable the ends of justice to be served than that the courts should be deprived of evidence which might be material to a proper resolution of the case which is being tried<sup>1</sup>.

---

<sup>1</sup> Njie and Others v. Amadou Cora (The Gambia) [1997] UKPC 41 (28<sup>th</sup> July,1997)

- (09) Section 39 (1) requires a judge to take notice of any insufficiency in the stamping of any instrument chargeable with duty which is produced in evidence before him. It goes on to provide that it may be received in evidence on payment of the amount of the unpaid duty and certain penalties.
- (10) Therefore, in order to serve the ends of justice, I grant the plaintiffs' application under section 100 (2) of the Stamp duties Act to stamp the Sale and Purchase Agreement (late stamping).

### ORDERS

- (1) The plaintiffs' application for late stamping of the Sale and Purchase Agreement is allowed.
- (2) There will be no order as to costs.



At Lautoka  
Friday, 29<sup>th</sup> November, 2019

  
.....  
Jude Nanayakkara  
Judge