

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. 155 of 2017

BETWEEN: **FIJI FOOTBALL ASSOCIATION** an association duly affiliated and registered with Federation Internationale de Football Association and having its registered office at Taramati Street, Bhindi Sub-division, Vatuwaqa, Suva, Fiji.

PLAINTIFF

AND: **NASINU LAND PURCHASE & HOUSING CO-OPERATIVE LIMITED** (formerly Nasinu Land Purchase and Housing Co-Operative Society Ltd) a society duly registered under the Co-operative Societies Ordinance and having its head office at 6½ Miles, Nasinu, Suva.

DEFENDANT

BEFORE: **Justice Vishwa Datt Sharma**

COUNSEL: **Mr Padarath N.** for the Plaintiff
Mr Maharaj V for the Defendant
Mr Raman J for the proposed Joinder

Date of Judgment: **25th April, 2024 @ 9.30am**

JUDGMENT

[Summons for Leave to Amend the Writ of Summons and Statement of Claim AND to join the Attorney General of Fiji as the Legal Representative of the Registrar of Titles]

Introduction

- [1] The Plaintiff, Fiji Football Association filed a Summons coupled with an affidavit in support on 26th July 2023 and sought for the following orders:-
- (i) That the Plaintiff be granted leave to amend the Writ of Summons and the Statement of Claim filed on 30th May 2017 as per the proposed Amended Claim exhibited to the Affidavit in Support filed with this Summons.
 - (ii) That leave be granted to join the **ATTORNEY GENERAL OF FIJI** as the legal representative of the Registrar of Titles, Level 1, Suvavou House, Victoria Parade, Suva, as a party to this proceeding if they do not offer compensation to the Plaintiff on or before 31 August 2023.
 - (iii) The time for service of this application be abridged.
 - (iv) That costs if this application be paid by the Defendant.
- [2] The application was made pursuant to **Order 15 Rule 4 and 6, and Order 20 Rule 5 of the High Court Rules 1988 and the Inherent Jurisdiction of this High Court.**
- [3] An Affidavit in Opposition was filed by the Registrar of Titles for and on behalf of the Attorney General of Fiji to be joined as an interested party to the proceedings.

Law and Analysis

- (i) **Applications to Amend the Writ of Summons and Statement of Claims:**

Order 20 rule 5 (1) of the High Court Rules 1988 provides as follows:

'Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

It is clear that an amendment to pleadings can be granted at any time, before the judgment is delivered, but that courts have through years by way of decisions relating to amendments laid down principles in regarding the application of the law relating amendments to pleadings.

According to the proposed Amended statement of claim that is annexed to this summons and affidavit in support of Mohammed Sheeraz seeking leave of the court to amend the statement of claim on behalf of the Plaintiff the proposed amendments are insertions that are proposed in paragraphs 2, 3, 4, of the Plaintiff's

amended statement of claim 21 to 37, 38.1, 39 to 41 (a) to (h) inclusive.

- (ii) **Joinder and/or to add Attorney General of Fiji representing the Registrar of Titles as a party to the proceedings:**

Order 15 Rule 6 (2) to 5 of the High Court Rules 1988 states as follows:

"(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely-
 - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
 - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either-

- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted, or
- (b) the relevant period arises under the provisions of subparagraph (i) of the proviso to paragraph 4(1)(d) of the Limitation Act and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph "any relevant period of limitation" means a time limit under the Limitation Act."

Plaintiff's Contention

- [4] The Plaintiff sought orders for **Leave to Amend the Writ of Summons and the Statement of Claim filed on 30th May 2017** and further to **add the Attorney General of Fiji as the Legal Representative of the Registrar of Titles** as a party to the current proceedings.
- [5] The need for the current applications stems from the facts that were disclosed and/or made known by the Defendant in its responding affidavit and submissions made during the hearing of the injunction application.
- [6] Around May 2022 the Defendant dealt with the said land in question and proceeded to subdivide it and sell to third parties despite an agreement entered into with the Plaintiff

and knowledge of the current proceedings.

- [7] A search from the titles office for a certified copy of the Caveat shows that as of 30th May 2022, it remained valid and not cancelled.
- [8] The proposed party (The Registrar of Titles) knew the Plaintiff had entered a Caveat.
- [9] Despite this Caveat, the transfer was allowed to be registered.
- [10] The Plaintiff is claiming that the Registrar of Titles is liable to compensate the Plaintiff for its omission, mistake and or Misfeasance pursuant to **Section 140 of the Land Transfer Act 1971**.

Joinder of the Attorney General of Fiji As Legal Representative of the Registrar of Titles Contention:

- [11] On or about August 2023, Registrar of Titles [ROT] office was served with **Plaintiff's Summons seeking to join the Attorney General of Fiji [AG] as Legal Representative of Registrar of Titles AND amendment to the substantive Writ Action and the Statement of claim filed on 30th July 2017**.
- [12] Whether the Limitation Act 1971 is a bar to bringing any Cause of action against the Registrar of Titles or the Attorney General of Fiji?
- [13] There is no cause of Action that lies against the Registrar of Titles justifying any Plaintiff's joinder.
- [14] The Plaintiff's purported cause of action against Registrar of Titles would have arisen in February 2017 and be statute - barred by February 2023. It would be unfair for the Registrar of Titles to be joined into this action when alleged cause of action against Registrar of Titles is already statute -barred.
- [15] Registrar of Titles maintains that the Caveat was not registered since it was not in its proper form. Even if the Caveat was lodged/ registered, the Caveat was in relation to the interests of the Caveator and in only to part of Lease No. 38753 for 20 acres only without stating which portion of the lease or providing relevant documentation as to which area of the said lease.
- [16] The purported Caveat does not protect the interests of the Plaintiff, Fiji Football Association under the lease as the Plaintiff, Fiji Football Association is not the applicant of caveat and/or the Caveator.
- [17] The Attorney General of Fiji as the Legal Representative of the Registrar of Titles sought for joinder to the proceedings be dismissed with costs.

Defendants Contention.

- [18] The interlocutory application for joinder of Attorney General of Fiji as Legal Representative of Registrar of Titles is between Registrar of Titles and the Plaintiff.
- [19] Application in opposition of Registrar of Titles at paragraph 10 (J) 'from 1967 to date, after parties transfers have been done and numerous titles provided, 204 acres of land still remains on the title is registered to the Defendant.
- [20] There is delay in this case which started 20 years ago and not 2017 when the case started.
- [21] Purported Caveat was not received by Registrar of Titles and to date no Caveat Registered on the lease.
- [22] The property in question is now dealt with, transferred and owned by different people.

Determination

- [23] The substantive Writ action in the current proceedings was filed and commenced by the Plaintiff on 30th May 2017 against the Defendant, Nasinu Land and Purchase and Housing Co-operative Ltd, for breach of contract.
- [24] The Cause of the Action against the Defendant is breach of a Sale and Purchase Agreement dated 05th April 2006 which was varied on 23rd January 2006. The relief sought by the Plaintiff then in their statement of claim was that of '**specific performance**'.
- [25] However, the relief of 'Specific-Performance' is now no longer available to the Plaintiff since the Defendant has dealt with the portion of the land that was part of the Sale and Purchase Agreement executed between the Plaintiff and the Defendant. The Plaintiff's alleged claim against the Defendant is now limited to **Damages** in lieu of '**Specific-Performance**'.
- [26] Further, it was discovered that the transfer of the said land in question which was part of the Sale and Purchase Agreement had already taken place.
- [27] The Caveat Registration No. 730831A forbidding Registration of dealing with Land was lodged on 15th April 2010 by the Caveator, Bob Sant Kumar presenting his interest as a beneficiary by virtue of Lease Number 38753 dated 23rd December 2006 and not presenting the interest of the Plaintiff, Fiji Football Association.
- [28] The Caveat did not specifically indicate the part of the land under the lease which was intended to be caveated and did not relate to any interest of Bob Sant Kumar in respect of the Sale and Purchase Agreement. The Sale and Purchase Agreement in fact was executed between the Plaintiff, Fiji Footballs Association and the Defendant, Nasinu Land Purchase & Housing Co-operative Ltd.

- [29] Even if this Court accepts the fact that Caveat registration No. 730831A was allegedly lodged on 15th April 2010, then any cause of action against the Attorney General of Fiji representing the Registrar of Titles would have arisen from the date of the first transfer and/or dealing effected after the registration of the said Caveat that would be 14th February 2017 accordingly.
- [30] Therefore, the Plaintiff's purported cause of action against the Registrar of Titles, if any, would have then arisen in February 2017.
- [31] Reference is made to **Order 15 Rule 6 (2) (ii)** and Read in conjunction with **Order 15 Rule 6 (5) (b) of the High Court Rules 1988:**
- '2 (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon,
5. (b) the relevant period arises under the provisions of subparagraph (i) of the proviso to paragraph 4(1)(d) of the Limitation Act and the Court directs that those provisions should not apply to the action by or against the new party.
- In this paragraph "any relevant period of limitation" means a time limit under the Limitation Act.
- [32] Taking into consideration above Rules, I reiterate that the purported Cause of Action against the Registrar of Titles, if any, would have arisen in February 2017 and therefore is statute -barred by February 2023.
- [33] Further, I note from the caveat registration no. 730831A that a member of the Plaintiff's organisation Fiji Football Association lodged the described Caveat herein with the Registrar of Titles, hence, at all material times, the Plaintiff would have been reasonably aware of the existence of the said registered caveat and could have pursued an action against the Attorney General of Fiji representing the Registrar of Titles from the earliest instance, beginning 15th April 2020.
- [34] The purported Caveat therefore does not protect the interests of the Plaintiff under the said Lease since the Plaintiff, Fiji Football Association is neither the Plaintiff nor the Caveator per se. The Plaintiff, Fiji Football Association as a football institution has the locus standi to sue and be sued. Therefore, the Plaintiff should have filed the Caveat under its name to safeguard its caveatable interest on the said lease since it was under dispute.
- [35] The Plaintiff's initial claim seeking for the relief was for 'Specific -Performance'. However, the relief sought is no longer available and the Plaintiff is now turning to join the Attorney General of Fiji as the Legal Representative of the Registrar of Titles in order to sue for damages against the Registrar of Titles.
- [36] The Defendant has dealt with the said portion of the land of 20 acres within the Certificate of Title No. 12486 which is the subject of the Sale and Purchase Agreement executed between the Plaintiff and Defendant.

[37] The Attorney General of Fiji in his capacity as the Legal Representatives of the Registrar of Titles cannot be joined as a party to this proceedings since no cause of action has been established against the Registrar of Titles by the Plaintiff.

Leave for joinder

[38] Accordingly, the Plaintiff's Summons seeking to join the Attorney General of Fiji as the Legal Representative of Registrar of Titles is refused and hence dismissed in its entirety.

Leave to Amend the Writ of Summons

[39] The purpose of the application by the Plaintiff, Fiji Football Association seeking to join and add the Attorney General of Fiji as the Legal Representatives of the Registrar of Titles to the current proceedings is to claim for 'damages' in lieu of the original relief for 'specific performance' against the Defendant Nasinu Land Purchase & Housing Co-operatives Ltd.

[40] If this Court had acceded to the Plaintiff's application for 'joinder', then the Plaintiff would have been at liberty to file/served its amended Statement of claim. Then the initial cause of action of the Plaintiff seeking for the relief of 'specific performance' would also have been amended, allowing the Plaintiff to claim for 'damages' in lieu, tent amounting to a 'new Cause of Action' altogether.

[41] The initial Plaintiff's claim was commenced against the Defendant, Nasinu Land Purchase & Housing Co-operatives Limited in 2017 for breach of contract pursuant to the Sale and Purchase Agreement dated 05th April 2002 and varied on 23rd July 2006.

[42] A time lapse of 22 years has passed by since the Execution of the Sales and Purchase Agreement between the Plaintiff and the Defendant. The substantive matter has been impending in Court with the hearing and determination of the interlocutory applications so far and yet another current subsequent Interlocutory application by the Plaintiff filed seeking for the **amendment of the initial Writ of Summons and the statement of claim together with a different cause of action for Damages in lieu of the initial relief seeking for specific performance.**

[43] **Order 20 Rules 5 of the High Court Rules 1988** may allow for the Amendment of Writ of pleadings with leave (O.20, R.5). However, this is subject to order 15 rule 6, 8 and 9.

[44] **Order 15 Rule 6 (1)** states:

6 (1)No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

[45] At the initial and current time, the substantive action was begun in 2017 by the Plaintiff,

Fiji Football Association against the Defendant, Nasinu Land Purchase & Housing Co-operatives Limited claiming for breach of contract and seeking the relief for specific performance against the Defendant. Now, altogether a different cause of action and relief for damages in lieu of specific-performance is sought by the Plaintiff, if the Plaintiff is allowed by Court to amend its earlier/ initial writ and the statement of claim therein.

[46] The issue or question in dispute by the plaintiff against the Defendant was for Breach of Contract seeking for the relief for a specific performance affecting the rights and interest of parties to the cause of the matter.

[47] However, any addition or joining of the Attorney General of Fiji representing the Registrar of Titles in this case will not determine the initial issue and dispute of Breach of contract and relief for specific performance, rather, will altogether change the cause of action against the Attorney General of Fiji representing Registrar of Titles for Damages in lieu of the relief for specific performance.

[48] It is only fair and justified that bearing in mind:

- The lapse of 07 years' time since the filing and commencement of the initial writ action in 2017 against the Defendant,
- Substantive matter impending for 07 years,

That the Plaintiff thought fit to seek the Amendment of the initial statement of claim when the Plaintiff realised that the relief then sought for specific performance no longer was available to the Plaintiff since the Plaintiff has already dealt with the said land that was part of and related within the Executed Sale and Purchase Agreement in 2002 with subsequent variation in 2006 and that now, the Plaintiffs claim was limited to damages only, if this Court acceded to the Plaintiff's application for joinder of the Attorney General of Fiji representing Registrar of Titles and hence amendment of the Statement of Claim accordingly.

[49] For the aforesaid rational. I have no alternative but proceed to refuse the Plaintiff's second limb application seeking for the amendment of this initial Statement of Claim, bearing in mind that the First limb application to join The Attorney General of Fiji representing Registrar of Titles in the like has been refused and dismissed.

Costs

[50] The Plaintiff's Summons with two (2) limbs application seeking orders for joinder of the Attorney General of Fiji representing Registrar of Titles to the current proceedings coupled with an order for the amendment of the initial Statement of claim proceeded to hearing and determination with oral and written submissions furnished to this Court.

[51] It is only just and fair that I make an order against the Plaintiff to pay the Defendant a

sum of \$2,000 as summarily assessed costs within 14 days' time frame accordingly.

In Conclusion

- [52] The Plaintiffs' application seeking an order for joinder of The Attorney General of Fiji representing Registrar of Titles is refused and dismissed.
- [53] The Plaintiff's application further seeking for the amendment of the initial statement of claim in the like is also accordingly dismissed since the joinder application has been refused and dismissed.
- [54] The Plaintiff, Fiji Football Association to pay the Defendant summarily assessed costs of \$2,000 within 14 days timeframe.
- [55] The impending substantive action to take its normal cause and schedule for trial at its earliest available date. Bearing in mind that the matter has come of an old age commenced in 2017.

Orders

- (i) The Plaintiff's application seeking for leave to amend the writ of summons coupled with the statement of claim of 30th of May 2017 is refused and dismissed.
- (ii) The Plaintiff's application seeking for leave to join the Attorney General of Fiji as the legal representative of the Registrar of Titles as a party to the current proceedings is refused and accordingly dismissed since the first limb application seeking for the amendment of the Plaintiff's claim for specific performance in lieu of Damages in the like was also refused.
- (iii) The Plaintiff, Fiji Football Association to pay the Defendant summarily assessed costs of \$2,000 within 14 days timeframe.

Dated at **Suva** this **25th** day of **April, 2024.**



VISHWA DATT SHARMA
JUDGE

cc: Samuel Ram Lawyers
Vijay Maharaj Lawyers.
Attorney General's Chambers, Suva.