

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

Civil Action No. HBC 238 of 2006

**BETWEEN: SULTAN MOHAMMED KHAN**

**PLAINTIFF**

**AND: THE OFFICIAL RECIEVER**

**1<sup>st</sup> DEFENDANT**

**AND: FIJI ISLANDS MARITIME SAFETY ADMINISTRATION**

**2<sup>nd</sup> DEFENDANT**

**Appearances:**

Mr D. Sharma & Mr W. Mohammed (R Patel Lawyers) – **Plaintiff.**  
Ms V. O.Solimailagi & Ms. A. Harikishan (Office of AG) – **1<sup>st</sup> Defendant.**  
Mr T. Kilakila & Ms R.O. Varasikete (MSAF) – **2<sup>nd</sup> Defendant.**

**Date of Hearing:** 28<sup>th</sup> August 2024

**Decision**

**A. Introduction**

[1] The Fiji Court of Appeal (“FCA”) on 29<sup>th</sup> February 2024 referred this matter for further consideration and determination of the Plaintiff’s claims in light of its findings.

**B. Brief Background**

[2] The Plaintiff had appealed the decision of Justice Brito-Mutunayagam of 2<sup>nd</sup> September 2022, dismissing his claim for damages against the two Defendants. The Plaintiff’s claim arose out of a winding up of Khan’s Shipping Company Limited (“KSC”). The Plaintiff alleged that the Official Receiver (“OR”) had wrongly assumed that KSC owned a shipping vessel of which he was in fact the owner, and wrongly obtained an order vesting ownership of the vessel in the Official Receiver. The Plaintiff further alleged that the Official Receiver then sold the vessel at an undervalue. The Plaintiff alleged that the 2<sup>nd</sup> Defendant, FIMSA had failed to register his ownership of the vessel. He claimed to have suffered losses totaling \$1,005,000.00.

- [3] The grounds on which Justice Brito-Mutunayagam had dismissed the Plaintiff's claim were that KSC had been wound up on 7<sup>th</sup> February 2005 and that the transactions whereby the Plaintiff became the registered owner of the vessel occurred after that date. KSC was then prohibited from transferring any of its assets. Justice Brito-Mutunayagam held that the time the transfer took place, the vessel had lawfully vested in the OR and that the OR's seizure and sale were also lawful.
- [4] On appeal, the FCA's findings were that the winding up order for KSC was made on 23<sup>rd</sup> September 2005, the Plaintiff was the owner of the vessel as from 27<sup>th</sup> July 2005, it having been transferred to him from KSC and that the vesting order obtained by the OR was premised on KSC having been wound up on 7<sup>th</sup> February 2005 and the ownership of the vessel being transferred to KSC on 18<sup>th</sup> October and to the Plaintiff on 13<sup>th</sup> December 2005. The FCA concluded neither of these was sound. The transfer from KSC to the Plaintiff was not made after KSC was wound up.
- [5] The FCA sought this Court make a determination as to the following:
- (a) Whether in the circumstances the Official Receiver was at fault in applying for a Vesting Order; and
  - (b) If it is found that the Official Receiver was at fault, whether the Official Receiver is liable to pay Sultan Khan damages (and, if so, in what quantum).
  - (c) Whether FIMSA was at fault in respect of the delay in registering the change in ownership to KSC then to Sultan Khan; and
  - (d) If it is found that FIMSA was at fault, whether FIMSA is liable to pay Sultan Khan damages (and, if so, in what quantum).

**C. Determination**

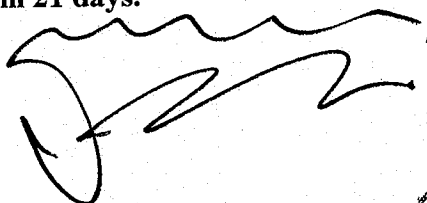
- [6] The vessel in question was owned by the Plaintiff since 27<sup>th</sup> July 2005. This is a finding of the Fiji Court of Appeal. On 12<sup>th</sup> April 2006, Justice Singh made an order on the application of the Official Receiver, vesting ownership of the vessel in the OR. The OR then sought expressions of interests for the purchase of the vessel. On 21<sup>st</sup> June 2006 the vessel was sold for \$20,000.00. The vesting order for the vessel was sought under the assertion that it was owned by KSC, when in fact it was owned by the Plaintiff. The winding up order for KSC was made on 23<sup>rd</sup> September 2005. The OR's actions led to the Plaintiff losing his vessel. The OR in seizing and selling the Plaintiff's vessel caused the Plaintiff loss. The OR had no right over the assets of the Plaintiff. The OR had a right over the assets of KSC following winding up of KSC on 23<sup>rd</sup> September 2005. I find that the OR under the circumstances was at fault in applying for a vesting order for a vessel belonging to the Plaintiff. The OR is liable to pay the Plaintiff damages. The quantum is to be assessed.
- [7] The Bill of Sale to record that the Plaintiff was the rightful owner of the vessel from 27<sup>th</sup> July 2005 was the responsibility of FIMSA, the 2<sup>nd</sup> Defendant. On 27<sup>th</sup> March 2006, well

before the vessel was sold by the OR, the Plaintiff proved to FIMSA that he was the legal owner of the vessel. The FCA found that *“any delay in registering the ownership of the vessel cannot be held against Sultan Khan when determining when ownership was transferred to him.”* and they further concluded *“that ownership of the vessel was transferred by the Bills of Sale, not registration. Sultan Khan was its owner as from the date the Bill of Sale transferring ownership of the vessel to him was executed. Accordingly, Sultan Khan was the owner of the vessel as from 27<sup>th</sup> July 2005...”*. The failure of FIMSA to record the Plaintiff as the owner of the vessel on 27<sup>th</sup> July 2005 resulted in the records reflecting that the vessel was owned by KSC on that date. This is FIMSA’s failure. FIMSA’s actions started a chain of events leading to the sale of Plaintiff’s vessel, under a vesting order. I find that FIMSA is at fault in respect of the delay in registering the change in ownership to KSC then to Sultan Khan. FIMSA’s failure caused the Plaintiff loss of his vessel. He is entitled to damages.

[8] For the reasons given I find both the Defendants liable for the Plaintiff’s loss of his vessel and its sale under a vesting order. The quantum of damages is to be assessed. I will hear the parties on damages.

**D. Court Orders**

- (a) **The Official Receiver was at fault in applying for a Vesting Order over Sultan Mohammed Khan’s Vessel.**
- (b) **The Official Receiver is liable to pay Sultan Mohammed Khan damages. The quantum is to be assessed.**
- (c) **FIMSA was at fault in respect of the delay in registering the change in ownership to KSC then to Sultan Mohammed Khan.**
- (d) **FIMSA is liable to pay Sultan Mohammed Khan damages. The quantum is to be assessed.**
- (e) **Each Defendant is to pay Sultan Mohammed Khan \$2000.00, which is summarily assessed, within 21 days.**



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Chaitanya S C A Lakshman

**Puisne Judge**  
31<sup>st</sup> October 2024

