

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

CIVIL ACTION NO. HBC 78 OF 1995

BETWEEN : **CHANDRA DEO** and **SURUJ WATI** both of Johnson Road,
Lautoka.

PLAINTIFFS

AND : **VIJAY KUMAR**, President **KAMLA PRASAD**, Sirdar **UMESH CHAND** Secretary, **BISUN DEO**, **PRASANJIT NARAYAN** Committee Members of Teidamu LT 31 Cane Harvesting Gang sued on behalf and as representing all members of the said gang Except the Plaintiffs.

DEFENDANTS

Appearances : Mr S. Krishna for plaintiffs
No appearance for the defendants
Date of Hearing : 22 February 2019
Date of Ruling : 22 February 2019

R U L I N G

[01] By his *ex-parte* notice of motion filed on 10 December 2018, which is supported by an affidavit of Chandar Deo (the first named plaintiff), the plaintiffs seek the following orders:

- a. *That the sum of \$11,000.00 be paid to Fiji Revenue and Customs Services being the Capital Gains Tax from the sale price; (as per annexure CD 4)*
- b. *As ordered at order 6, the sum of \$13,541.66 be paid to plaintiffs being their legal costs for recovery of the Judgement sum from the sale price; (as per annexure CD 5)*

- c. *That the plaintiffs be paid the sum of \$8,468.50 to be summarily assessed by the Court being the indemnity cost ordered by his Lordship, Justice D.D. Finnigan on 17 July 2008, in favour of the plaintiffs.*
- d. *That the plaintiff is entitled to post judgment interest at a rate of 4% from date of judgment pronounced on 4 November 2008, pursuant to section 2 of the Law Reforms (Miscellaneous Provisions) (Death and Interest) Amendment Act 2011 till date of the payment being the sum of \$21,173.29.*
- e. *That the plaintiffs be paid the sum of \$3,350.00 as the cost already ordered by the court on 20 July, 2015 and 27 March, 2014 (as per the annexure CD 8).*

[02] The application is made pursuant to section 86 (2) and (3) of the Property Law Act and the inherent jurisdiction of the court.

[03] The plaintiff obtained an order imposing a charge on the defendant's property for securing payment of the money that became due under the judgment of the court and the debtor had defaulted in payment of such sum. The plaintiffs applied for and obtained an order for the sale of the debtor's property under section 86 (2) of the Property Law Act 1971.

[04] The plaintiffs now seek consequential order following the sale of the property. I have carefully perused the application, the supporting affidavit and the documents attached to it.

[05] I am convinced that I should make the orders the plaintiff is seeking to complete the sale. The sale was by order of the Court for the recovery of the Judgment sum. I would, therefore, grant the orders as prayed for except for the changes I have suggested in that the plaintiff will be entitled to indemnity costs of \$5,000.00, which I have assessed to be reasonable and \$15,000.00 as post interest which is a portion of the interest amount calculated by the plaintiff. I have allowed a part of the post interest sum because the plaintiffs had delayed the execution process significantly. The judgment was delivered in favour of the

plaintiff on 17 July 2008. The plaintiff was able to enforce it only in 2017. As regards to indemnity costs (ordered by Finnigan J on 17 July 2008 in favour of the plaintiffs), the plaintiffs tendered their detailed bill of cost for \$8,468.50. I have allowed only \$5,000.00 as reasonable indemnity costs. Accordingly, the plaintiffs are entitled to offset the proceeds of sale as follows:

PARTICULARS		
Amount received after the sale of the property.		\$110,000.00
Judgment sum to be paid to the plaintiff	\$ 50,951.02	
Sum to be paid to Fiji Revenue and Customs Services being Capital Gains Tax	\$ 11,000.00	
Sum to be deducted being the legal costs for recovery of the judgment sum to be paid to the plaintiffs.	\$ 13,541.66	
Indemnity cost ordered by his Lordship, Justice Finnigan on 17 July 2008, in favour of the plaintiff and amount to be assessed as in the sum stated.	\$ 5,000.00	
Post judgment interest at a rate of 4%.	\$ 15,000.00	
Plaintiff's to be paid the cost already ordered by the court on 20 July 2015 and 27 March 2014.	\$ 3,350.00	
	\$98,842.68	\$110,000.00
Balance (to be deposited into court)		\$ 11,157.32

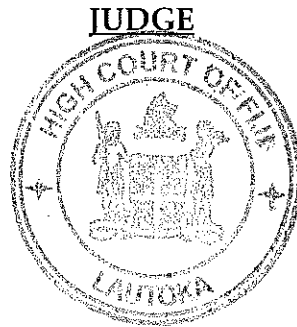
[06] After offsetting as allowed by the court (see the table above), the plaintiffs' solicitors must deposit the remainder of \$11,157.32 into court forthwith, which the defendants will be entitled to claim.

The result

1. After offsetting as allowed by the court, the plaintiffs' solicitor shall deposit the remainder of \$11,157.32 into court forthwith.
2. The defendants will be entitled to claim the remainder of \$11,157.32.
3. There will be no order as to costs.

M.H. Mohamed Ajmeer
22/02/19

M.H. Mohamed Ajmeer



**At Lautoka
22 February 2019**

Solicitors:

For the plaintiffs: M/s. Krishna & Co, Barristers & Solicitors