

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

**CIVIL ACTION NO. HBC 261 OF 2020**

**BETWEEN** : **MAHENDRA PRASAD** of 15 Dimascio Place, Oakhurst, NSW, Australia.  
**PLAINTIFF**

**AND** : **PREM CHANDRA** of 8653 Golden Saga Drive, Elkgrove, CA 95624, United States of America as the sole Executor and Trustee of the **ESTATE OF RAM PADARATH**  
**DEFENDANT**

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Ms. Radhia -for the Plaintiff  
: Defendant absent.

**HEARING** : By way of written submissions filed on 15<sup>th</sup> December 2023.

**DATE OF DECISION** : 16<sup>th</sup> April 2024.

**RULING**

**A. Introduction:**

1. Before me is a Summons filed on behalf of the Plaintiff on 28<sup>th</sup> August 2023, seeking the following reliefs;
  1. *The Plaintiff shall be entitled for the recovery of compensation, together with interest as prayed for, on account of the house constructed by him in the land in question.*
  2. *The recovery of Compensation shall be valued as \$75,000.00 as per the value of the improvements under the Cost Approach Summation Method used in the Valuation report dated 4<sup>th</sup> July 2023 annexed as "A" under the supplementary affidavit of **Mahendra Prasad** sworn on 12<sup>th</sup> July 2023.*
  3. *Interest for the Plaintiff at 6% per centum per annum from the 1<sup>st</sup> day of January 1970 to the date of full payment of the recovery of compensation valued at \$75,000.00 under the Law Reform (Miscellaneous Provisions) (Death & Interest) Act Chap 27 of the laws of Fiji, which as of August 2023 is at \$237,000.00.*
  4. *The Compensation shall be recovered from the Defendant as the Executor and Trustee of the Estate of late RAM PADARATH.*

5. *That the Plaintiff is entitled for summarily assessed costs from the Defendant in a sum of \$3,000.00.*
  6. *The Plaintiff be paid the Compensation together with the interest and costs by the Estate of RAM PADARATH within a month's time or within a time frame this Honorable Court see fit and just.*
  7. *Plaintiff be granted leave to serve this application out of jurisdiction.*
  8. *Any other Orders that the Honorable Court may see fit and just.*
2. The above Summons was supported by an Affidavit sworn by the Plaintiff MAHENDRA PRASAD on 16<sup>th</sup> August 2023 and filed on 28<sup>th</sup> August 2023.
  3. The summons being supported before me on 14<sup>th</sup> September 2023, leave in terms of paragraph 7 of the Summons was granted for the summons to be served on the Defendant out of this jurisdiction, and accordingly, an Affidavit of service thereof was filed on 20<sup>th</sup> September 2023.
  4. Accordingly, when the matter came up on 08<sup>th</sup> November 2023, being the Summons returnable date, despite the Summons was, reportedly, served, the Defendant was neither present nor represented by a Counsel.
  5. The task before the Court by that time was for the assessment of the compensation in terms of paragraph (d) of the final Orders in my judgment dated 22<sup>nd</sup> of October 2022. For the purpose of the assessment of compensation, the Court was to mainly rely on the Plaintiff's oral evidence and the Valuation report dated 29<sup>th</sup> June 2023 obtained by the Plaintiff, with the leave of the Court. It was filed on 20<sup>th</sup> July 2023, along with a supplementary affidavit sworn by the Plaintiff, and, reportedly, served on the Defendant, who did not respond to it as well.

**B. BRIEF HISTORY:**

6. The plaintiff, by filing his writ of summons, along with the statement of claim against the defendant on 26<sup>th</sup> November 2020, had sought, inter-alia, the following reliefs.
  - a. *An Order that the Defendant pay the Plaintiff the sum equitant to the current market value of the Agreement for Lease No-10/006526.*
  - b. ***Alternatively***, *for an Order that the Defendant do transfer Agreement for Lease No.10/006526 to the Plaintiff.*
  - c. *Interest for the Plaintiff at 6% per centum per annum from the 1<sup>st</sup> day of January 1970 to the date of full payment of such award under the Law Reform (Miscellaneous provisions) (Death and Interest) Act Cap 27 of the Laws of Fiji.*
  - d. *Cost of this action on a Solicitor Client indemnity basis.*

- e. Such further and/or other relief as to this honorable Court deems just and expedient.*
7. Though, the writ of summons, together with the statement of claim, was reportedly served on the Defendant, who is said to be resident out of this jurisdiction, by obtaining necessary orders for such service, the Defendant neither entered an appearance in response to the Writ nor filed his acknowledgement of service and/ or Defence to the Plaintiff's claim.
8. Then, the Plaintiff caused his Solicitors to file summons dated 8<sup>th</sup> April, 2021, pursuant to order 13 Rules 6 rr 2 & 3 supported by his Affidavit sworn on 1<sup>st</sup> March, 2021, together with the annexures marked as "A" to "M" seeking the same reliefs. This Summons too was, reportedly, served on the Defendant in the aforesaid manner on 16<sup>th</sup> June, 2022. Though, 42 days' time period had been allowed, the Defendant did not respond to the said Summons too.
9. As the Defendant had failed to file the acknowledgment of service and/or the statement of Defence to the writ of summons and the statement of claim and to the subsequent Summons filed and served, the plaintiff's claim was heard by way of formal proof, as moved by the Plaintiff's Solicitors, wherein the Plaintiff and 4 other witnesses gave evidence to substantiate the Plaintiff's claim.
10. Thereafter, this Court by its judgment dated 22<sup>nd</sup> October 2022 made the following Orders;
- a. The Plaintiff's claim for reliefs as prayed for in paragraphs (a) and (b) of the prayer to the statement of claim is dismissed, subject to his right granted in paragraph (b) below.*
  - b. The Plaintiff shall be entitled for the recovery of compensation for the house constructed by him in the land in question.*
  - c. The Compensation shall be recovered from the Defendant as the Executor and Trustee of the Estate of late RAM PADARATH.*
  - d. There shall be an assessment of compensation before a judge or the Master, and the Plaintiff shall be at liberty to obtain a proper Valuation Report for this purpose.*
  - e. The Plaintiff is entitled for summarily assessed costs, from the Defendant, in a sum of \$3000.00.*
  - f. This judgment shall be sealed and served on the Defendant out of jurisdiction.*
11. The only task before this Court now is the assessment of the compensation, which this Court granted as per paragraph (b) of the judgment dated 3<sup>rd</sup> October 2022 by acting in terms of paragraph (e) of the prayer to the statement of claim, which reads to the effect "***Such further and/or other relief as to this honorable Court deems just and expedient***".

12. Notably, this Court by its said judgment dated 22<sup>nd</sup> October 2022 did not grant the Plaintiff, the main relief in terms of paragraph (a) of the prayer to the Statement of claim or the alternative relief in terms of paragraph (b) of the prayer to the SOC.
13. For the purpose of the assessment of the compensation, the Plaintiff did not move for an oral hearing in order to give or call evidence, except for filing the Valuation Report dated 29<sup>th</sup> June 2023. However, the oral evidence given by the Plaintiff at the substantial trial with regard to the expenses he had to incur for the construction of the House, would also be relied on by this Court in its task of assessing the compensation. The oral evidences led by the Plaintiff's other 4 witnesses at the trial are of little use or no use in deciding the quantum of compensation, which in fact helped this Court in the task of deciding the liability.
14. As per my judgment dated 22<sup>nd</sup> October 2022, the task of assessment of compensation is limited only to the expenses that the Plaintiff had to incur for the construction of the House at the time material. The Court has declined to grant the relief to the Plaintiff for the value of the land claimed by him or alternatively, for the property to be transferred un to his name.
15. The Plaintiff as per paragraph 2 of his present summons, filed on 28<sup>th</sup> August 2023, has moved for the compensation in a sum of \$75,000.00 (Seventy-Five Thousand Fijian Dollars) being the current value of improvements as per the Valuation Report dated 29<sup>th</sup> June 2023 filed along with the Plaintiff's supplementary affidavit.
16. The Plaintiff, as per paragraph 3 of the summons, also prays for interest on the said sum of \$75,000.00 at the rate of 6% per centum per annum from the 1<sup>st</sup> January 1970 till August 2023, which alone comes to a massive sum of \$237,000.00. Thus, the total amount the Plaintiff seek to recover as principal amount and as interest on it is \$75,000.00 + \$237,000.00 = **\$312,000.00**.
17. This Court being alerted by the said exorbitant sum of compensation moved on behalf of the Plaintiff, called upon the Plaintiff's Counsel to address the court on the interest component and to justify the total amount claimed. Accordingly, counsel for the Plaintiff has filed written submission in that regard. This Court, having perused the contents of the written submissions, the extent of the relief granted by my judgment dated 3rd October 2022 and by analyzing the oral evidence of the plaintiff, together with the contents of the Valuation Report, hereby proceed to assess the actual compensation payable to the Plaintiff as follows.
18. The Plaintiff during his evidence at the formal proof hearing has categorically stated that the total amount he had to spend on the construction was only around \$25,000.00 (Twenty-Five Thousand Fijian Dollars) Vide- answer of the Plaintiff to question No-2 in page 8 of the transcript, where he says "***My lord I spent approximately \$25,000.00***".

19. There is no any other evidence to substantiate that he had spent more than the said amount of \$25,000.00. The Valuation done on 29<sup>th</sup> June 2023 on Summation (Cost Approach) Method shows the Capital value of both the improvement and the Leasehold land Interest as \$165,000.00 (\$75000.00 being the value of improvement and \$90,000.00 being the land interest value)
20. But, the Plaintiff, who had, admittedly, spent only around \$25,000.00 for the construction/ improvement, appears to be in an attempt to recover the whole amount of present valuation, which is in a sum of \$75,000.00, by disregarding the fact that he is benefitting by way of interest on his actual amount spent (capital amount) as per the judgment dated 3<sup>rd</sup> October 2022.
21. Further, the fact that the House in question has undergone a structural improvement in 1980's, as stated in the last paragraph of page 5 of the Valuation Report, seems to have escaped the attention of the Plaintiff's Counsel. However, the Plaintiff does not claim for any improvement done in 1980's (Nineteen Eighties). The Photographs of the House attached in page 10 of the Valuation Report also, on the face of it, suggest that the improvements could have been done in 1980's, which is after the construction done by the Plaintiff.
22. However, the Plaintiff's claim for interest, on the present value of the property as at **29<sup>th</sup> June 2023**, cannot be allowed to be calculated from the date he claims to have done the construction or improvement in 1970's. His entitlement for interest should be limited to the amount he actually spent on the House, which is \$25,000.00 and not on \$75,000.00, which is the present value of the House as per the valuation done on 29<sup>th</sup> June 2023.
23. However, the percentage of the interest on the said sum of \$25,000.00 shall be at 6% per centum per annum till the date Judgment as allowed by the Judgment dated 3<sup>rd</sup> October 2022.
24. Thereafter, the Plaintiff shall be entitled for further interest at 4% per centum per annum, only on the capital amount of \$25,000.00, from the date of judgment till the said sum is fully paid and settled. No interest could be charged on the interest.
25. The Plaintiff is entitled for a sum of \$1500.00 (One Thousand Five Hundred Fijian Dollars) being the summarily assessed costs in relation to the current Summons for assessment of compensation.

**C. Final Orders:**

1. The compensation for the Plaintiff is assessed as \$25,000.00 (Twenty-Five Thousand Fijian dollars).
2. The interest recoverable by the Plaintiff shall at 6% per centum per annum, as prayed for and to be calculated till the date of the judgment.

3. Thereafter, the Plaintiff is entitled to recover interest at 4% per centum per annum till the said sum is fully paid and settled.
4. The Plaintiff is entitled for a sum of \$1,500.00 (One Thousand Five Hundred Fijian Dollars) being the summarily assessed costs in relation to this summons.
5. This Order shall be sealed and served on the Defendant out of Jurisdiction.



*A.M. Mohamed Mackie*  
16/4/24  
A.M. Mohamed Mackie  
Judge

At the High Court of Lautoka on this 16<sup>th</sup> day of April, 2024

**SOLICITORS:**

For the Plaintiff: Siddiq Koya Lawyers- Barristers & Solicitors.

For the Defendant: No Appearance