

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No: HBC 41 of 2021

BETWEEN: **SATYA NAND GONDAR aka SATYA NAND GOUNDAN** of Siberia,
Labasa.

APPLICANT

A N D: **RAMES CHANDAR GOUNDON** of 16 Mali Place, Suva.

1st RESPONDENT

A N D: **DIRECTOR OF LANDS** of GCC Complex, Nasova, Suva.

2nd RESPONDENT

AND: **ATTORNEY GENERAL OF FIJI** of Suvavou House, Victoria Parade, Suva.

3rd RESPONDENT

Appearance : Mr. Rishal Dayal for the Applicant
 : Mr. Benjamin Ram for the 1st Respondent
 : Ms. Mary Motofaga for the 2nd and 3rd Respondents

Hearing : Monday, 23rd May, 2022 at 9.30 a.m

Decision : Tuesday, 26th July, 2022 at 9.00am

DECISION

(A) INTRODUCTION

[01]. The matter before me stems from the applicant's Originating Summons filed on 21.09.2021 seeking the grant of the following orders:

1. *An Order that State Lease No. 19550 (LD 4/9/3356) known as PT. of Labasa & Naiyaca (formerly Lot 2 SO 965) situated at Labasa, Macuata be subdivided by the 2nd Respondent into two equal lots and*

2. *The equal share will be given to the defendant, 9 feet away from the plaintiff's residence and the remaining piece of land to be divided between the plaintiff and the defendant.*
3. *All the claim and counter-claim by consent are struck out.*
4. *Parties to bear their own costs."*

[03]. As per the consent orders, the applicant and the first respondent were to attend to subdivision of subject land comprised in State Lease No. 19550.

[04]. The applicant alleges that despite numerous requests, the first respondent has failed and refused to facilitate the subdivision of the said property.

[05]. The applicant asserted the followings in his affidavit sworn on 16.09.2021 (reference is made to paragraph (10) to (15) of the applicant's affidavit).

10. *THAT after the Orders were made, I had engaged Mr Muni Dutt of Keystone Consultants who provided me with a quotation of \$5,000.00 (Five Thousand Dollars) to attend to subdivision works. Annexed hereto and marked with letter "C" is a copy of 'To Whom It May Concern' letter dated 20th July, 2021 from Mr Munil Dutt of Keystone Consultants.*
11. *THAT I gave the quotation to the 1st Respondent and requested the 1st Respondent to pay me \$2,500.00 (Two Thousand Five Hundred Dollars), being 50% of the quoted price, so that I can instruct the surveyors to commence the subdivision works.*
12. *THAT my surveyor has also prepared a proposed subdivision plan of Lot 2 on Plan SO 556. Annexed hereto and marked with letter "D" is a copy of the proposed subdivision plan.*
13. *THAT I have obtained the relevant consents from the Sugar Industry Tribunal (SIT) and Ministry of Agriculture (MOA) for the subdivision of the lot (Lot 2) but the 1st Defendant has refused and/or neglected to help in the subdivision of the said lot. Annexed hereto and marked with letter "E" and "F" are copies of the consent from the Sugar Industry Tribunal (SIT) and Ministry of Agriculture (MOA).*

- i. I disagree with paragraph 14 and say that I will pay 50% of the surveyor's fees amounting to \$2,500.00 on the condition that he meets me and amends the subdivision plan;*
 - j. I disagree with paragraph 15 and say that I have also made significant amount of payment to the Lands Department by clearing the rental arrears, paid for the lease documentation fees. Annexed and marked "B" are copies of the receipt.*
 - K. I disagree with paragraph 16 and say that this is a frivolous and vexatious application made by the Applicant who could have sorted this matter out via alternative dispute resolution.*
- 2. That I would like to further say that the Applicant built his house and runs his business in the name of Satya Nand Goundar Tyre Centre and Car Wash without seeking consent of the 2nd Respondent.*
- 3. That my solicitors were liaising with the Applicant's solicitors to settle this matter via terms of settlement but neither the Applicant nor his solicitors understood our approach. Annexed and marked "C" is copy of the Letter from my solicitors.*
- 4. That I being the eldest son in my family, I paid all the debts that left unpaid by my late father at Westpac Banking Corporation in the amount of \$33,000.00.*
- 5. That the Applicant reaped the benefits of all my hard work and efforts trying to maintain our property. I feel disgusted about the attitude/approach taken by my brother/Applicant to resort to Court to settle this matter.*
- 6. That I verily believe that the Applicant's solicitors are misguiding the Applicant and not making the proper application. The Applicant's solicitors are deliberately procrastinating this matter in order to increase their legal fees for which they have made a deal with the Applicant to transfer one of the lots so that the fees will be set off.*
- 7. From 1996 till date, the Applicant benefitted from all the proceeds of the farm produce and not a single cent was given to me or any of my siblings.*
- 8. That I pray this action to struck out and for the 2nd Respondent and 3rd Respondent to take a strict approach and look into the allegations I have laid against the Applicant and his solicitors.*

1. *That my responses to the Applicant's Affidavit in Support sworn on 16 September 2021 and filed on 21 September 2021 follows:*
 - a. *I agree with paragraphs 1 and 2;*
 - b. *I neither agree nor disagree with paragraph 3;*
 - c. *I agree with paragraphs 4 — 8;*
 - d. *I disagree with paragraph 9 and say that the surveyor till date has not met me for a discussion on the manner in which the subdivision will take place despite my son and me making 2 visits to his office/yard and 3 attempts to meet him at a scheduled time and place which he failed to show up. I kept calling on the number of the surveyor however he continuously ignored my call nor did he return my calls;*
 - e. *I agree with paragraph 10;*
 - f. *I agree with paragraph 11 on condition that the surveyor meets me in person;*
 - g. *I agree with paragraph 12 but say that the subdivision plan is biased as the better part of the property is being given to the Applicant. Thus, this is the reason why I was/am adamant to meet the surveyor;*
 - h. *I disagree with paragraph 13 and say that I took the initial steps to have the subdivision on forth going, however, the Applicant did not agree with the surveyor I chose as the Applicant said that the surveyors fees was too high. Annexed and marked "A" is copy of the quotation from Land Planning, Surveying & Engineering Consultants (Fiji) Professional Land Surveying Inc and my application to Lands Department for the appointment of my surveyor;*
 - i. *I disagree with paragraph 14 and say that I will pay 50% of the a surveyors fees amounting to \$2,500.00 on the condition that he meets me and amends the subdivision plan;*
 - j. *I disagree with paragraph 15 and say that I have also made significant amount of payment to the Lands Department by clearing the rental arrears, paid for the lease documentation fees. Annexed and marked "B" are copies of the receipt.*
 - K. *I disagree with paragraph 16 and say that this is a frivolous and vexatious application made by the Applicant who could have sorted this matter out via alternative dispute resolution.*