

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 01 of 2019

BETWEEN : **SATENDRA NAIDU** of Lovu, Lautoka, Businessman.

PLAINTIFF

A N D : **SAMISE LAVE, JOELI WAQERUA SAUQAQA, SAILASA SAUQAQA** as Trustees of **MATAQALI MATARISIGA TRUST** and for on behalf of themselves and as representatives of other members of the Trust, of Lautoka

DEFENDANTS

A N D : **iTAUKEI LAND TRUST BOARD** a body corporate under the provisions of the iTaukei Land Trust Act.

THIRD PARTY

Before : Master U.L. Mohamed Azhar

Counsels : Ms. M. Tavakuru and Ms. S. Ravai for the Plaintiff
Ms. S. Tabuadua Seru for the Defendant
Mr. W. Mucunabitu for Third Party

Date of Ruling : 08.03.2024

RULING

01. The plaintiff and the defendant entered into a Sale and Purchase Agreement whereby the plaintiff agreed to sell and the defendants agreed to buy the property known as Agreement for Lease NLTB No. 4/7//39830 Lovu (part of) Lot 1 in the Tikina of Vitogo in the Province of Ba containing an area of 3.1436 hectares (**subject property**). The purchase price was agreed as \$ 350,000.00 and was to be paid in five installments. The first installment was \$ 50,000.00 and other four were \$ 75,000.00 each.

02. The plaintiff alleged that, the defendants only paid a sum of \$ 50,000.00 and failed to pay the balance sum of \$ 300,000.00 as agreed. The plaintiff sued the defendants for \$ 300,000.00 - the balance consideration, damages for breach of contract and other remedies. The defendants filed their Statement of Defence together with the counter claim on 25.01.2019 and on the same date they issued Third Party Notice against the iTaukei Land Trust Board. Third Party acknowledged the notice and filed the Acknowledgement on 05.02.2019. However, the defendants failed to apply to the court for directions as required by Order 16 rule 4 of the High Court Rules
03. The Third Party thereafter brought this current summons supported by an affidavit, pursuant to Order 16 rule 4 (2) of the High Court Rules and sought the following orders from the court.
 - a. That the defendants' Third Party Notice be permanently set aside and/or struck out;
 - b. That the cost of this application in the cause; and
 - c. That any other order this court deems just and appropriate.
04. The Order 16 rule 1 of the High Court Rules, subject to other relevant rules, allows a defendant to issue a notice in the Form No. 9 in the Appendix [1] if he or she (a) claims any contribution or indemnity against a person who is not already a party to the action; or (b) claims against any such person any relief or remedy which is substantially same as the relief or remedy of the plaintiff; or (c) requires that the question between him and the plaintiff should be determined not only between them, but also as between either or both of them and a person not already a party to the action. The defendant who issues such notice, upon filling the acknowledgment by the third party, must, by way of summons served on all the parties, apply to the court for necessary directions. If the defendant fails to do so, the Order 16 rule 4 (2) permits the third party, who already acknowledged the notice, at any time after lapse of seven days of giving notice of intention to defend, to apply to the court either for directions or for an order to set aside the third party notice issued by the defendant. It is under the above rule, the third party in this case filed the current summons.
05. The procedure to be followed in such instance is explicitly provided in Order 16 rule 4 (3) and (4). In fact, the court is given discretion to grant orders or give directions as it can be just and appropriate in the circumstances of each and every case. Furthermore, the court has also has discretion either to vary or rescind such order or directions already given by it. Those sub rules are as follows:

(3) On an application for directions under this rule the Court may-

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant;
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice;

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule⁷⁹¹ the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule⁷⁹² may be varied or rescinded by the Court at any time.

06. Whilst, the plaintiff claimed for sum of \$ 300,000.00 - the balance of the purchase price from the defendants, they claimed that, they paid a sum of \$ 200,750.00 to the Trust Account of the plaintiff's solicitors in two occasions; namely, on 19.06.2015 and on 24.12.2015. The defendants further claimed that, they represent the Mataqali Matarisiga comprising Tokatoka Naduanitu and Manuqila that owns the subject property. According to the defendants, the subject property was initially leased out to a tenant and upon its expiry, they entered into occupation of it, as the trustees of the Mataqali. The third party illegally issued the Agreement to Lease NLTB No. 4/7/39830 to the plaintiff. As the result, the defendants were forcefully evicted from the subject property.
07. It is the contention of the defendants that, the third party was required to be satisfied that, the subject property was not occupied by the native owners and not needed for the use, maintenance and support of owners during the currency of proposed lease. The subject property, as per the argument of the defendants, was occupied by them – the native owners and was needed for industrial subdivision for their benefits. However, the third party illegally granted Agreement to Lease to the plaintiff and the plaintiff was part of that illegal

action by the third party. Therefore, the defendants claimed that, they were compelled to purchase the same property and pay part of purchase price which was \$ 200,750.00.

08. The defendants sought a declaration that, the Agreement to Lease granted to the plaintiff in respect of the subject property was declared illegal, null and void; an order for refund of \$ 200,750.00 paid to the plaintiff under the purported Sale and Purchase Agreement; general damages and costs on indemnity basis.
09. On examination of the claim and counter claim of the parties it reveals that, there is number of issues to be determined in this case. Some of those issues are: (a) does the subject property belong to the Mataqali of the defendants? (b) could the defendants have owned the subject property that belongs to the Mataqali? (c) did the third party fail to consider and follow its statutory duty when it issued the Agreement to Lease to the plaintiff in respect of the subject property? Is the Sale and Purchase Agreement, between the plaintiff and the defendants, illegal, null and void? There could be other issues as well in order to conveniently determine the rights and liabilities of the parties including the third party. For these reasons, the Third Party Notice issued by the defendants cannot be set aside, but the Third Party should be remain in this case for proper adjudication of all issues in this matter.
10. As the result, I give following directions in this matter instead of setting aside the Third Party Notice issued by the defendants:
 - a. The defendant should file and serve the statement of claim against the Third Party within 14 days or before 22.03.2024;
 - b. The Third Party should file and serve the statement of defence within 14 days on or before 05.04.2024;
 - c. The defendant should file and serve the reply to defence within 14 days on or before 19.04.2024;
 - d. The parties to bear the costs; and
 - e. The matter to be mentioned on 09.05.2024 for further directions.

At Lautoka
08.03.2024




U. L. Mohamed Azhar
Master of the High Court