

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 104 of 2022

BETWEEN : **TEVITA VELODROKA**
Plaintiff

AND : **APISAI VASUTURAGA**
First Defendant

AND : **MATUA TAXI**
Second Defendant

AND : **BOARD OF THE MATUA TAXI**
Third Defendant

Counsel : Mr S Drole for Plaintiff
Mr P Niubalavu for First, Second & Third Defendants

Hearing : 28 November 2024

Written Submissions: 18 December 2024 (Defendants)
30 December 2024 (Plaintiff)

Judgment : 12 March 2025

JUDGMENT

[1] The parties entered into a rental arrangement for the defendants to use facilities on what they both believed to be the Plaintiff's land. The defendants used the land as a base for

their taxi business. This arrangement went on for several years. In 2019, it appears that the defendants became aware that the Plaintiff did not have authority or legal interest over the land upon which the facilities were situated and stopped paying rent.

- [2] The Plaintiff has brought this proceeding on the basis of an alleged breach of contract, claiming rental arrears as well as the cost of improvement to the land in question. The amount sought is special damages of \$51,500.
- [3] The defendants claim that the Plaintiff had no legal interest in the land and, therefore, was not entitled to payment of rent. They seek reimbursement of the rents paid for the period from January 2014 to August 2019 in the amount of \$21,200.

Background

- [4] The Plaintiff and First Defendant provided evidence at trial. The parties also filed an Agreed Bundle of Documents which was most helpful and for which I am grateful. The material facts are set out as follows:

Dates	Event
	The Plaintiff and First Defendant have known each other for several decades. They were, it appears, previously very good friends.
2003	The Plaintiff purchases and moves into his property at Lot 25, DP 5253 on Sukanaivalu Road. There is an empty lot next to his house. The land in question is lot 9 on DP2023 at the junction of Mead Road and Sukanaivalu Road. He understands that the land is owned by Suva City Council and approaches Suva City Council to obtain use of the land for a taxi business.
27 February 2008	The Plaintiff is granted an allocation of four taxi spaces on Sukanaivalu Road. The allocation is gazetted on this date. According to the Gazette, (Common Bundle Exhibit ('CBE') 20) the description where the taxi

	spaces are situated on Sukanaivalu Road are, <i>'From the northern boundary of Mead Road to a point 12m northwards'</i> . This indicates to me that the approval is for spaces on Sukanaivalu Road and not on any land at lot 9.
8 July 2008	The Suva City Council writes to the Plaintiff confirming approval for him to operate from a taxi stand on Sukanaivalu Road. He is required to pay a monthly fee, a license fee and a deposit (CBE 19). The third page of CBE 19 is a map of the corner of Mead Road and Sukanaivalu Road. Lot 9 is shaded with diagonal lines and in a cloud with an arrow pointing to Lot 9 are the words <i>'Proposed Taxi Stand'</i> . The Plaintiff claims that this map was attached to Suva City Council's letter of 8 July 2008 - I have some difficulty accepting this given that there is no reference in the body of the letter of 8 July 2008 to any attachment or map.
2013/2014	The First Defendant approaches the Plaintiff in the traditional customary way with a sevusevu requesting that he be permitted to operate his taxis at lot 9. The Plaintiff agrees. It is unclear whether the Plaintiff had a taxi operating at this time. The Plaintiff stated in evidence that he made a lot of improvements to the land, including constructing a retaining wall. He also arranged for water, sewerage and electricity connections, as well as improvements to the existing structures. There was an old booth already on the land which the Plaintiff improved. It is the Plaintiff's evidence that he only ever dealt with the Suva City Council as he was not aware that he had to deal with the Ministry of Lands. It is also his evidence that he initially charged the defendants \$150 a month and increased the rental to \$400/month when the defendants asked the Plaintiff to build a washroom, toilet etc on lot 9.

	The First Defendant's evidence is that the defendants had regularly requested documentary evidence from the Plaintiff to establish his ownership of lot 9 but the papers were never supplied. It is the Plaintiff's evidence that he had provided a contract to the Defendant when the rent was increased to \$400/month, setting out the terms of the arrangement but the contract was not signed and returned to the Plaintiff. In cross-examination, the First Defendant appeared to acknowledge that he did not do his due diligence to verify the Plaintiff's legal interest in lot 9 when he initially made the arrangement with the Plaintiff.
8 March 2016	The Suva City Council sends a notice to the Plaintiff (CBE 2) requiring the Plaintiff ' <i>to remove illegal structures/wooden dwellings from Sukanaivalu Road and Mead road junction</i> ' pursuant to section 115 of the Local Government Act 1972.
Mid 2019	The defendants take steps to obtain a legal interest in lot 9. They contact the Suva City Council to ascertain who has authority over the land and are referred to the Fiji Roads Authority. The defendants get in contact with the Fiji Roads Authority on the matter.
30 July 2019	Fiji Roads Authority writes to the defendants (CBE 3) advising that the ' <i>subject land (lot 9) is set aside as public reserve dedicated to Suva City Council</i> '. The defendants are advised to communicate with the Council on their request to use lot 9.
September 2019	The defendants stop making rental payments to the Plaintiff.
7 November 2019	The defendants write to the Suva City Council applying for approval to operate its taxi base at lot 9 (CBE 4).
30 December 2019	The Plaintiff writes to the defendants complaining about its use of the taxi base at lot 9 as well as its failure to pay rent for several months (Plaintiffs Bundle Exhibit 6).

	The Plaintiff requires the defendants to urgently address the matter or vacate the land.
20 January 2020	The Ministry of Lands issues a Stop Work Notice to both the Plaintiff and defendants demanding that both stop operating from lot 9 (CBE 5). Each is advised: <i>'3. You are therefore instructed to obtain approval by submitting your application letter together with your company registration certificate, tin letter and approval from Suva city council.'</i>
21 January 2020	The defendants write to the Director of Lands seeking approval for its taxi operations to use lot 9. (CBE 6).
23 January 2020	The Plaintiff writes to the Director of Lands also seeking approval to use lot 9 and advising that he has had such consent from the Suva City Council for 10 years and had since undertaken improvement including backfilling, grass cutting, rubbish disposal, and construction of a retaining wall (CBE 25).
23 September 2020	The Director of Lands writes to the Plaintiff to advise that his application for approval is refused <i>'on the ground that you have an approved base from Suva City Council along Sukunaivalu Road'</i> , and that <i>'you are hereby requested to relocate to area gazetted and approved from Suva City Council'</i> (CBE 26).
24 September 2020	The Director of Lands writes to the defendants advising that it had approved allocation of lot 9 for the defendants to use as a taxi base (CBE 16).
25 September 2020	The Plaintiff writes to the Director of Lands appealing its decision (CBE 27).
23 October 2020	Suva City Council writes to the defendants advising that the <i>'the Council has ceased all endorsement of private Taxi Bases and necessary approval are to be sought from the Land Transport Authority'</i> (CBE 9).

24 March 2021	<p>The Director of Lands writes to the defendants, referring to its earlier approval of 24 September 2020 and advising that the <i>'Minister of Lands has reconsidered his decision and approved the allocation of Lot 9 DP 2023'</i> to the Plaintiff <i>'as the site was approved to him for taxi booth by Suva City Council'</i>.¹ The defendants are advised <i>'to relocate your taxi base at your original site opposite Nabua Secondary School'</i>. (CBE 29).</p>
1 April 2021	<p>The Director of Lands writes to Plaintiff to advise <i>'that the Minister of Lands has made his decision and approved part of Lot 9 DP 2023 to you for taxi base/booth as confirmed by Suva City Council'</i>. (CBE 30)</p>
20 September 2021	<p>The Director of Lands writes to the Plaintiff to advise:</p> <p><i>'Please be advised that the Management has approved the allocation of the subject land to Sukunaivalu Taxis and Nabua Matua Taxi & Hire for taxi booth purpose only.</i></p> <p><i>Our surveyors will be demarcating the area into 2 lots after which the Tenancy at Will document will be prepared and released to you for execution.</i></p> <p><i>Further be advised, this letter does not permit you to proceed with any construction works on site until the above requirements are satisfied and Tenancy at Will document registered under the mentioned name.'</i></p> <p>(CBE 32)</p>

¹ It is not clear what information the Director of Lands has relied to form this view.

Evidence at Trial

- [5] The Plaintiff stated in evidence that he believed that he had approval from the Suva City Council to use lot 9 as a taxi base and had operated under this belief throughout. It was on this understanding that he entered into a rental arrangement with the defendants to use the land.
- [6] The First Defendant's evidence is that he understood that the Plaintiff was authorised to use the land. Initially, a washroom and shower were constructed next to the Plaintiff's house which was used by the defendant's staff but subsequently another washroom and toilet (and car wash) were constructed on lot 9 next to the booth. The defendants paid for these improvements. The First Defendant stated that the rental costs also covered the electricity and water usage which the Plaintiff had set up. He drew on the map at CBE 19 where these structures were situated. The defendants stopped making rental payments in 2019 because they were concerned that the Plaintiff did not have authority to use the land. The First Defendant stated that the defendants continued to use the Plaintiff's electricity and water up until rent payments were stopped. Thereafter, they used electricity and water supplied from a neighbor - since 2020 the defendants have organised their own water and electricity connection. They are currently using the booth and washroom while, it appears, the Plaintiff is using the car wash.
- [7] With respect to seeking approval from the Director of Lands to use lot 9 as a taxi base, the First Defendant stated that this occurred following receipt of the Stop Work Notice dated 20 January 2020 - I note that the correspondence from the Suva City Council and the LTA in 2019 make it clear that the defendants were seeking authority to use lot 9 well before the Stop Work Notice and before the rental payments were stopped in September 2019.
- [8] The First Defendant also stated that the Director of Lands had organized a meeting with them and the Plaintiff to facilitate a resolution over their shared use of lot 9. The Director of Lands has now decided to divide lot 9 in half - the half closest to Sukanaivalu Road is allocated to the Plaintiff and the other half to the defendants. The existing structures on lot 9 (four of them) are situated on the defendants allocated

portion of lot 9. Pegs have been placed into the ground by the surveyor but the survey documents have not yet been completed.

Decision

- [9] The Plaintiff seeks compensation for breach of contract by the defendants. He claims damages for loss of rent and for improvements to the land in the amount of \$51,500. The defendants counter claim in the amount of \$21,200 for rental payments which the defendants claim the Plaintiff had no legal right or entitlement to receive.
- [10] There is common ground between the parties that they had an arrangement. The defendants paid a monthly rental in consideration for use of lot 9 as a taxi base and use of the facilities, including electricity and water. There is, however, no written agreement – perhaps reflective of the once close relationship between the Plaintiff and First Defendant – and, as such, the term of the arrangement are not spelt out.
- [11] The parties operated under the belief that the Plaintiff had legal authority to use lot 9. I am satisfied that the Plaintiff had no legal right or interest in lot 9. I have carefully considered the documents from 2008 (**CBE 19 and 20**) and it is clear to me that the Suva City Council did no more than approve the Plaintiff's use of 4 taxi spaces at the taxi stand on Sukanaivalu Road. There is no reference in the letter of 8 July 2008 or the Gazette notice to the land at lot 9 DP 2023. As I have already stated, I do not accept (in the absence of better evidence) that the third page of **CBE 19** (being the map) was attached to the original letter of 8 July 2008 from the Suva City Council. The letter of 8 July 2008 makes no reference to the map. The details in the Gazette are at odds with the map – according to the Gazette, the Plaintiff was permitted to use 4 taxis on Sukanaivalu Road not at lot 9. My reading of those documents is consistent with the Suva City Council's Encroachment Notice to the Plaintiff dated 8 March 2016 requiring him to remove the 'illegal structures' on lot 9 (**CBE 2**). It is also consistent with the Stop Work Notice from the Ministry of Lands issued to both the Plaintiff and defendants on 20 January 2020 (**CBE 5**).
- [12] Even if the Suva City Council had approved the Plaintiff's use of taxi spaces on lot 9 (which I do not accept on the evidence before me), the letter of 8 July 2008 did not

permit the Plaintiff to make changes to the land or structures at lot 9, or to sublet the same.

- [13] As such, I find that the Plaintiff had no authority to enter into any agreement with the defendants over the use of lot 9. The arrangement was formed on a mistaken belief by both parties regarding the Plaintiff's legal interest in lot 9. I am satisfied, having observed the evidence at trial, that both parties genuinely held this mistaken belief.
- [14] While the arrangement between the Plaintiff and the defendants was founded on a shared mistaken belief, both parties benefited from the mistake. The Plaintiff received rental monies from the defendants. In consideration, the defendants used the facilities at lot 9 that were improved and/or constructed by the Plaintiff. The defendants also used water and electricity supplied at the Plaintiff's cost.
- [15] Neither party is entitled to a remedy against the other arising from an agreement that was founded on a mistake. The Plaintiff certainly was not entitled to ongoing rental payments once the mistake came to light. The defendants are not liable for the improvements made to the land and structures by the Plaintiff.
- [16] With respect to the defendants' counterclaim, they derived a benefit from the use of lot 9 from 2014 to 2019. It would be both unfair and unreasonable to require the Plaintiff to reimburse the rentals monies paid by the defendants in such circumstances.

Orders

- [17] For the reasons stated above, my orders are as follows:
- i. The Plaintiff's claim is dismissed.
 - ii. The defendants' counterclaim is dismissed.
 - iii. There will be no order as to costs. Each party will bear their own costs.




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D.K.L Tuqereqere
JUDGE

Solicitors:

Maisamoa & Associates for the Plaintiff

Oceanica IP for the First, Second and Third Defendants