

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 27 of 2020

BETWEEN : **SARENDRA SINGH** of Bua in the Republic of Fiji

PLAINTIFF

AND : **ITAUKEI LAND TRUST BOARD** a body corporate
duly constituted under the Native Land Trust Act [Cap
134] of 431 Victoria Parade, Suva.

1st DEFENDANT

AND : **FIJI PINE LIMITED** a corporate body of Vakabuli
Village, Drasa, Lautoka

2nd DEFENDANT

Coram : **Banuve, J**

Counsels : **Sen Lawyers for the Plaintiff**
Ms L. Turaganivalu for the 1st Defendant
Alvin Prakash Lawyers for the 2nd Defendant

Hearing : **5 and 7 May 2025**

Ruling : **8 May 2025**

RULING

A. INTRODUCTION

1. A Summons (Order for Specific Discovery under Order 24 Rule 7) was filed by the Plaintiff on 29 April 2025 seeking orders for specific discovery from the 1st Defendant of the following;
 - i. *The 1st Defendant's initial file regarding the land described as Lease Application No. CO100-45675, TLTB Reference: 2/2/3611 in Tusia in the Tikina of Labasa also known as Native Land Lease Lot 48 over NLC E3/4 and included in NLTB Tenancy at Will (TAW) referenced 4/2/1159.*
 - ii. *All files pertaining to File No. LD 4/9/5371 and AG 1015/1-7 being revision from the Director of Lands and Surveyor-General to TLTB over the subject land.*

B. THE LAW

2. Order 24 Rule 7 states as follows;
 - (1) *Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described in the application or any class of document so specified or described is, or has at any time been, in his or her possession, custody or power, and if not than in his [or her] possession, custody or power when he or she parted with it and what has become of it.*
 - (2) *An order may be made against a party under this rule notwithstanding that he or she may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.*
 - (3) *An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom the discovery is sought under this rule has or at some time had, in his or her possession, custody or power the document, or class of document specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.*

3. The order confers wide jurisdiction for the discovery and inspection of documents. The onus lies with the Plaintiff, as Applicant to establish by or through affidavit evidence¹;
 - (i) Particular document(s) or class of documents he seeks to be discovered by an opposing party;
 - (ii) A prima facie case that a specific document or class of documents exist or have existed;
 - (iii) Establish that the documents are relevant, relate to a matter in question (either directly or indirectly enable an applicant to advance his case or damage the adversary's case), Alternately, it is sufficient if information in a document fairly leads to a train of enquiry which may have either of these consequences.
4. Relevance is to be tested against issues and/or questions raised by pleadings. What is not pleaded cannot ordinarily be presumed to be related to the matter in issue, because it is assumed that only matters in dispute are contained in pleadings, and that relevant matters would not have been excluded from the pleadings. Thus unless a matter was put in issue in the pleadings, or later admitted, it cannot subsequently be regarded as a matter in issue.
5. In *Berkely Administration v McClelland* (1990) F.S.R 381, the Court stated the principle governing specific discovery as follows;
 - (i) There is no jurisdiction to make an order under RSC O.24,r.7, for the production of documents unless; (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the documents relates to matters in issue in the action; (c) there is sufficient evidence that the document is in the possession, custody or power of the other party.
 - (ii) When it is established that those three prerequisites for jurisdiction exists, the Court has jurisdiction whether or not to order disclosure.

¹ *Singh v Minjesk Investment Corporation Ltd & Anor* –Civil Action No 148 of 2006 as considered in *Chahan Engineering Pte Ltd v Coastal Development Ltd* [2021] FJHC 242;HBC12.2020 (20 September 2020) per Seneviratne J

- (iii) The order must identify with precision the document or documents or categories of document which are required to be disclosed, for otherwise the person making the list may find himself/herself in serious trouble for swearing to a false affidavit even though doing his/her best to provide an honest disclosure.

C. DISCUSSION

6. The Court notes that the Summons seeking specific discovery was filed on 29th April 2024 after the substantive matter had been set for trial on 11th March 2025. The conduct of proceeding by the Plaintiff has been protracted;
- (i) It was the last of the parties to file its Affidavit Verifying List of Documents which it did on 22nd December 2021²;
- (ii) It has filed interlocutory applications for an injunction against the 2nd Defendant on 11th September 2021 and 1st May 2024 and an application for interrogatories on 24th July 2023.
- (iii) An Application to amend the Statement of Claim was filed on 1st May 2024 and granted by the Master on 27th September 2024
- (iv) Copy pleadings and an Order 34 Summons were filed by the Plaintiff on 5th March 2025 and listed for first call on 11th March 2025
7. The Court has considered the pleadings filed by the parties in this proceeding and the issues arising from them. It has taken particular note of contents of the *Affidavit Verifying the 1st Defendant's List of Documents* filed on 15th December 2024. Despite the 1st Defendant complying with the requirement of discovery as required by set out Order 24 the Plaintiff seeks additional or specific discovery of documents from the 1st Defendant, as set out in the Motion filed on 29th April 2025.
8. When the matter was called on 11th March 2025, the Master dispensed with the Pre-Trial Conference Minutes, due to disagreement by counsels representing the Plaintiff and the Second Defendant, as to whether the Draft PTC Minutes had been circulated and the matter set for trial on 20th and 21st May 2025.

² The First and Second Defendants filed their Affidavits Verifying List of Documents on 15th December 2021

9. The failure to settle PTC Minutes is an issue which the Court finds pertinent in isolating the issues for which specific discovery is premised, and is an issue which the Court will revisit in this ruling.
10. The documents for which specific discovery are sought in the Summons filed on 29th April 2025 are;
 - (i) *The Defendant's initial file regarding the land described as Lease Application Case Number CO100-45675, TLTB Reference; 2/2/3611 in Tusia in the Tikina of Bua, also known as Native Land Lease Lot 48 over NLC E3/4 and included in NLTB Tenancy at Will (TAW) referenced 4/2/1159.*
 - (ii) *All files pertaining to File No LD 4/9/5371, LD A46/79 and AG 1015/1-7 being revision from the Director of Lands and Surveyor-General to TLTB over the subject land.*
11. Order 27, rule 7(3) stipulates that an application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had in his or her possession, custody or power the documents or class of documents specified or described in the application, and that it relates to one or more of the matters in question in the cause or matter.
12. In relation to the requirement of Order 27. r.7(3), counsel representing the Plaintiff referred to paragraph 6 of the Affidavit in Support of the Summons for Specific Discovery which states;
 6. *On 29th November 2024, my solicitor Amrit Sen wrote a letter to the 1st Defendant informing the 1st Defendant that they had in their possession, power and custody documents from the Land Survey Department, Director of Lands and from the Solicitor-General which had conclusively held that Fiji Pine Limited had lost their interest in the subject land known as Lease Application Case Number CO100-45675,TLTB Reference: 2/2/3611 in Tusia together with the pine trees. It was also requested that the folder for the subject land be made available.*
13. The Court has reached certain preliminary findings based on its assessment of the pleadings;

- 13.1 The affidavit of Sarendra Singh filed in support of the Summons for Specific Discovery did not comply with Order 24, rule 7(3) because it does not contain an averment that complies with the requirement that the deponent, Sarendra Singh state that *'according to his belief or the grounds of his belief'* the 1st Defendant had in its possession, custody or power the documents sought to be discovered. Rather than *deposing his personal belief and/or the grounds on which his belief is premised* the Plaintiff states in paragraph 6 of his affidavit that he relies on written communication dated 29th November 2024, sent by his solicitor to the 1st Defendant which *unilaterally* 'informs' the 1st Defendant, without stating the basis for his assertion, that they had in their possession, power and custody documents from the Land Survey Department, Director of Lands and from the Solicitor-General which had conclusively held that Fiji Pine Limited had lost their interest.
- 13.2 The correct approach to take in determining an application for specific discovery disclosure is to firstly, identify the factual issues that would arise for decision at trial. Disclosure must be limited to documents relevant to those issues which may be identified by analyzing the pleadings. The purpose of the pleadings is to identify those factual issues which are in dispute and in relation to which evidence can properly be adduced.³ The task of identifying whether the issue raised by the Plaintiff in paragraph 6 of the Affidavit in Support filed on 29th April 2025 has been complicated by the Plaintiff not settling facts and issues in a Pre-Trial Conference Minutes.
- 13.3 On examining the issues identifiable from the pleadings, the Court finds that the Plaintiff, has had ample opportunity in the protracted manner it has conducted these proceedings, alluded to earlier, to raise any or all issues pertinent to the lease held by Fiji Pine Ltd, and is well aware of the respective positions of the 1st and 2nd Defendants in respect of the subsistence of the FPL Lease;
- (i) As stated in paragraph 4(e) of the 1st Defendant's Statement of Defence to the Amended Statement of Claim filed on 18th November 2024 that the lease offer made in 2011 to the Plaintiff for the land known as Tusia in the Tikina of Bua had to be recalled as it had on it a subsisting lease issued to the 2nd Defendant in 1989.

³ *Chahan Engineering Pte Ltd v Coastal Development Ltd* [2021] FJHC 242; HBC 12.2020

- (ii) As stated in paragraph 7(i) of the 2nd Defendant's Statement of Defence to Amended Statement of Claim, its predecessor (Fiji Pine Commission) was issued with the Approval Notice of Lease by the Lands Department under Reference No: LD 4/8/5371 over land known as Part of NLC Lot 48,41 and 43, Wainunu in the District of Wainunu, Bua containing a total area of 123.4292 hectares for a period of 60 years with effect from 1 February 1989 for the purposes of pine planting.
- (iii) The Plaintiff has previously filed a **Summons for Specific Discovery and Leave to Serve Interrogatories** pursuant to **O.26, r (i)** and **O. 24, r.7** of the *High Court Rules* 1988, on 11th July 2023. The Court notes that the issue raised for Specific Discovery and Interrogatories by the Plaintiff against the 1st Defendant, related to the letter recalling the lease over land described as 'Tusia' initially issued to the Plaintiff in 2011 as the subject land was the subject of a subsisting lease issued to the 2nd Defendant in 1989, which lease was then inherited by the 1st Defendant under the *iTaukei Land Trust (Amendment)* Act 2002, subject to the existing lease held by Fiji Pine Ltd. In response to the specific issue raised by the Plaintiff in Interrogatories, the First Defendant responded⁴;

6. THAT in regards to paragraph (4) of the Interrogatories, the First Defendant says that the letter is already part of the First Defendant's Affidavit Verifying List of Evidence filed on 1st December 2021 and can produce the letter withdrawing the letter dated 7th June 2011.

13.4 There is no record of an objection being raised by the Plaintiff to the response provided by the 1st Defendant as being either inadequate or non-compliant with the order for interrogatory, such as available under O.26, r.6 (*Failure to comply with order.*)⁵ Rather than raise any issue about the response provided by the 1st Defendant, pursuant to the Order for

⁴ Affidavit in Answer by iTaukei Land Trust Board to Interrogatories filed by the Plaintiff on 24 July 2023 filed on 6 November 2023

⁵ **6-(1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such an order as it thinks just in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly**

Interrogatories, copy of pleadings and an Order 34 Summons were filed by the Plaintiff on 5th March 2025 and on 11th March 2025 the substantive matter was set for trial on 20th and 21st May 2025.

13.5 On 29th April 2025 the Plaintiff filed another Summons for Specific Discovery under O.24, r 7.

D. FINDINGS

14. The Court has reviewed the issues raised by the Plaintiff in the Summons (Order for Specific Discovery under Order 24, Rule 7) filed on 29th April 2025 together with an Affidavit in Support and hold, that whilst it has jurisdiction to deal with the matter raised in the Summons, it finds no basis for the grant of orders sought in it and they are hereby refused, on the following grounds;

- (i) The affidavit filed by the Plaintiff in support of the Summons for Specific Discovery did not comply with Order 24, rule 7(3) because it does not contain an averment that complies with the requirement that the deponent state that according to his belief or the grounds of his belief that the 1st Defendant had in its possession, custody or power the document sought to be discovered. Rather the Plaintiff wholly relies on written communication sent by his counsel dated 29th November 2024. There is no indication from the Plaintiff whether he believed in the issue raised by his counsel and if so, the basis of his belief. Further, the Plaintiff 's affidavit in Support of the Summons for Specific Discovery does not assist the Court in determining the outstanding question –whether the document sought to be discovered would relate to the matter in question-*Kalabo Investments Ltd v New India Assurance Co Ltd* [2019] FJCA 210. The Court notes in particular that the letter issued by the 1st Defendant recalling the lease issued to the Plaintiff has been disclosed by the 1st Defendant in its Affidavit Verifying List of Documents filed on 15th December 2021, and specifically in response to Interrogatories provided on 6th November 2023.
- (ii) The Court does not discern any purpose to be served by this 'additional' Summons for Specific Discovery filed on 29th April 2025, given an earlier Summons for Specific Discovery and Interrogatories had been filed on 11th July 2023 and a response to the same issue had been provided by the 1st

Defendant on 6th November 2023. No issue was raised by the Plaintiff on the inadequacy of the 1st Defendant's response pursuant to the Order for Interrogatories. It proceeded to set the matter for trial, instead. The Plaintiff, otherwise has had more than adequate opportunity to raise any 'issue' with the 1st Defendant as pointed in the protracted manner this matter has been prosecuted thus far by the Plaintiff through various interlocutory applications and a major amendment to pleadings.

15. The Court would apply the Court of Appeal's cautionary statement in *Kalabo Investments v New India Assurance Co Ltd* [2019] FJCA 210 to the current Summons for Specific Discovery filed by the Plaintiff, that the procedure relating to the discovery of documents cannot be used as a means of filling gaps in pleadings and delaying court proceedings.

ORDERS:

1. The prayers sought in the Summons (Order for Specific Discovery under Order 24 Rule 7) is refused and dismissed in its entirety;
2. Costs summarily assessed at \$750.00 each to the Defendants.




Savenaca Banuve
Judge

At Labasa
8th May 2025