

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 60 of 2020

Patterson Brothers Shipping Company Pte Limited

Plaintiff

v

Fiji Road Authority

Defendant

Counsel: Mr S. Valenitabua with Mr V. Filipe for the plaintiff
Mr R. Prakash for the defendant

Date of hearing: 6th October, 2020

Date of Judgment: 15th February, 2023

Judgment

1. The plaintiff, in its originating summons seeks declaration that:
 - a. Sections 2 and 6 of the Fiji Road Authority Act, (Act) in effect, excludes or does not include Ellington wharf or if it includes Ellington wharf, then it excludes the plaintiff's boat ramp or ramp face located in Ellington wharf.
 - b. The plaintiff's boat ramp is not a land and civil infrastructure within the definition of "road" or "roads" in the Act.
 - c. The defendant has no statutory power and jurisdiction over Ellington wharf nor authority to control and/or manage the shipping operations out of the plaintiff's boat ramp or ramp face ongoing since 1984, like Fiji Road Authority, (FRA) did between September and November, 2019.

The supporting affidavit

2. The affidavit filed by the Managing Director of the plaintiff states that the plaintiff constructed and is in possession of a ramp face at Ellington wharf in Rakiraki since 1984. The plaintiffs' ramp face at the end of the wharf causeway was the only infrastructure in existence. There were no roads, causeway nor a ramp face. There was never and currently no jetty nor wharf where ships can berth in Ellington.
3. In 1966, the Colonial Sugar Refining Company applied for a lease to be issued to its subsidiary South Pacific Sugar Mills Limited. It was initially an Approval Notice of lease of Crown foreshore land known as Nasogai Point for the construction of a wharf. Subsequently, a Crown lease was issued by the Director of Lands to South Pacific Sugar Mills Limited for 50 years commencing 1st January, 1967. The plaintiff's construction and usage of the causeway was subject to use by Fiji Sugar Corporation Ltd, (FSC) to load sugar bags from the wharf to boats.
4. The plaintiff was granted exclusive access to the ramp face. It is the owner of the ramp face. From 1984 to- date, any person has to seek their consent or approval to use the ramp face. The plaintiff's vessel provided a daily return from the Port of Ellington to Nabouwalu and Rotuma. The ramp face is not a public jetty. It is a commercial ramp face not for public use, but exclusively for the use of the plaintiff. The only structures remaining and operating to-date are the causeway and the ramp face constructed by the plaintiff.

The affidavit in opposition

5. The affidavit states that Ellington is and has always been treated as a jetty, though it is often incorrectly referred to as Ellington wharf. The jetty at Ellington consists of causeway and ramp both constructed on State foreshore land. The infrastructure of Ellington was on State Foreshore Lease held by the Director of Lands. The plaintiff has failed to provide evidence that FSC gave it permission to construct a ramp on the land leased to FSC. Since FSC surrendered its lease in 1985, the infrastructure at Ellington has been used by members of the public to travel from Ellington to Nabouwalu. Other shipping operators also use the facility to berth their vessels and for passengers to disembark. The custodian of the land and infrastructure is the Director of Lands.

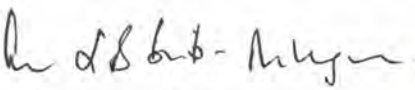
6. The Act included “jetties” within the definition of “roads” to allow the defendant to have rights to construct, renew, maintain and manage jetties as well as roads. The definition covers all land and civil infrastructure constructed by any Municipal Council or Government body that is used as or facilitates a public right of passage for the movement of vehicles and pedestrians and includes all jetties that facilitate a public right of passage. By virtue of these provisions, the defendant has been maintaining, constructing, renewing and managing jetty infrastructure in the country. The public have been using the infrastructure at Ellington for decades.
7. In October 2019, the plaintiff blocked access to the jetty head to prevent the vessels of Goundar Shipping Limited from berthing and offloading its passengers. The defendant, the Maritime Safety Authority and Fijian Competition and Consumer Commission used their enforcement powers and informed the plaintiff that its actions were illegal. The infrastructure built does not belong to the plaintiff. It is in the public’s interest that the infrastructure at Ellington continues to be vested in the defendant.

The determination

8. The plaintiff contends that the FRA has no authority over Ellington wharf and the definition of “road” or “roads” in the Act does not include its ramp face, as it is not a public jetty.
9. The plaintiff claims it constructed and is in possession of a ramp face at Ellington wharf with a “*generally accepted permission, consent, approval, sublease or licence given by FSC and then the State from 1985*”.
10. As pointed out by the defendant, the plaintiff has failed to provide evidence that FSC gave it permission to construct a ramp on the land leased to FSC.
11. In that context, I would note that the plaintiff by letter of 12th June, 1984, to the FSC refers to its application to use the ramp and “*beg(s)*” FSC to reconsider its policy not to let anyone use the facilities at Ellington.

12. On 6th February, 2019, and 12th June, 2019, the plaintiff applied to the Director of Lands to lease “*Ellington Jetty*”.
13. The defendant responded on 29th August, 2019, stating that “*FRA is not in a position to sublease this area as the jetty is a public jetty and the causeway, etc is reserved for public use. Leasing the precincts of the jetty to a corporation may hinder the public’ free access and unrestricted use of the facility*”.
14. On 3rd October, 2019, the Director of Lands wrote to the plaintiff as follows:
 - i) *The issue regarding Ellington Jetty is now classified as national issue.*
 - ii) *It is also confirmed that the ownership of the jetty has been surrendered back to the Government and now under the administration of the Fiji Road Authority.*
 - iii) *...*
 - iv) *And it is now concluded during our last sitting that all ship/boat operators with licence holders be allowed to use the jetty...*
15. In my view, the above correspondence establishes that the plaintiff has no rights on the ramp and hence sought a lease of “*Ellington Jetty*”.
16. The plaintiff argues that sections 2 and 6 of the Act in effect, excludes or does not include Ellington wharf or if it includes Ellington wharf, then it excludes the plaintiff’s ramp face in Ellington wharf, as it is not a land and civil infrastructure within the definition of “*road*” or “*roads*”.
17. Section 2 gives a wide definition to the term “*road*” to mean “*all land and civil infrastructure.. used as or facilitates a public right of passage.. including jetties*”. (emphasis added)
18. Section 6 provides that the FRA is responsible for all matters pertaining to construction, maintenance and development of roads.

19. The wharf has been used as a passage for the public, as evident from the letters sent by the defendant and the Maritime Safety Authority to the plaintiff on 15th October, 2019, on it obstructing access to the ramp.
20. In my judgment, the plaintiff's ramp is a land and civil infrastructure within the definition of "road" or "roads". The defendant has power and jurisdiction over Ellington wharf and authority to control shipping operations out of the wharf, as it did in 2019.
21. The plaintiff's originating summons fails and is declined
22. **Orders**
 - a. The plaintiff's originating summons is declined.
 - b. The plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 2000.


A.L.B. Brito-Mutunayagam
JUDGE
15th February, 2023

