

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 235 of 2022

BETWEEN: **SAKIUSA DELAI** a beneficiary of the 12 Initial Original Beneficiaries of Lapanoni Settlement/Village of Serua in the island of Viti Levu in the Republic of Fiji, Property Maintenance Officer, Suva.

PLAINTIFF

AND: **LAISIASA DAVE [Sole Surviving Trustee]** of Lapanoni Settlement/ Village, Serua, Unemployed.

1ST DEFENDANT

AND: **MARIKA VEITATA, SECIKOMAI VUNIVESI, TERESIA VATI, AMINIASI SAKU, MARICA NAILELE, SITIVENI DELAI & TAUFA BIU BUADROMO** [Being the new committee members of Lapanoni Settlement/Village].

2ND DEFENDANTS

BEFORE **:** **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Raikanikoda S. for the Plaintiff**
Mr. Savou J. for the 1st and 2nd Defendants

DATE OF DECISION: 13th June, 2024

DECISION

[Originating Summons seeking Restraining and Removal of Trustees and Committee and appointment of Interim Beneficiaries]

Introduction

1. The Plaintiff commenced summary proceedings via Originating Summons on 09th August 2022 and sought for the following orders:
 1. **THAT** the 1st Defendant be restrained and forbidden from acting in his capacity as Trustee of the Lapanoni Settlement/Village Trust and/or from dealing with or representing the Trust with immediate effect.
 2. **THAT** the 2nd Defendants be restrained and forbidden in their capacity as committee from dealing with any Trust properties, appoint new Trustee or monies held under the Lapanoni Settlement/Village Trust in any Financial Institution or Bank account under the name of Lapanoni Settlement/ Village Trust.
 3. **THAT** all Defendants be removed as Trustees and Committee of the Lapanoni Settlement/Village Trust with immediate effect until the determination and new appointments are made through an Order of the Court.
 4. **THAT** the 1st Defendant and Second named Defendants be restrained and forbidden to demand funds or fund raising with the beneficiaries for payments of their legal fees to their legal counsel.
 5. **THAT** the Legal beneficiaries of the Original beneficiaries of CT 14889 in 1979 (Awaiting Copy of Deed of Trust 1979) from Titles Office be included with more existing beneficiaries that was confirmed in 2006 when the Plaintiff was the Chairman of such group.
 6. **THAT** the Defendants to pay costs to the Plaintiff incidental to this proceedings on a full solicitor/ client indemnity basis; and
 7. **THAT** costs be in the cause of the application; and
 8. **SUCH** further and other Orders and or Directions as this Honorable Court may deem fit and just given the present circumstances.
2. The Orders are sought on the strength of the contents of the affidavit deposited by Sakiusa Delai pursuant to the Common Law Principles and the inherent jurisdiction of this Honorable Court.
3. The 1st Defendant deposited an affidavit in opposition to the Plaintiff's application.

4. An affidavit in Reply was filed to the opposition Affidavit on 17th November 2022.
5. The parties to the proceedings relied on the written submission filed into Court and made oral submissions for Court to deliberate and make a Determination/ Decision accordingly.

Plaintiffs Contention [Summarised]

6. The Plaintiff seeks the Court's indulgence to look into the plights of the Plaintiff and all other residences of Lapanoni as they are all beneficiaries of Vunibula who were then relocated to the current site known as Lapanoni.
7. The current Trustees were appointed by way of Court Order. However, their obligation and Execution of duties are very much questionable as they are very selective in their dealings and Execution of Duties.
8. Establishing that a duty of care is owed to the beneficiary by a third party.
9. In Lapanoni case, the trustees are empowered to exercise their Fiduciary duties to safe guard and protect the interests of all beneficiaries and not only a selected few as what has transpired during their tenure.
10. The Plaintiff sought Court to grant Orders for a new Trustees to be appointed and exercise their Fiduciary duty as outlined in their 1978 Trust since no more trustees appointed then is still alive as all have passed away, the latest being Laisasa Dave [First Defendant].

Defendant's Contention

11. Opposes the Plaintiff's application for orders sought therein.
12. There are no pleaded cause(s) of action or *Locus Standi* of the Plaintiff.
13. The Defendants opposition is two (2) fold:
 - (i) Absence of a pleaded Statement of Claim revealing causes(s) of Action
 - (ii) The Plaintiff does not have a *Locus Standi* to bring this action since he is not a party to the Agreement and/or Trust Deed.
14. The facts are set out in the affidavit of Laisiasa Dave deposed on 12th October 2022 and detailed therein, Agreement of 11th October 1978 for transfer of CT No. 14889 to the Defendants and their families, Registration of Court Order of 21st April 2005, Copy of CT No. 14889 showing the proprietorship of the Trustees of Lapanoni Village - Committee, the Plaintiff

is not named as a beneficiary under the Trust Deed of 02nd June 2005 and CT No. 14889 showing transfer of 138271 of CT No. 144889 to trustees of Lapanoni Village Committee.

15. The Plaintiff's application ought to be dismissed with costs.

Determination

16. Upon a careful hearing of both written and oral submission of the Plaintiff, what can be ascertained is that the Plaintiff is seeking for a **Mandatory Injunction** against the Defendants coupled with a number of other orders relating to a Lapanoni Settlement Trust.
17. Firstly, my attention has been drawn to a dispute and that the 1st defendant be restrained and forbidden from acting his capacity as Trustee and/or dealing with and representing the Lapanoni Settlement Trust.
18. It is difficult to ascertain from the Plaintiff's Originating Summons whether any cause(s) of action has been pleaded.
19. The Plaintiff is not named and or made a beneficiary under the Lapanoni Village Committee Trust Deed of 02nd June 2005 and further CT No. 14889 endorsed with Court Order 580179 showing registration of CT No. 14889 into the proprietorship of Trustees of the Lapanoni Village Committee coupled with the Deed of Trust of the Lapanoni Village Committee dated 02nd June 2005. Therefore, what I can conclude is that the Plaintiff has no Locus Standing to bring and/or commence any proceedings against the Defendants herein.

Conclusion

20. The Plaintiff has no *Locus Standi* to Commence the Criminal Proceedings in Court nor has shown what Legal Rights (if any) he has in relation to the Agreement dated 11th December 1978 and this Court further notes that the Plaintiff was at that very time an infant aged 08 years old at the time of the Execution of the Agreement and is not a signatory either, nor a party to the Agreement.
21. The Plaintiff is neither a beneficiary to the Trust Deed nor shown any legal rights (if any) he has under the Trust Deed to commence these proceedings.
22. To add further, the Plaintiff has failed to plead any Cause(s) of Action Leave alone there being no statement of Claim filed herein in the current action.

23. The Action was begun by summary proceedings, and if there were any triable issues that the Plaintiff thought to address this Court, then the Plaintiff should have initiated proceeding via a Writ Action including a Statement of Claim accordingly.

Costs

24. The matter proceeded to full hearing with parties to the proceedings filing Written Submissions and orally argued its appropriate case.
25. It is only just and fair that the Plaintiff is hereby ordered to pay a summarily assessed costs of \$1,500 to the Defendants accordingly within 14 days timeframe.

Orders

- (i) The Plaintiff's Originating Summons filed on 09th August 2022 is dismissed in its entirety.
- (ii) The Plaintiff is ordered to pay these Defendants a sum of \$1,500 as summarily assessed costs within 14 days timeframe.
- (iii) File closed with Action stands dismissed.

Dated at Suva this 13th day of June ,2024.



VISHWA DATT SHARMA
PUISNE JUDGE

cc: Raikanikoda & Associates, Suva
Jioji Savou, Barristers & Solicitors, Suva