

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CIVIL JURISDICTION

HBC 16 of 2021

**BETWEEN:**            **ABDUL ABBAS** of Zion Hall, Natadola, Farmer.

**PLAINTIFF**

**A N D:**                **PETRIE LIMITED** a duly incorporated company having its registered office in Sigatoka.

**DEFENDANT**

Appearances:            Mr. N. Kumar for the Applicant  
                                 Mr. A. J. Singh for the Respondent  
Date of Ruling:         20 January 2023

**R U L I N G**

1. Before me is a Summons dated 16 July 2021 filed by Messrs. Krishna & Company for the Defendant, Petrie Limited (“**Petrie**”). The application seeks the following orders:
  - a) the Plaintiff (“**Abbas**”) and/or its servants and/or other occupants be restrained from cultivating, toiling and/or landscaping and/or dealing with the property known as Certificate of Title No: 13825, all that piece of land known as Matamatacawa (part of) and containing an area of 924 acres two roods and fifteen perches, situated in the district of Nadroga in the islands of Viti Levu and being Lot 3 of Deposited Plan No: 1261 and Lots 1 to 22 and 24 to 40 on Deposited Plan 1890.
  - b) that the orders herein do continue until the substantive matter is determined.
  - c) any such orders deemed suitable by the Honorable Court.
  
2. The Summons is supported by an affidavit of Jehnend Kumar sworn on 07 July 2021. I summarize below all which Kumar deposes at paragraph 3 to 30:
  - (a) Petrie is the registered proprietor of all that piece of land known as Matamatacawa (part of) which is all comprised in Certificate of Title No: 13825 situated in the district of Nadroga in the islands of Viti Levu and being Lot 3 of Deposited Plan No: 1261 and Lots 1 to 22 and 24 to 40 on Deposited Plan 1890 (“**the property**”).
  - (b) the property is 924 acres two roods and fifteen perches in size.
  - (c) the property is zoned special tourism use.
  - (d) on 01 January 1952, Abbas’s father was granted a lease to remain on the property for a term of 21 years.
  - (e) that lease expired in 1973.

- (f) with the expiry of the lease, Abbas's father's right to remain on the property also ceases.
- (g) at all times, Abbas was in Australia.
- (h) Petrie is the owner of a five-star resort known as the Shangri-La's Fijian Resort and Spa which is one of the leading Resorts in Fiji.
- (i) over the years, Petrie has been acquiring properties to use for further expansion of the Resort.
- (j) over the years, Petrie has caused its solicitors, employees and/or agents, given Abbas verbal and written notices to vacate the property.
- (k) however – Abbas has refused. He continues to occupy the property illegally.
- (l) on 06 August, 2018, Petrie's solicitors issued a written *Notice to Vacate* to Abbas. However, Abbas has refused to comply.
- (m) accordingly, Petrie instructed its solicitors to issue another *Notice to Vacate* on Abbas. However, Abbas remained and did not bother to communicate with Petrie.
- (n) Petrie then issued proceedings at the Sigatoka Magistrates Court against Abbas for Vacant Possession (Petrie Limited –v- All Unlawful Occupants, Sigatoka Magistrates Court Civil Action No: 58 of 2019).
- (o) Abbas did file a Statement of Defence. The Defence does show that he has any right to the property.
- (p) the was fixed for trial on 15 February, 2021 however, Abbas sought an adjournment based on a subsequent High Court proceedings which was filed at the eve of the Magistrates Court Trial.
- (q) Abbas has never disputed that Petrie is the registered proprietor of the property. However, in his claim in the High Court, Abbas bases his case on the principle of *adverse possession*. His claim is with respect to 21 acres only of the property.
- (r) around February 2021, Abbas commenced cultivating and building structures on the property.
- (s) if injunction is not granted, Petrie will suffer great prejudice and Abbas will continue to unjustly enrich and benefit himself from his illegal occupation of the property while Petrie is deprived of the use and enjoyment of its own property.

3. Anil J. Singh Lawyers have filed an affidavit in opposition of Abdul Abbas sworn on 27 July 2021. Below I summarize all that Abbas deposes in paragraphs 3.4 to 3.15 of his affidavit:

- (a) that his (Abbas) father obtained a lease from Petrie in 1952 for 21 years.
- (b) the lease expired in 1973
- (c) however, in 1964 Abba's father paid 2,500 pounds for the purchase of 21 acres which he was occupying.
- (d) this was paid to Petrie from Abbas' family's sugarcane proceeds. However, Petrie has failed to transfer the property.
- (e) in 1965, Abbas and his father constructed a dwelling on the property
- (f) in 1980, they constructed a mosque on the same property.
- (g) Petrie tried to evict Abbas and his family
- (h) however, in 1998 the Court of Appeal quashed the eviction Order against my Abba's father's estate.
- (i) Abbas' father died in 2003 and since then Abbas has been occupying the property with his family.
- (j) Abbas says he does not have dual citizenship. Rather, he has spent most of his time in Fiji looking after the property.
- (k) the 21 acres which Abbas claims is part of about 924 acres and there are many occupants and the others who are also in litigation and/or dispute with Petrie.
- (l) contrary to Petrie's assertion that Abbas only started cultivation in 2021, Abbas asserts that he has been cultivating the land since 2013. Before that, his father was cultivating and occupying the land.
- (m) Petrie, at one stage, violently destroyed the Mosque erected on the property as well as Abbas' residence.

- (n) Abbas says that he is a retiree and is 75 years of age. He needs to keep cultivating the land to sustain his health and well-being. If he is stopped – it would be detrimental and harmful to him and he would have no source of income. He has a constitutional right to life and to be free from hunger.
4. I will not reiterate here the principles in the American Cyanamid case except to say generally that the court must embark on the following inquiry before granting an injunction: whether there is a serious issue to be tried (2) the balance of convenience and (3) undertaking as to damages.
  5. There are indeed a lot of issues to be tried in this case. There are also a lot of questions I have about Abbas' claim to adverse possession – one of which is whether he is basing his claim under common law or under section 78(1) of the Land Transfer Act – for a vesting order. Depending on his answer – I have various other questions which I will direct my mind to at the trial of this matter. I will not go over these at this time.
  6. I am satisfied with the undertaking as to damages provided by Petrie. In saying that, I take into account the fact that Petrie Limited owns large tracts of land in Fiji and is one of the major hotel operators in Fiji.
  7. As to the balance of convenience, I am the view that in the peculiar circumstances of this case – it is best to maintain the status quo as it is until the outcome of the claim is determined.
  8. I refuse the application for injunction. The parties are to bear their own costs.



Anare Tuilevuka  
**JUDGE**  
Lautoka

20 January 2023