

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

**CIVIL ACTION NO. HBC 9 OF 2021**

**IN THE MATTER** of the property comprised in Certificate of Title Number 27439 being Lot 1 on DP 5386 part of Land known as “Nasivi” comprising an area of fourteen (14) acres and Two (2) Roods one perch and five tenths of a perch together with Sugarcane Contract number 2857 Tagi Tagi Sector, the property of **LALTA DEVI** (“the property”)

**AND**

**IN THE MATTER** of the alienation of the property by Chandar Prakash to the said **LALTA DEVI**.

**AND**

**IN THE MATTER** of Section 51 of the Property Law Act 130 and Section 167 and 168 of the Land Transfer Act Cap 131.

**BETWEEN**

**:** **UMA PRASAD** of Malele Tavua, Fiji, Cultivator as administrator of Estate of PRASHANTIKA ANJANI DEVI also known as PRASHANTIKA ANJINI DEVI of Maqere, Tavua, Deceased.

**1<sup>st</sup> PLAINTIFF**

**AND**

**:** **SWASTIKA DEVI** of Maqere, Tavua

**2<sup>nd</sup> PLAINTIFF**

**AND**

**:** **CHANDAR PRAKASH**  
of Vatia, Tavua

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

**AND**

**:** **LALTA DEVI** of Baru, Rakiraki

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

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

**APPEARANCES** : Mr. S. Kumar, for the Plaintiffs.

: Ms. R. Prasad for the Defendants

**HEARING** : Held on 10<sup>th</sup> December 2024.

**DATE OF RULING** : 05<sup>th</sup> February 2025 @10.30 am.

## **RULING**

### **A. INTRODUCTION:**

1. This Ruling pertains to the “Means Test” hearing held before me on 10<sup>th</sup> December 2025, as sought by the Amended Summons (“the Summons”) filed by the Plaintiffs on 13<sup>th</sup> November 2024 seeking for the following reliefs;

1. A *HEARING* date be assigned to conduct the means test of the 1st Defendant to satisfy Order (e) granted by Honorable Justice A. M. Mohammed Mackie on the 12th day of April, 2023 in HBC 09 of 2021 and/or **transfer of the said property** as partial satisfaction of judgment that was pronounced against the Defendants on the 30th day of January, 2020 by Honorable Justice A. G. Stuart in Civil Action No. HBC 58 of 2005 consolidated with HBC 74 of 2005 in the sum of \$252,340.00 in favour of the 1st Plaintiff and \$35,260.00 in favour of the 2nd Plaintiff together with interest on both sums pursuant to section 4 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act 1935 from the date of the Judgment until the entire sum is paid in full and cost awarded in said judgment in the sum of \$7,500.00.

2. *ALTERNATIVELY:* -

**a.** The Judgment against the Defendants entered and pronounced on the 30th day of January, 2020 by Honorable Justice A.G. Stuart in Civil Action No. HBC 58 of 2005 consolidated with HBC 74 of 2005 in the sum of \$252,340.00 in favour of the 1st Plaintiff and \$35,260.00 in favour of the 2nd Plaintiff together with interest on both the sums pursuant to section 4 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act 1935 from the date of Judgment until the entire sum is paid in full and cost awarded in said judgment in the sum of \$7,500.00 **stand charged against the 1st Defendants interest in Certificate of Title Number 27439 being Lot 1 on DP 5386 part of Land known as “Nasivi” situated in the District of Tavua in the island of Viti Levu having an area of fourteen (14) acres and two (2) roods one perch and five tenths of a perch until such date as the Court makes a final Order.**

- b. *COPIES of all documents be served on the 1st Defendant, Chandra Prakash who must make an appearance in terms of Order 50 Rule 1 (6) of the High Court Rules 1988.*
  - c. *ON service and appearance, the 1st Defendant, Chandra Prakash do show cause why the said Judgment pronounced and entered on the 30th day of January, 2020 in Civil Action No. HBC 58 of 2005 consolidated with HBC 74 of 2005 in favour of the Plaintiffs shall not become Charging Order absolute against the 1st Defendant's interest in Certificate of Title Number 27439 being Lot 1 on DP 5386 part of Land known as "Nasivi: situated in the District of Tavua in the island of Viti Levu having an area of fourteen (14) acres and two (2) roods one perch and five tenths of a perch until such date as the Court makes a final Order.*
  - d. *UPON the Orders being pronounced charging Order absolute, **the Plaintiff be permitted to transfer the Defendants land** described as Certificate of Title Number 27439 being Lot 1 on DP 5386 part of Land known as "Nasivi" situated in the District of Tavua in the island of Viti Levu having an area of fourteen (14) acres and two (2) roods one perch and five tenths of a perch as partial satisfaction of the Judgment sum.*
  - e. *THE **Deputy Registrar Legal of High Court Lautoka shall execute all documents** required on behalf of the 1st Defendant to process Transfer, the Capital Gains Tax Clearance Application and any other applications required to give effect to such transfer.*
  - f. *WITHIN 7 days of the making of the Orders herein, the 1st Defendant and/or the 2nd Defendant by himself /herself or through this agent or his Power of Attorney Holder shall provide the duplicate original Certificate of Title Number 27439 to the Plaintiff Solicitors. If the 1st Defendant and/or the 2nd Defendant fails to hand over the Duplicate original Certificate of Title Number 27439 in the 1st and/or the 2nd Defendants possession and issue a fresh Duplicate /Provisional Title of the property for use by the Plaintiffs to achieve the transfer of the property unto the Plaintiffs name.*
3. *Such further and/or other Orders this Court deems just and expedient.*
  4. *Costs on indemnity basis. (**emphasis mine**)*
2. The Summons is supported by an Affidavit sworn on 28<sup>th</sup> May 2024 by **UMA PRASAD**, the first Plaintiff, being the father and the Administrator of the Estate of deceased **PRASHANTIKA ANJANI DEVI**. This Summons is filed pursuant to Section 104 of the Land Transfer Act 1971, Section 32 of the High Court Act 1875 and Order 42 Rule 3, Order 50 Rule 1, Order 50 Rule 6, and Order 86 of the High Court Rules 1988.
  3. The Summons was duly served and the 1<sup>st</sup> Defendant, who appeared with his legal representation and gave evidence under oath for the purpose of testing his means to satisfy the judgment sum. Thus, the remaining task before the Court now is to consider

whether the orders sought in terms of paragraphs 1, 2 (a), (d) ,( e) ,(f) and 3 & 4 of the Amended Summons should be granted to the Plaintiff.

## **B. HISTORY IN BRIEF:**

4. The said PRASHANTIKA ANJANI DEVI ( the deceased), on 24<sup>th</sup> May 2002 was travelling in a Motor Car owned and/or driven by the 1<sup>st</sup> Defendant, which collided into the Tram transporting Sugarcane, in Lausa , and she succumbed to her resultant injuries.
5. The 2<sup>nd</sup> Plaintiff, SWASTIKA DEVI, being another daughter of the 1<sup>st</sup> Plaintiff and the sister of the said deceased PRASHANTIKA ANJANI DEVI, was also travelling in the same Car and sustained serious injuries.
6. Two separate actions, bearing Nos HBC 58 of 2005 and HBC 74 of 2005, were filed on behalf of both victims, which were later consolidated, and after the trial before my predecessor Hon. Justice A.G. Stuart (as he then was), by judgment dated 30<sup>th</sup> April 2020, the 1<sup>st</sup> Plaintiff was granted a sum of **\$252,340.00**, while the 2<sup>nd</sup> Plaintiff was granted **\$35,260.00**, with interest as stated therein and costs.
7. The 1<sup>st</sup> Defendant made an Application to the Court of Appeal for the extension of time to Appeal, but the Court of Appeal dismissed the said Application.
8. The Orders in the said Judgment being sealed and served on the 1<sup>st</sup> Defendant, the Plaintiff was made aware that the 1<sup>st</sup> Defendant was in the act disposing and alienating his properties in order to avoid the judgment against him being executed.
9. The Plaintiff had a search done in respect of the Certificate of Title No- 27439 being Lot -1 in DP 5386 part of the Land known as "Nasivi" comprising an area of fourteen (14) acres, two (2) Roods, one perch and five tenths of a perch, then owned by the 1<sup>st</sup> Defendant, and found that the 1<sup>st</sup> Defendant had fraudulently transferred the said property unto one LALTA DEVI, the 2<sup>nd</sup> Defendant hereof.
10. Accordingly, the Plaintiffs on 18<sup>th</sup> January 2021 filed an Originating summons before me seeking various reliefs, including the cancellation of the said fraudulent transfer and re-transfer the said property from the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant, and this Court by its judgment dated 12<sup>th</sup> April 2023 made the following Orders;
  - a. *It is hereby declared, as prayed for in paragraph (a) of the prayer to the Originating Summons filed on 18th January, 2021, that the Transfer of property, described above, by the 1st Defendant in favor of the 2nd Defendant on 15th October, 2019 and having it registered on 18th November 2019, constituted an alienation of property with the intention of defrauding the Plaintiffs,*

- b. *It is also hereby declared, as prayed for in paragraph (b) of the prayers to the said Originating Summons, that the 2nd Defendant had at all times held and is holding the said property on Trust for the 1st Defendant, with the purpose of defeating the impending judgment in Civil Actions no HBC 58 of 2005 and HBC-74 of 2005 against the 1st Defendant,*
- c. *The 2nd Defendant hereof is ordered, as prayed for in paragraph (c) of the prayers to the said Originating Summons, to re-convey the title of the property and transfer all administrative powers on the said property unto the 1st Defendant. This Order shall be complied within 6 weeks from today.*
- d. *The Registrar of Title is hereby directed, as prayed for in paragraph (d) of the prayer to the Summons, to forthwith cancel the registration of the Transfer dated 15th October 2019 bearing the Dealing No. 884072 , which was Registered on 18th November 2019 and restore the 1st Defendant as the Title holder on the Certificate of Title No. 27439 together with the sugarcane contract No. 2857 Tagi Tagi Sector ,*
- e. *The Order prayed for as per paragraph (e) of the prayer to the Summons will be considered after a mean test hearing.*
- f. *In the event the 2nd Defendant fails and/ or neglects to execute the Transfer, the Chief Registrar of the High Court is hereby empowered and ordered to take all actions needed for the re-transfer of the Property in favor of the 1st Defendant, however, subject to the payment of disbursements by the 1st and 2nd Defendants.*
- g. *The Defendants shall pay the Plaintiffs \$3,000.00 in 28 days, being the summarily assessed costs of this Application.*
- h. *The Plaintiffs are at liberty to move, inter-parte, for further directions and/ or orders, if need arises.*
- i. *These orders shall be sealed and served on the Defendants and the Registrar of Title forthwith.*

**11.** The relief (e) that had been prayed for in the said Originating summons, which was for the transfer of the said property in favor of the Plaintiff to satisfy said judgment in part, was withheld by this Court to be considered after a Means Test hearing.

**12.** Accordingly, as sought by the current Summons, Means Test hearing was held before me on 10<sup>th</sup> December 2024, wherein the 1<sup>st</sup> Defendant gave evidence on his behalf.

### **C. CONSIDERATION:**

**13.** As per the 1<sup>st</sup> Defendant's evidence, I find that the Plaintiff's Counsel could not ascertain any form of 1<sup>st</sup> Defendant's income or assets that can be utilized for the satisfaction of the sums awarded by the judgment in the substantive action hereof, except for the Land in the **Certificate of Title Number 27439 being Lot -1 on DP 5386 part of Land known as "Nasivi" situated in the district of Tavua in the Island of Viti Levu having an area of Fourteen (14) acres, Two (2) Roods , One perch and five tenth of a perch**, of which the Title now stands re-transferred unto the 1<sup>st</sup> Defendant from the 2<sup>nd</sup> Defendant , in terms of my judgment dated 12<sup>th</sup> April 2023.

14. However, the 1<sup>st</sup> Defendant in his evidence readily agreed to transfer half (1/2) share of the said Land unto the Plaintiffs in satisfaction of the entire judgment sum, interest thereon and the Costs so far ordered. However, the Plaintiffs did not agree to the said proposal on the ground that the Land is hilly and has no sufficient market value to satisfy the judgment.
15. Though, it was proposed to the 1<sup>st</sup> Defendant for him to pay the total sum on installment basis within a reasonable time period, he was not amenable to such proposal indicating that he has no any permanent income.
16. On being asked by the Plaintiffs' Counsel, whether he can initially pay at least the Costs so far ordered, which was in a sum of \$10,500.00, his immediate response was that he can pay it only on installment basis in a sum of \$50.00 (Fifty Dollar) per month, which alone, if allowed, would take more than 17 years to pay. This response by the 1<sup>st</sup> Defendant clearly demonstrated the callous disregard he has towards the Plaintiffs' plight and blatant disregard and disrespect he has towards the Court Orders.
17. The Plaintiffs' position is that the subject land is hilly and it does not have a sufficient market value for the satisfaction of the judgment sum and the interest on it together with costs. However, the Defendant has, with the leave of the Court, submitted a valuation report according to which the market value of the Land is said to be around \$500,000.00.
18. The valuation report confirms the Plaintiffs' stance to some extent, which states, *inter alia*, that ***"the lot is irregular in shape. Topography of land is flat, easy slopes to medium steeps with brown clay soil, boulders scattered randomly and substratum of soapstone. Said agricultural land is well maintained and utilized for dairy farming and goat grazing ..... approximately 0.1000 hectare (3/4) utilized for residential purpose....."***
19. However, in my view, this valuation report appears to be a self-serving one, obtained after the Means Test hearing, in order to hoodwink the Plaintiffs. Even the offer made by the 1<sup>st</sup> Defendant to give half share of this Land unto the Plaintiffs is not a viable solution for obvious reasons.
20. The principal sum awarded by the judgment in the substantive matter in April 2020 was \$287,600.00. Within last 5 years, the interest on it has continued to accrue. The 1<sup>st</sup> Defendant has not shown any interest in fulfilling his legal obligation.
21. It is observed that the substantive actions claiming damages were filed in the year 2005 and the judgment thereof was given in the year 2020. The Defendant belatedly attempted to Appeal against the Judgment, but it was not successful. Thereafter, in order to avoid the execution of the judgment, the 1<sup>st</sup> Defendant transferred his title to the Land unto the 2<sup>nd</sup> Defendant hereof. This Court, by its judgment dated 12<sup>th</sup> April

2023, made the said Transfer null and void and ordered the Land to be retransferred to the 1<sup>st</sup> Defendant.

- 22.** On consideration of the facts and circumstances surrounding this application and the evidence adduced, this Court, in the absence of any other alternative to satisfy the judgment, stands fully convinced that unless the 1<sup>st</sup> Defendant's Land described hereof is subjected to the execution of the judgment, in the manner sought by the Amended Summons, the Plaintiffs will be deprived of their right to enjoy the fruits of the judgment forever. I find that the 1<sup>st</sup> Defendant is deliberately avoiding the execution of this judgment causing serious prejudice to the Plaintiffs.
- 23.** Therefore, this Court is of the firm view that the reliefs claimed for in the Plaintiffs' Amended Summons should be granted as prayed for, leaving no room for the 1<sup>st</sup> Defendant to frustrate the Plaintiffs' claim and their entitlements any further. However, in fairness to the 1<sup>st</sup> Defendant, this Court is of the view that he should be afforded a last opportunity to pay and settle the total sum within 12 months from the date of the entering of the Charging Order at the Title Registry.
- 24.** In the event the 1<sup>st</sup> Defendant fails and/or neglects to pay within said 12 months period, the Plaintiff should be at liberty to have the said Land Transferred into his or his nominee's name. Further, if the Plaintiffs decides to dispose the subject Land to recover the sums awarded by the judgment, the sale price thereof should be decided by obtaining a fresh valuation agreeable to both parties, and after the sale, the 1<sup>st</sup> Defendant should have the right to recover the remainder of the sale price, after deduction of the dues to the Plaintiffs.
- 25.** Parties may resort to Court, if any further orders are needed, and any dealing with the subject land should be with the consent of the relevant authorities, if need arises.
- 26.** In the event, the Plaintiffs decide to retain the Title of the subject land with them, the 1<sup>st</sup> Defendant shall have the right to claim the amount that is in excess of the total sum payable to the Plaintiffs, which will be decided on a fresh valuation jointly obtained for this purpose.
- 27.** The Plaintiffs had been granted costs in a sum of \$7,500.00 by the substantive judgment. On account of the Originating Summons already disposed, this Court has granted the Plaintiffs \$3,000.00 as summarily assessed Costs. In relation to the current Summons, in my view, the imposition of costs in a sum of \$1,500.00, is justifiable. Thus, the total costs payable to the Plaintiffs is \$12,000.00.

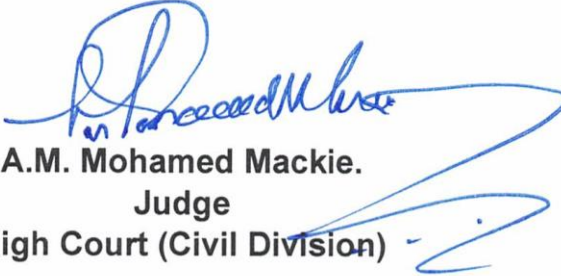
Considering the circumstances, this Court decides to leave the Plaintiffs at liberty to have the above Orders made for costs executed at anytime against any movable assets of the 1<sup>st</sup> Defendant.

**D. FINAL ORDERS:**

1. Orders sought in paragraphs 1, 2(a), (d), (e), & (f) of the Amended Summons are granted in favor of the Plaintiffs.
2. However, the 1<sup>st</sup> Defendant is at liberty to pay and settle the entire sum awarded by substantive judgment, together with the interest thereon and costs, within 12 months from the date of the registration of the charging Order in the relevant folio with the Registrar of Titles.
3. In the event the 1<sup>st</sup> Defendant fails and neglects to pay the said total sum as aforesaid, the Plaintiff will be at liberty to have the subject land transferred in his name or his nominee/s name, in the manner sought in the Amended Summons.
4. The Plaintiffs are entitled for a sum of \$1,500.00 (One Thousand Five Hundred Dollars) being the summarily assessed costs of this Application payable by the 1<sup>st</sup> Defendant.
5. The Plaintiffs, if they so wish, are entitled to have the orders for Costs so far made in the substantive action, Originating Summons and in the current Application , which is in a total sum of \$12,000.00(Twelve Thousand Dollars), executed forthwith against any movable assets of the 1<sup>st</sup> Defendant.
6. Orders shall be sealed and served forthwith on the 1<sup>st</sup> Defendant.

**On this 5<sup>th</sup> Day of February 2025 at the High Court of Fiji in Lautoka.**



  
**A.M. Mohamed Mackie.**  
**Judge**  
**High Court (Civil Division)**  
**Lautoka.**

**SOLICITORS:**

Messrs. Sunil Kumar Esq – Barristers & Solicitors – For the Plaintiffs.

Messrs. Fazilat Shah Legal- Barristers & Solicitors- For the Defendants.