

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

CIVIL ACTION NO. HBC 81 OF 2019

BETWEEN : **NARENDRA PRASAD** of Vitogo, Paipai, Lautoka
PLAINTIFF

AND : **MAHENDRA SINGH** formerly of Vitogo, Paipai, Lautoka now residing at
58 Odelia Crescent, Plumpton NSW 2761, Australia.
1ST DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD** a body incorporated under the iTaukei
Land Trust Act Cap 134 with its registered office at 431 Victoria Parade,
Suva
**2ND DEFENDANT
(NOMINAL)**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Ms. Bhavna with Ms. Singh, for the Plaintiff
Mr. A. K. Singh, for the 1st Defendant
Ms. Naukarawa, 2nd Defendant

DATE OF TRIAL : 29th & 30th March 2023.

WRITTEN SUBMISSIONS: By the Plaintiff on 27th April 2023.
By the 1st Defendant on 16th May 2023.

DATE OF JUDGMENT : 10th August, 2023

JUDGMENT

A. INTRODUCTION:

1. This is an action commenced by the plaintiff by way his Writ of Summons and the Statement of Claim dated and filed on 5th April 2019, seeking the following reliefs against the 1st defendant.
 - a. *That Energy Fiji Limited (EFL) be directed to restore electricity connection forthwith to meter number 116724 belonging to the residential premises at Paipai, Vitogo Lautoka comprised in TLTB Ref No. 4/7/5838 upon payment of security deposit and any dues to EFL;*
 - b. *An injunction permanently restraining the 1st Defendant by his servants and agents from interfering with the Plaintiff's quite enjoyment of the property comprised in TLTB Ref No. 4/7/5838 land known as Vitogo subdivision (pt) Lot 18 in the Tikina of Vitogo on ND 5117.*

- c. *That 1st Defendant by himself and/or his servants and/or his servants and/or his agents and/or whosoever be permanently restrained form either physically or verbally or howsoever from interfering with the Plaintiff in cultivating and harvesting sugarcane grown on farm No. 1213 and on all that native land known as Vakasoso Lot 1 on ND 2410 in the Tikina of Vitogo in the Province of Ba and containing an area of 15 acres and 1 rood on native lease with Native Lease No. 28778;*
 - d. *An order for the 1st Defendant to specifically perform the agreement between the parties;*
 - e. *That the Fiji Sugar Corporation do withhold all cane proceeds upon sugarcane from No. 1213 Lovu Sector until the determination of the Agricultural Tribunal Ref W/D 03/19.*
 - f. *An order that all future sugarcane proceeds upon cane farm No. 1213 Lovu Sector be paid into the Honourable Court until the determination of the Agricultural Tribunal Ref W/D 03/19;*
 - g. *Damages for Harassment;*
 - h. *General Equitable Damages;*
 - i. *Interest on Damages found due to the Plaintiff under the common law and or the Law Reform (Miscellaneous Provisions) (Death and Interest) at such rate and for such a period as the court deems just;*
 - j. *Cost.*
 - k. *Such further or other orders this court deems just and expedient.*
2. The 2nd defendant was named only as a nominal defendant and no relief against it was sought. An interim injunction order against the 1st defendant, being granted by my brother judge A. Tuilevuka, as per prayers a, b, c, & d of the Ex-parte Notice of Motion filed and supported on the 5th April 2019 are currently in force.

B. PLEADINGS:

3. The Plaintiff in his Statement of Claim, *inter- alia*, says as follows THAT:
- a. The 1st defendant is the registered proprietor of Native Lease No. 28778 the land known as Vakasoso Lot 1 on ND 2410 in the Tikina of Vitogo in the province of Ba having an area of 15 acres and 1 rood ("Agricultural Land") and Native Agreement Lease TLTB reference No. 4/7/5838 the Land known as Vitogo Sub division part of lot 18 on ND 5117 having an area of 1169 square meters ("Residential Land").
 - b. The 2nd defendant is the head lessor of both the Agricultural land and Residential Land.
 - c. In 2008, the 1st defendant approached and offered to sell his both Agricultural and residential Lands to him together with dwelling erected on the residential land, Massey

Ferguson Tractor bearing registration no. BJ-612 and assorted farming tools with farm implements.

- d. Upon further talks and negotiations, he accepted the offer of sale and entered into an oral agreement for the sale and purchase for a sum of \$120,000.00.
 - e. It was agreed that he would cultivate Sugarcane in the Agriculture Land and the proceeds out the cane harvest, would be directly deposited to the 1st defendant's ANZ bank account No. 2304122 by the Fiji Sugar Corporation, which would serve as payment for the consideration of the sale and purchase.
 - f. The 1st defendant agreed that upon receiving the full payment, he would obtain the consent from relevant authorities and thereafter transfer the property.
 - g. The 1st defendant, having executed a Power of Attorney on 7th December 2008 authorizing him to manage and deal with the farm, migrated to Australia and he took possession of the properties, commenced cultivating and harvesting Sugarcane and the proceeds were deposited as aforesaid.
 - h. Since 2009 to 31st May 2018, total sum of \$129,908.00 was deposited. He also undertook the payment of the household insurance premium under the 1st defendant's name.
 - i. Upon realizing that the full payment had been done by the year 2017, he requested the 1st defendant to transfer the properties to his name and despite numerous requests, the 1st defendant failed to transfer and breached the agreement and started harassing him and his family.
 - j. On 28th March 2019 he received a Notice to Vacate through 1st defendant's solicitor demanding that he vacate the property. He over the years made substantial investments for the upgrading, renovations and development of the property after the Cyclone Winston in 2017.
4. The 1st defendant in his Statement of defence, inter-alia, took up the following position THAT:
- a. He never approached the plaintiff offering his (2) properties or Tractor or Farm implements for sale as averred in paragraph 3 of the Statement of claim. The plaintiff at all material times was acting as his Farm Manager, for which he was adequately remunerated.
 - b. He executed a limited General Power of Attorney on 7th November 2008 to allow the plaintiff to carry out his works as his Farm Manager. He admit that the plaintiff took possession of the properties, commenced cultivating and harvesting. Hallowed the plaintiff to take possession of the residential property only to reside there when his services are needed at the farm land.
 - c. The plaintiff paid the rentals to the 2nd defendant and insurance premium utilizing the monies that he gave to the plaintiff. The plaintiff never spent any sum of his own money and it was he who spent around \$40,000.00 for the renovation of the residential property.

- d. There was no oral or written agreement for his properties with the plaintiff and he never received any money from the plaintiff. He relies on Section 12 of the iTAUKEI / Native Land Trust Act (CAP 134), which requires the consent for dealing and Section 59 (d) of the Indemnity, Guarantee and Bailment Act (CAP 232).
 - e. By making his counter claim, the 1st defendant states that the plaintiff improperly managed the Farm, sold the Fertilizer bags that were received from FSC to outsiders, deceitfully transferred the Tractor No. BJ-612 unto his name and despite the Notice to vacate dated 28th March 2019, he is illegally occupying the property by refusing and neglecting to vacate.
5. **1st Defendant Claims the following reliefs against the Plaintiff;**
- a. *The Plaintiff's Claim be dismissed with costs.*
 - b. *The Plaintiff to immediately give up vacant possession of the properties described in paragraph 1 of the claim.*
 - c. *Damages for unlawful occupation of the 1st Defendant's properties.*
 - d. *Declaration that the Plaintiff unlawfully acquired the 1st Defendant's tractor.*
 - e. *Damages for unlawful acquisition of the 1st Defendant's Mercy Ferguson Tractor.*
 - f. *Costs. Interest and Such further or other relief as this Honourable Court shall deem just.*
6. The Minutes of the Pre-Trial Conference dated 5th March 2021 records inter-alia, the following:

Agreed Facts

- 1) The 1st Defendant is the Registered proprietor of Native Lease No: 28778 the land known as Vakasoso Lot 1 on ND 2410 in the Tikina of Vitogo in the province of Ba having an area of 15 acres and 1 road ("Agricultural Land") and Native Agreement for Lease TLTB reference No: 4/7/5838 the land known as Vitogo Subdivision part of Lot 18 on ND5117 having an area of 1169 square meters ("Residential Land").
- 2) The 2nd Defendant is the head lessor of the Agricultural and Residential land.
- 3) The 1st Defendant had executed a power of attorney on 7th November 2008.
- 4) All proceeds from the harvest of sugarcane from the farm were directly deposited by the Fiji Sugarcane Corporation into the 1st Defendant's Australia & New Zealand Bank ("ANZ Bank") account no: 2304122.
- 5) The Plaintiff has already made an application to the Agricultural Tribunal seeking declaration of tenancy and the outcome of the application is pending.

Current issues

- 6) Although, counsel for both the parties had agreed on 21 issues, the pivotal issues that would conveniently dispose this matter are as follows:
- a. Whether in 2008, the 1st Defendant approached the Plaintiff and offered to sell both his agricultural and residential land to Plaintiff together with the following properties:
 - (i) One 3-bedroom concrete residential dwelling erected on the residential land;
 - (ii) One Mercy Ferguson tractor registration No. BJ 612;
 - (iii) Assorted farming tools and farm implements.
 - b. Whether the Plaintiff's claim is statutorily barred under section 59 of the Indemnity Bailment and Guarantee Act?
 - c. Whether the said alleged Oral agreement is in breach of Section 12 of the Native Lands Trust Act (NLT Act)?
 - d. Whether the 1st Defendant purchased the Truck registration number AB 106?
 - e. Whether Plaintiff committed fraud when he transferred 1st Defendant's Tractor in his name?

C. EVIDENCE:

7. At the trial, the deceased plaintiff's son, Nishmal Prasad Sharma (PW-1), Mosese Malakai Ratu (PW-2), Nilesh Prasad (PW-3) and Mohamed Mosheim Khan (PW-4) gave evidence for and on behalf of the plaintiff marking annexures from "P.ex-1" to "P.ex 10. On the other hand the 1st defendant Mahendra Singh (DW-1), Rajnesh Kumar (DW-2), Rajesh Chand (DW-3) gave evidence on behalf of the 1st defendant by marking annexures as "D-ex-1" to "Dex-8".
8. I will not be reproducing here the whole evidence: Instead I may refer to the most relevant and crucial parts of it as and when necessary during my analysis below.

D. ANALYSIS:

ISSUE NO-01.

9. The Plaintiff in his Statement of Claim and his Son PW-1 in his evidence have unequivocally admitted the fact that the 1st defendant is the registered proprietor of both the properties, namely, Native Lease 28778 the land known as Vasacoso Lot 1 on ND 2410 in the Tikina of Vitogo in the province of Ba having an area of 15 acres and 1 rood ("**Agricultural Land**") and Native Agreement Lease TLTB reference No. 4/7/5838 the Land known as Vitogo Sub division part of lot 18 on ND 5117 having an area of 1169 square meters ("**Residential Land**"). This is not disputed by the 2nd defendant too.

10. The plaintiff as registered proprietor has an indefeasible title to the land, in terms of section 39(1) of the Land Transfer Act (cap131).

Section 39 has its counterpart in Australia and New Zealand. In *Jaideep Kishore v Krishna Kumari and Diven Balram, (2001) 1 FLR 299* at page 303 Gates J (as his Lordship then was) quoted the following passage from *Fels and Another v Knowles, (1907) 26 NZLR 604* at 620 which contains the essence of the principle of indefeasibility of title:

"The cardinal principle of the statute is that the register is everything, and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world". (Emphasis added)

11. The first and foremost issue that begs adjudication here is whether the 1st defendant had made an offer to the plaintiff for the sale of his both Agricultural and Residential properties in the manner stated in the statement of claim and averred by the PW-1 in his evidence. The "PW-1" is the Son of the deceased original plaintiff, Narendra Prasad. He has been substituted in place of the original plaintiff.
12. The plaintiff in paragraph 3 of his Statement of Claim (SOC) has stated that in the year 2008 the 1st defendant approached him and offered to sell the property. In paragraph 4 of the SOC he states further that "**Upon further talks and negotiations**" he accepted the 1st defendant's offer of Sale. But what his Son, the PW-1, under his cross examination has stated is that he doesn't know about 2008 meetings, but in 2009 they had an agreement.
13. The 1st defendant's stern position is that the plaintiff and his wife came and met him at his house in October 2008 and requested his permission to occupy the farm house. The fact that the 1st defendant migrated to Australia on 8th December 2008 and prior to that he had executed the Power of Attorney on 7th November 2008 are not disputed by the plaintiff. The Power of Attorney bears evidence to that effect. Then the pertinent question that arises is how could an agreement be entered in 2009 as the PW-1 states under his cross examination. (Vide page 19 of the transcript).
14. PW-1, Nishmal Prasad Sharma, does not give evidence in relation to any meeting, discussion or agreement in the year 2008. All what he says is about the purported agreement in the year 2009 and the 1st defendant came to his place and offered to sell his house. It is observed that neither a single question nor at least a suggestion was made to the 1st defendant disputing the 1st defendant's position in this regard when he was under cross examination by the plaintiff's counsel. The PW-1's stance during his evidence that his deceased father used to discuss with him all what he did in relation to this matter is false. Plaintiff's 1st witness utterly failed to substantiate his position that the 1st Defendant had an idea of selling or proposed to sell the properties to the plaintiff.

Re- Power of Attorney:

15. PW-1 in his evidence has categorically accepted that the Power of Attorney was given by the 1st defendant for his Father, the plaintiff, in relation to the Management of the Sugar Cane farm at the Sugar Corporation.

The Power of Attorney does not embody even a single clause to mean that the 1st defendant had the intention of selling or transferring of the respective 2 lands covered by Leases (Agriculture & Residential) unto the plaintiff or authorizing the plaintiff to attend for such affairs at iTAUKEI Land Trust Board.

In his evidence under cross examination, PW-1 clearly admitted that nowhere in the limited Power of Attorney it is mentioned that Mr. Mahendra Singh is selling the properties to his Father. He also admitted that the Power of Attorney was given to manage the Farm, attend the meetings and not for his father to be a tenant or a purchaser (Vide page 24 of the transcript)

If it was for the sale, transfer, alienate or to deal with the land, it would have been specifically stated therein, which would have required a special Power of Attorney. The relevant Clerk from the FSC also gave clear evidence as to preparation of it, the purpose of it and under what circumstances it was granted. Neither an intention of selling the land by the 1st defendant to the plaintiff was expressed by it nor can it be reasonably inferred from the contents of it.

Re-Various Payments.

16. The PW-1 through his evidence has not been successful in substantiating that the payments of rentals to the iTAUKEI Board, the Insurance Premium to the New India Assurance for the House Insurance on behalf of the 1st defendants were made by his father's Money. Conversely, the 1st defendant through his convincing oral evidence and by producing his Bank Statement and relevant documents, has satisfied the Court that it was he who provided monies to make the above payments. The withdrawal pattern and the amounts so withdrawn also substantiate his position in that regard.

Apart from the above, the payments such as remuneration to the plaintiff for the management of the Farm, labor charges, expenses for house renovations, and purchase price of the Truck bearing registration No: AB -106 etc are also substantiated by adducing documentary evidence such as Bank Statement, Receipts marked as "Dex-4A" "Dex-4b" and "Dex-4c". The plaintiff's witness Son has not disputed all these payments. He has not given any evidence that such expenses were met by his Father.

If the 1st defendant had intended to sell both his Farm, his residential land with his 3 bedroom ancestral house, his Tractor and other farm utensils to the plaintiff, he need not have provided his own monies for those purposes as aforesaid. Series of questions that arise in this regard are as follows;

- i. Why should the 1st defendant keep on paying for the insurance for the House, if he had intended to sell the house to the plaintiff?
- ii. Why he should opt for the, purported, purchase price to be paid unto him from his own income from the farm, after all spending a colossal amount of his own money for the Fertilizer, Tractor, Truck and other expenses?
- iii. Why he should spend around \$40,000.00 on repairs of the house if it was to be sold to the plaintiff?

- iv. Why should he have waited for 10 years till the plaintiff pays him by harvesting sugar Cane from his own farm, when he could have, possibly, sold both the lands in the market for a highest price and easily received the money?
- v. Why should he pay the plaintiff a salary, and labor charges for the workers at the Farm, if there was a sale and purchase to be eventuated at the end?

The answers to the above questions will, undoubtedly, prove that the verbal agreement or understanding discussions between the plaintiff and the 1st defendant was not for anything but for managing the 1st defendant's Farm, while occupying the House in the residential lot with the leave and license of the 1st defendant, as the plaintiff was in need of a place to stay since he was to be evicted from his former house.

Even if it is assumed for the sake of argument that there in fact was a verbal agreement for the sale and purchase as averred by the plaintiff, his claim will be defeated in limine by the Section 59 of the **Indemnity, Bailment and Guarantee Act**, which will be discussed next in this judgment.

- 17. The 1st defendant, his witnesses namely, Rajesh Kumar ("DW-1") and Rajesh Chand Raj ("DW-3") have given convincing evidence, which withstood the cross examination by the plaintiff's counsel. The 1st defendant's evidence was corroborated by that of the "DW-1" and "DW-2". I reject the evidence of the PW-1 and his other witnesses. Accordingly, for the reasons stated in foregoing paragraphs, the issue number (1) will necessarily attract an affirmative answer in favor of the 1st defendant to the effect that the 1st defendant had never ever intended to sell his land to the plaintiff.

ISSUE No-02.

Whether the plaintiff's claim is statutorily barred under Section 59 of the Indemnity, Bailment and Guarantee Act?

- 18. The 1st defendant in his Statement of defence has denied the purported verbal agreement for the sale of his lands and has taken up the main defence to the effect that the alleged oral agreement is contrary to section 59 of the Indemnity, Guarantee and Bailment Act.
- 19. The pivotal issue which lie at the heart of this case, as recorded at the pre-trial conference, is whether the plaintiff's case is statutorily barred. The answer to this contention lies in section 59(d) of the **Indemnity, Guarantee and Bailment Act, (cap 232)**, which precludes a party from enforcing an agreement relating to land "***unless the agreement upon which such action is to be brought or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized***". Accordingly, the oral contract pleaded by the plaintiff, which was not proved, is invalid and unenforceable. No a valid cause of action could have arisen in favor of the plaintiff
- 20. In the final analysis, I find that there is no binding sale and purchase agreement between the parties to the proceeding. In law, the plaintiff cannot bring an action for specific performance on

the purported verbal agreement nor can he rely on the same to continue in occupation of the land as the agreement is not legally binding for want of compliance of s. 59(d) of the IGBA Act.

21. I am fortified in the conclusion that I am reaching by the decision of the Court of Appeal in **Latchman BalaAppellant AND Wasu Dewan....Respondent [1998] FJCA 54 Civil Appeal No. ABU 0007 of 1998S (27 November 1998)**. The Court of Appeal dismissed an appeal against a decision of Lyons J, who, although he "found there was an oral agreement between the parties for the sale and purchase of the house....." had dismissed the claim, because the agreement for the sale and purchase of the house which was in writing and signed by the appellant **was not signed by the respondent**.
22. In **Tuidama v Prasad [2011] FJHC 236; HBC 508 of 2007 (28 April 2011)** his Lordship the Hon. A.L.B. Muthunayagam had to decide on similar facts regarding money paid by the defendant to take possession of the plaintiff's property. There was no written agreement. His Lordship stated "in my judgment, the defendant's contention that the purchase "was verbal" and that the other receipts of payments for the purchase price of the land had been destroyed in the floods and others misplaced is unconvincing"
23. In this case before me, it is undisputed fact that there is no a sale and Purchase Agreement signed by and between the parties. Thus, no alternative available other than dismissing the plaintiff's action and entering judgment for the 1st defendant. Hence issue No-2 decided in favor of the 1st defendant.

ISSUE NO-3:

Whether the said alleged Oral agreement is in breach of section 12 of the Native Land Trust Act?

24. Section 12 of the Native Land Trust Act states as follows.

12. -(1) Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void:

25. In the case at hand the above section is applicable. It will place an absolute bar against any sale, transfer, sublease alienation, construction, or dealing of any kind without the consent of NLTB; and declares that such dealings are null and void as opposed to them being declared voidable. Thus, the issue No. 3 attracts an answer in favor of the 1st defendant.

ISSUE 4

Whether the 1st defendant purchased the truck Registration No. AB 106?

26. The 1st defendant has given clear and convincing evidence as to how the Truck bearing registration number AB 106 had to be purchased and registered in the name of the plaintiff. The payment of money for this purpose is substantiated by the annexure "Dex-4B" apart from oral evidence of the 1st defendant. The evidence in this regard found at page 69 of the transcript is overwhelming.

The PW1 failed to substantiate that it was his father who financed the purchasing of the Truck. The 1st defendant's evidence in this regard remains unchallenged. This Court stands convinced that it was on a proposal made by the plaintiff, the Truck was purchased and the plaintiff got it registered in his name with the ulterior motive of owning it. Thus, on the evidence adduced, the 1st defendant is entitled to have a declaration that the said Truck bearing Registration No. AB - 106 was purchased by the he 1st defendant.

ISSUE 5:

Whether the plaintiff committed fraud when he transferred the 1st defendant's tractor in his name?

27. The Tractor being a Farm vehicle has remained with no requirement for registration as long as it was not used on the public roads. The plaintiff's son (PW1) led no documentary evidence to show that his father was pressured by the LTA to have it registered.

The 1st defendant gave evidence as per page 73 of the transcript that he purchased the Tractor in the year 1984 from BP, used it only in the farm, not on the government roads and he had not intended to sell it or to give it to the plaintiff, except for it to be used in the Farm. From the exhibits marked "Dex 7 A & B" it is clear that the plaintiff has got it registered in his name on 12th April 2019 after he was asked to vacate the premises. It is clear that the plaintiff has proceeded to have it registered in his name after Notice to vacate dated 28th March 2019 was served on him and after obtaining an injunction order against the 1st defendant.

The registration number of the Tractor given by the 1st defendant should stand corrected as KA 570. The year of purchasing of it stated by the 1st defendant should be either 1985 or thereafter as evidenced by the Certificate of registration marked "Dex-7A", which states the year & month of manufacture as 1985 April. These errors in the number and the year, as I see, could be due to the forgetfulness of the 1st defendant owing to his age now, which according to him is 84. Thus, fraud on the plaintiff's part in this regard is obvious and no contrary evidence has been placed before the Court.

ISSUE 6.

On Vacant Possession.

28. The overall evidence and the circumstances show that the plaintiff has no right in law or equity to continue to be the Farm Manager and to cultivate the Farm Land and/or to possess and occupy the residential land and premises in question. The plaintiff does not dispute the receipt of the notice to vacate dated 28th March 2019. The 1st defendant had not granted the plaintiff license to occupy the properties and do the farming in perpetuity. In my judgment, the 1st

defendant, being the registered proprietor, is entitled for the vacant possession thereof. The plaintiff has not adduced any justifiable ground for him to continue in occupation thereof.

ISSUE 7.

Damages:

29. For the reasons adumbrated above, this Court is fully convinced that the plaintiff is not entitled for any relief, including monetary damages. On the other hand, the 1st defendant did not plead and/ or pray for any special damages or loss of income from the Sugarcane Farm. However, he has prayed for damages on account of the unlawful occupation of the plaintiff and his family, despite the notice to vacate dated 28th March 2019 was served on him by the 1st defendant's Solicitors. The 1st defendant has claimed \$1,000.00 as monthly damages under this head. But he has not adduced any evidence to the effect that he could have earned such an amount. However, after considering all the factors, I decide to grant damages at the rate of \$ 750, 00 per month payable from the month of April 2019 till the vacant possession is handed over. There shall be Pre-judgment interest at 3% per annum and post judgment interest at 4% per annum till the damages are fully paid and settled.
30. The 1st defendant has also prayed for a declaration that the plaintiff has unlawfully acquired the 1st defendant's "Massey Ferguson" Tractor (bearing registration No. KA 570) and for damages on it as per paragraphs (d) & (e) to the prayer to the Statement of defence counter claim.
31. On the evidence led, I am inclined to grant the declaration as prayed for and an order for the transferring the said Tractor back to the 1st defendant, failing of which for a sum of \$10,000.00 to be paid in lieu of it, within 28 days from the date of Judgment.
32. However, he has not asked for any relief in respect of the Truck bearing registration No. AB-106, except for raising an issue to the effect "**whether the 1st defendant purchased the Truck?** On the evidence adduced, this Court stands convinced that the said Truck was purchased utilizing the money paid by the 1st defendant and no contrary was proved by the plaintiff. However, no relief prayed for in that regard.

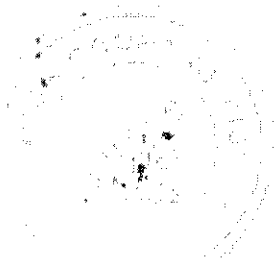
COSTS:

33. The trust placed by the 1st defendant in the plaintiff, by appointing him as his Farm Manager and entrusting the lands and properties, has been breached by the plaintiff. The 1st defendant, undoubtedly, would have incurred enormous cost in defending this action and pursuing his legitimate claims, having to travel all the way from Australia for last 4 years. The 1st defendant is seeking \$10,000.00 as costs. In my summary assessment, a sum of \$7,500. (Seven thousand five hundred dollars) would do justice, payable by the plaintiff unto the 1st defendant within 28 days. From the date of this Judgment.

E. FINAL ORDERS:

- a. The reliefs claimed by the plaintiff are declined.

- b. The Plaintiff's action is hereby dismissed.
- c. The 1st defendant's counter claims succeed.
- d. The plaintiff shall handover the vacant possession of the farm and the residential lands and premises unto the 1st defendant within 28 days from today.
- e. The plaintiff shall pay damages in a sum of \$ 750.00 per month, on account of his unlawful occupation from 1st April 2019 until the 1st defendant is restored to the possession.
- f. The plaintiff shall transfer the ownership and handover the possession of the "Massey Ferguson" Tractor (KA-570) unto the 1st defendant forthwith or pay \$10,000.00 alternatively.
- g. The interim injunction orders issued on 5th April 2019 stand expired.
- h. The plaintiff shall pay a sum of \$ 7,500.00 being the summarily assessed costs, within 28 days.
- i. The 1st defendant is entitled for 3% pre-judgment interest and 4% post-judgment interest on the sum awarded as damages, till the entire sum is fully paid.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 10th day of August, 2023.

SOLICITORS:

For the Plaintiff:

Ravineet Charan Lawyers, Barristers & Solicitors

For the 1st Defendants:

AK Singh Law