

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

HBC 65 OF 2020

BETWEEN : **SAILESH CHAND** of Nasau, Nadi, Mechanic.

APPELLANT/ ORIGINAL DEFENDANT

AND : **DAVENDRA PRASAD** of Nasau, Nadi, Farmer as the Sole Executor and Trustee of the Estate of Sambu Prasad aka Sabhu Prasad aka Shambhu Prasad, Deceased.

RESPONDENT/ ORIGINAL PLAINTIFF

Appearances: Ms Nisha for the Appellant
Mr Charan for the Respondent
Date of Hearing: 27 April 2023
Date of Ruling: 08 November 2023

RULING

1. The full background to this case is set out in my Ruling dated 22 September 2022. Davendra Prasad is the last registered proprietor of some piece of land comprised in Certificate of Title No. 36533 land known as Nasou on Lot 3 on DP No. 9059 in the District of Nadi on the island of Viti Levu.
2. This land is approximately four hectares and one thousand and five hundred square meters in size.
3. On 18 March 2020, Prasad filed a Summons for Ejectment pursuant to section 169 of the Land Transfer Act against Sailesh Chand.
4. In his affidavit in support sworn on 13 March 2020, Prasad deposes *inter alia* that Chand is in illegal occupation of the said land and that he does not have any right or interest in the said land.

5. Chand did swear an affidavit on 14 July 2020. By the said affidavit, Chand had deposed inter alia that (i) that he was interested in 800 square meters only of the Prasad's land (ii) that he and Prasad, after a verbal agreement, had entered into a Memorandum of Agreement in 2013 concerning the 800 square meters in question (iii) pursuant to that agreement, Chand had built a house on the 800 square meters in question – which house he now occupies (iv) the arrangement between Chand and Prasad was that the consideration was \$21,000. Of that, Chand would pay an initial sum of \$3,000 (\$500 and \$2,5000) which he has already paid but for which he was not receipted. The balance of \$18,000 was to be settled by Chand by giving two 55 inch TV Sets to the plaintiff and his brother.
6. However, before the Master, it was noted that the said affidavit was defective for two reasons. Firstly, the jurat was placed in a separate page on its own and was entirely detached from the rest of the affidavit. Secondly, two different solicitors were involved in administering the oath. A certain solicitor administered the oath and witnessed the jurat while another witnessed the annexures on the affidavit.
7. The records show that the Master first became aware of the defects on 19 October 2020 and expunged it on 22 February 2021. Thereafter, despite the Master adjourning the matter and giving Chand and his lawyers a chance to file a fresh affidavit, they did not bother to file one.
8. The Master finally said “enough is enough” on 11 October 2021 and gave an unless order that if Chand does not file a fresh affidavit by 05 November 2021, he would grant Order in Terms of the Summons for Ejectment. Chand still did not oblige.
9. Having reviewed the file, I am of the view that the Master did exercise his discretion correctly. He had extended every chance possible to Chand to file a fresh affidavit but to no avail.
10. In any event, if the facts deposed to in Chand's expunged affidavit were to be taken into account, I am of the view that it would fall eventually on the balance of probabilities. It is hard to believe that anyone would give away an 800 square meters of freehold land in consideration for a 55 inch TV set.
11. Consequently, I dismiss the Notice and Grounds of Appeal filed by Chand and also the interim stay granted by the consent of the parties on 27 February 2023. Costs to the Respondent/Original Plaintiff which I summarily assess at \$800-00 (eight hundred dollars only).





Anare Tuilevuka

JUDGE

Lautoka

08 November 2023