

IN THE HIGH COURT OF FIJI AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 57 of 2021

BETWEEN

JAI PRAKASH Koronubu, Ba, Cultivator.

PLAINTIFF

AND

iTAUKEI LAND TRUST BOARD a body corporate constituted under
Native Lands Trust Act, Laws of Fiji, being its registered office at
Suva, Fiji and carrying on its business at other
Branch Offices elsewhere in Fiji.

1st DEFENDANT

AND

JAI PRAKASH Koronubu, Ba, Cultivator.

2nd DEFENDANT

AND

SATISH KUMAR of Benai, Ba, Cultivator.

3rd DEFENDANT

AND

ASHMEEN KUMAR SEN of Benai, Ba, Cultivator.

4th DEFENDANT

Counsel : Mr. Rosa W. for the Plaintiff
Ms. Nauwakarawa K. for the 1st Defendant
Mr. Gade for the 3rd defendant
Mr. Patel D. for the 4th Defendant

Date of Hearing : 06th November 2023

Date of Ruling : 23rd January 2024

RULING

[1] The plaintiff as the Lessee of within iTaukei Land Trust Board Reference Number 4/1/39754 being Registration Number 30703 dated 17th September 2013 land known as

Koronobu, Ba Subdivision Lot 61 on Ba 2133, in the Tikina of Bulu, in the Province of Ba having an area of 14 acres 32 perches, filed this action seeking the following reliefs:

- (i) Damages and loss
- (ii) General damages
- (iii) Costs of this action;
- (iv) 3rd and 4th defendants do give vacant possession of the plaintiff's lease.
- (v) Defendants do not deal in any manner with the plaintiff's lease until finalization of this action.
- (vi) Such any other orders as deems just and prudent to this Honourable court.
- (vii) Interest on indemnity basis payable by all defendants to the plaintiff.

[2] The 4th defendant filed his statement defence and counter claim and served it on the plaintiff on 26th March 2021 seeking the following orders:

- a. A declaration that the plaintiff holding the residential area occupied by the 4th defendant on trust for the benefit of the 4th defendant.
- b. A declaration that the plaintiff has surrendered all rights and title over the residential area occupied by the 4th defendant.
- c. An order that the plaintiff do all things necessary to allow the 1st defendant to process the lease application of the 4th defendant and issue a lease instrument to the 4th defendant.
- d. Costs on an indemnity basis.

[3] The plaintiff did not file the acknowledgement of service and statement defence to the counter claim. The 4th defendant on 12th November 2021 filed summons pursuant to Order 18 rule 3(4) and Order 19 rules 7 and 8 of the High Court Rules 1988 seeking the following orders against the plaintiff:

1. A declaration that the plaintiff holding the residential area occupied by the 4th defendant on trust for the benefit of the 4th defendant.
2. A declaration that the plaintiff has surrendered all rights and title over the residential area occupied by the 4th defendant.

3. An order that the plaintiff do all things necessary to allow the 1st defendant to process the lease application of the 4th defendant and issue a lease instrument to the 4th defendant.
4. That there be abridgment of time for filing and service of this application.
5. That costs to be awarded to the 4th defendant on an indemnity basis.

[4] Order 19 rule 7(1) of the High Court Rules 1988 provides -

Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

Order 19 rule 8 of the High Court Rules 1988 provides -

A defendant who counterclaims against a plaintiff shall be treated for the purposes of rule 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

[5] As averred in the affidavit in support of the 4th defendant the plaintiff is his mother's brother and the property was originally owned by plaintiff's mother. The 4th defendant and the family went into occupy part of the property in 2009 on the invitation of the plaintiff's mother. The 4th defendant then constructed a dwelling house and it is now

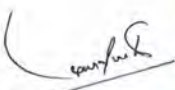
occupied by him and his family. The 4th defendant avers further that in 2012 they discussed with the plaintiff and his mother the plaintiff's mother agreed to surrender land and the 4th defendant was to apply for a residential lease. Thereafter, the 1st defendant had made an offer to the 4th defendant and he had paid \$1,150.00 as processing fees.

[6] In the affidavit in opposition the plaintiff states that they entered in to an agreement where the 3rd and 4th defendants agreed to pay \$1,000.00 each and since the defendants failed to pay as agreed he withdrew the consent. Referring to the documents AKS 11 attached to the 4th defendant's affidavit in support the plaintiff says that the post office box number, mobile phone number and signature on the agreement dated 31st July 2018 were not his.

[7] It appears that there are disputes relating to matters of fact between the parties which cannot be resolved summarily by affidavit evidence. It is advisable to decide this issue at the substantive hearing.

ORDERS

1. Summons filed by the 4th defendant on 12th November 2021 is struck out.
2. The counter claim of the 4th defendant will be decided at the hearing of the substantive matter.
3. There will be no order for costs.


Lyone Seneviratne



JUDGE

23rd January 2024