

**IN THE HIGH COURT OF FIJI AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 88 of 2016**

**BETWEEN**

**CHANDAR LOK** of Natabua, Lautoka, Retired Businessman.

**PLAINTIFF**

**AND**

**THE DIRECTOR OF LANDS**

**FIRST DEFENDANT**

**AND**

**THE ATTORNEY GENERAL**

**SECOND DEFENDANT**

**Counsel** : Ms. Naidu J. for the Plaintiff  
Mr. Mainavolau J. for the Defendants

**Date(s) of Hearing** : 4<sup>th</sup> & 5<sup>th</sup> July 2023

**Date of Judgment** : 14<sup>th</sup> August 2023

## JUDGMENT

[1] The plaintiff filed the Originating summons which was continued as it was begun by a writ seeking the following reliefs:

1. The 1<sup>st</sup> defendant do give survey plans and/or registered survey plans for the area of two acres and seven perches covered by the 1<sup>st</sup> defendant's caveat No. 121064 against the plaintiff's Native Lease No. 44656 on Lot 1 DP 1700 taken by the 1<sup>st</sup> defendant pursuant to sale and purchase agreement dated 7<sup>th</sup> January 1971, within 10 days.
2. An order that the 1<sup>st</sup> defendant do pay the plaintiff compensation agreed to be paid under agreement dated 7<sup>th</sup> January 1971 whereby the 1<sup>st</sup> defendant 2 acres and 7 perches.
3. The 1<sup>st</sup> defendant do pay compensation to the plaintiff in the sum of \$108,000.00 or as assessed by the court.
4. The defendants do pay damages to the plaintiff for not giving him possession of the old road area for not providing him with proper registered survey plan and proper varied lease to him which has stopped him from enforcing his rights to full usage of the area he is entitled to.

5. Alternatively that Caveat No. 121064 against Native Lease No. 443656 on Lot 1 DP 1700 do be removed.
6. The defendants do pay the plaintiff the costs of this action.

[2] The plaintiff's case is that pursuant to a court order the subject land was transferred to the plaintiff by the Registrar of Titles. The previous owner of this land was his father Balliya. Mr. Balliya and then Director of Lands entered into a sale and purchase agreement and pursuant to the said agreement the Director of Lands purchased the area of two acres and seven perches for the construction of Vatukoula / Tavua Road.

[3] The plaintiff alleges that due to the aforesaid acquisition of the land he suffered loss in not being able to cultivate the land and in losing the flat and the 1<sup>st</sup> defendant did not pay compensation.

[4] At the pre-trial conference the parties admitted the following facts:

1. The plaintiff is registered owner of an Agricultural Lease No. 44656.
2. It is agricultural land and comes under the provisions of the Land Transfer Act and is situated at Toko, Tavua.
3. The 1<sup>st</sup> defendant Mr. Robert Hume Renault entered into a sale and purchase agreement dated 7<sup>th</sup> January 1971 in respect of Lease No. 44656 purchasing two acres and seven perches of the Lease with the consent of the iTaukei Land Trusts Board (hereinafter called iLTB) as Landlord to extend or build the Tavus Vatokoula Highway.
4. The plaintiff has been already compensated for the purchase of the land. The land taken was flat land on which there was planted sugar cane. Most of the rest of the farm is hilly.
5. The 1<sup>st</sup> defendant on the basis of the sale agreement lodged a caveat No. 12064 against the lease which still stands. This was registered by the Registrar of Titles on 23<sup>rd</sup> September 1971.

6. Native Lease No. 44656 (hereinafter called "the lease") has sugar cane contract upon it.
7. The 1<sup>st</sup> defendant's workman and agents had entered into possession virtually immediately after the signing and they built a large tar sealed road upon the same which is the main road serving the area.

[5] The plaintiff's first witness Mr Taniela Wacokecoko is the plaintiff's surveyor who surveyed the subject land. He testified that due to the road running through the land it is divided into two parts. In his evidence he also referred to his affidavit filed on 16<sup>th</sup> August 2016 where he confirms the same. In cross-examination of this witness the learned counsel for the defendants tendered the survey report prepared by the Department of Lands which confirms the evidence of this witness and states further that tar sealed public road on Lot 1 DP 1700 to be of an area of 4919m<sup>2</sup>.

[6] The plaintiff's evidence is that the terms and conditions of the sale and purchase agreement have not been complied with the 1<sup>st</sup> defendant. He states further that he did not get any compensation nor his father received compensation for the acquisition. The 1<sup>st</sup> defendant and the plaintiff's father entered into the sale and purchase agreement in the year 1971 and at the time the land was valued before acquisition the plaintiff's father had been declared bankrupt. The plaintiff admits that all his father's financial matters were handled by the Official receiver. The discussions as to the value of the portion of land acquired had been between the 1<sup>st</sup> defendant and the official receiver.

[7] Paragraph 2(1)(b) of the sale and purchase agreement provides:

Such sum, being the true value thereof, as shall be agreed by and between the parties hereto as being such true value or as shall be determined by any court having jurisdiction to determine the same.

[8] The discussions as to the value of the land acquired, in this matter, were between the 1<sup>st</sup> defendant and the Official Receiver. By his memorandum (D3) dated 24<sup>th</sup> April 1972 the Official Receiver made an offer of \$730.00 to the 1<sup>st</sup> defendant and same was paid to the Official on 15<sup>th</sup> May 1972 (D2). The witness Mr Jope Livai, Principal Valuer of the Valuation Department testified that the actual area acquired is less than that extent of the land mentioned in the sale and purchase agreement. The valuation as agreed between the Official Receiver and the 1<sup>st</sup> defendant cannot be challenged after more than fifty years and also it was an agreement between the parties who had, at that time, the authority to come to an understanding on the contract sum.

[9] In this matter the survey was done in 2019 and since then the Director of Lands has not been able to finalise the transaction and affect the partial surrender. The witness Mr Jope Lavai said in his evidence that after the survey the Director of Lands must affect a partial surrender before removing the caveat. However, in this matter for the last four years after the survey was done the Director of Lands failed to finalise the transfer. The reasons offered by the Mr Livai were due to lack of funds and there are lot of other ongoing projects. In my view the long delay has deprived the plaintiff from cultivation and therefore, the Director of Lands must act expeditiously to finalise the transaction. The plaintiff is seeking an order directing the Director of Lands to register the survey plan and to remove the caveat within ten days. Taking all the circumstances of this case into consideration, this court is of the view that it is reasonable to order the Director of Lands to complete the process and remove the caveat within a year.

[11] The plaintiff claims compensation in the sum of \$108,000.00. In the affidavit in support the plaintiff states that the area taken over was the best part of the farm land producing 80 tons per one acre and at the rate of \$30 per ton the plaintiff could have earned \$2,400.00 per year. However, compensation has already been paid to the Official Receiver which includes everything. It is also important to

note that a caveat does not have the effect of restraining the occupier of the land from cultivating it. The plaintiff is therefore, not entitled to damages for loss of cultivation.

[12] For the reasons set out above the court makes the following orders.

### ORDERS

1. The 1<sup>st</sup> defendant is ordered to give survey plans and/or registered survey plans for the area of two acres and seven perches covered by the 1<sup>st</sup> defendant's caveat No. 121064 against the plaintiff's Native Lease No. 44656 on Lot 1 DP 1700 taken by the 1<sup>st</sup> defendant pursuant to sale and purchase agreement dated 7<sup>th</sup> January 1971, within three months from the date of the judgment.
2. The plaintiff's claim for damages is denied.
3. There will be no order for costs.

  
Lyone Seneviratne



JUDGE

14<sup>th</sup> August 2023