

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 134 of 431 Victoria Parade, Suva.

1ST DEFENDANT

AND: **FIJI PINE LIMITED** a corporate body of Vakabuli village road, Drasa, Lautoka.

2ND DEFENDANT

Counsel: Mr. A. Sen for the Plaintiff
Mr. J. Kati for first Defendant
Ms. Lidise Virisila for second Defendant

Date of Judgment : 13.08.2025

JUDGMENT

INTRODUCTION

[1] Plaintiff is seeking declarations relating to a land area of 118.32 ha (292.3751 acres) which is the area contained purported offer of 18.11.2011, he received from first Defendant for a lease. This offer did not contain a map to ascertain the land.

[2] According to document marked 31 issued by first Defendant to Forestry Officer area about 213 .3014 acres was planted with Pine trees from 118.32ha. These were planted by second Defendant in 1989 in terms of a lease granted to it prior to the purported offer to Plaintiff. The disputed area is this where Pine trees were planted.

- [3] Plaintiff seeks an order that second Defendant's lease hold interest (if any) came to an end pursuant to purported offer of first Defendant which offered him said land area where second Defendant had planted Pine in 1989.
- [4] First Defendant could not offer an area (of 213.3014 acres) of Pine planted land, when the same land was already part of the Lease granted to second Defendant.
- [5] Plaintiff in the statement of claim pleaded facts relating to his late grandfather Dullu Singh who had obtained an order from Agricultural Tribunal for tenancy for an area of 164 acres from which 159 acres were planted with Pine by second Defendant.
- [6] Late Dullu Singh had obtained this on the basis he had used the same land for grazing of his farm animals. Late Dullu Singh, had used major part of the land leased since 1966 for grazing of his farm animals. Late Dullu Singh entered a land area approximately 250 acres pursuant to purported Tenancy at Will of first Defendant in 1966. At that time by mistake purported Tenancy At Will , comprised State(Crown Schedule A) Land but this was discovered in 1979.
- [7] This mutual mistake was discovered in 1979 and Tenancy At Will was cancelled. Late Dullu Singh was requested to seek an instrument of tenancy from Director of Lands for 164 acres and remaining 86 acres, vested with first defendant at that time , was issued with '*Provisionally Approved*' Agricultural Lease for ten years on 16.8.1982, and this land was not planted with Pine. This area is not disputed.
- [8] The disputed area confined to area that was vested with Director of Lands at that time which was land belonged to extinct *mataqali* and called 'Crown Schedule A Land'. Late Dullu Singh applied for remainder of around 164 acres of 'Crown Schedule A Land' on 20.6.1979 to Director of Lands. Late Dullu Singh was not granted a lease for this land.
- [9] According to Document marked 29 C major part of the land in dispute was planted with Pine in early 1989 by second Defendant¹. Second Defendant² was leased an area for Pine Plantation, including the 164 acres of land for which late Dullu Singh applied for a lease from Director of Land . (See document marked 37)³

¹ ibid

² ibid

³ Under Findings of document 37 stated

- [10] Before late Dullu Singh's death he obtained a decision from Agricultural Tribunal declaring his tenancy over disputed 164 acres on 24.3.1995. From this area about five acres was not suitable for Pine trees , and this area was planted with rice and mixed crops by late Dullu Singh. So from second Defendant's Pine Plantation, 159 acres was disputed by late Dullu Singh as his grazing land for his farm animals. This was area subjected to decision of Agricultural Tribunal .
- [11] Late Dullu Singh had died without out obtaining an instrument of tenancy . Plaintiff's contention is declaration of tenancy in favour of late Dullu Singh on 24.3.1994 , had cancelled the Lease of second Defendant and purported offer letters of first Defendant issued on 18.11.2011 and 22.12.2011 and payments made through acceptance entitled him for a lease over Pine planted area
- [12] Purported offer letters issued by first Defendant ⁴ read with letter issued to Forestry Office for felling indicated first Defendant's position. It stated that area offered to Plaintiff was not part of any lease , which is factually and legally incorrect. Apart from that due to absence of map or diagram showing the area offer was incomplete and could not create a legally binding contract to be enforced through declaration.
- [13] Purported offer of 18.11.2011 had included an area of more than 159 acres of land planted with Pine by second Defendant in terms of Pine Planted area stated in Document marked 31 where Pine planted area under purported offer is stated as 213.3014 acres.
- [14] Plaintiff's contention that Agricultural Tribunal nullified the Lease granted to second Defendant is without merit. There is no such declaration by Agricultural Tribunal though it had such power in terms of Section 18(2) of Agricultural Landlord and Tenant Act 1966 (ALTA).
- [15] Except an area of five acres rest of 159 acres was planted with Pine in early 1989. Late Dullu Singh had used this area for grazing of about seventy heads of cattle and two hundred goats. There is no clear boundary shown in action filed in Agricultural Tribunal for grazing land and records of it does not show clear or approximate area, where late Dullu Singh had used for grazing of his farm animals. Agricultural Tribunal had declared tenancy for an area not

'FPL's Approval Notice of Lease LD REF;1/9/5371 and Lease Offer dated 22/02/2011 given by iTLTB to Sarendara Sing are the same land on site which falls with(Pt of) NLC lot P....

The subject land inspected is mostly covered with pine trees.'

⁴ Document marked 30,31,32 read together.(document 31 state the area under Pine plantation of the purported Grazing Lease 'currently processing'.

demarcated or identified properly . So identification of disputed area through a map , was essential as the claimed area was large.

[16] So in order to issue a written instrument to Dullu Singh the area of dispute , needs identification through a map and this had not happened. Despite this uncertainty to implementation of decision, a declaration of tenancy was made for unascertained area.

[17] Plaintiff sought a declaration that second Defendant's lease hold interest for disputed land where Pine trees planted , came to an end is without merit. Plaintiff is also seeking instrument of tenancy for the same pine planted area and this also cannot be granted on the Pine planted area.

[18] Plaintiff has no right to any part of second Defendant's Pine plantation.

[19] Plaintiff's alternative claim for declaration of tenancy also fails as second Defendant had planted Pine trees since 1989 and had maintained them. Plaintiff had attempted to fell trees pursuant to factually and legally incorrect letter issued to Forest Office by first Defendant. It is admitted that Plaintiff could not remove Pine trees fell by him and second Defendant is harvesting Pine in the area including area of 213.3014 acres purported offered by first Defendant to Plaintiff.

[20] Plaintiff had also claimed for trespass and also for fraud and conspiracy against Defendants and they are without merit and struck off.

FACTS

[21] In this action both parties submitted a common set of documents. At the hearing an official from Agricultural Tribunal produced Documents marked 29(A) to 29(G) . The only disputed document is Document marked D1 which was dated 7.6.2012 , and had informed self-evident facts such as the existence of the Lease and inclusion of that land in the said offer . In that letter sought to withdraw purported offers made on 18.11.2011 and 22.12.2011, but they could not offer land already leased to second Defendant and also planted with Pine .

[22] This letter was superfluous. It stated second Defendant was "withdrawing" the offer relating to land under the Lease to second Defendant. It was not available for any subsequent offer and this was a mistake as to the existence of subject area under Pine plantation for an offer.

[23] Both parties also submitted following agreed facts at the hearing and there was no minutes of Pre Trial Conference , contained in the copy pleadings.

[24] Following Facts are agreed in terms of the agreed facts submitted at hearing

- i. In 1966, late Dullu Singh held a Tenancy at Will issued by first Defendant over 250 acres of land under Reference 4/2/1159 dated 21 December 1966.
- ii. In 1979, late Dullu Singh was informed that 164 acres of the above included State (Crown) Land.
- iii. So late Dullu Singh was advised to make an application for a lease over 164 acres to predecessor of title to first Defendant. Since 2002 first Defendant became the trustee of said land due to amendment to relevant statute.
- iv. In 1979 late Dullu Singh's tenancy at will for the 250 acres was terminated by first Defendant and he was issued with an agricultural lease over 86 acres which were under first Defendant as trustee.
- v. On 20 June 1979 Dullu Singh applied to the Director of Lands for a lease over the 164 acres of the remaining land are under cancelled tenancy at will.
- vi. In 1982 the Fiji Pine Commission⁵ applied for a lease from the Director of Lands for a larger area.
- vii. On 16 .8. 1982 first Defendant granted late Dullu Singh an agricultural lease 86 acres, being the Native portion of the initial 250 acres under the 1966 Tenancy at Will
- viii. Director of Lands issued the Fiji Pine Commission with an Approved Notice of Lease Reference LD 4/9/5371 Wainunu, province of Bua over approximately 123.4292 ha subject to survey for a period of sixty years commencing from 1.2. 1989.(The Lease)
- ix. On 18 .2. 1991 the Director of Lands issued Dullu Singh with a notice to quit on the basis that he had been in unlawful occupation of the land which was the subject of FPC's ANL and to vacate the said land.

⁵ Predecessor to second Defendant

- x. On 8 .7. 1991⁶ Dullu Singh commenced proceedings before the Agricultural Tribunal Ref No. ND 12/19 seeking a declaration of tenancy over the 164 acres of the Crown Schedule A land(since 2002 this land is vested with first Defendant)
- xi. The Respondents to the application were the Director of Lands and first Defendant.
- xii. On 5 .11. 1992, the Approval Notice of Lease LD Ref. 41915371 was transferred from the Fiji Pine Commission to second Defendant.
- xiii. On 24 .3. 1995 the Agricultural Tribunal granted late Dullu Singh's application and declared that a tenancy exists and that Dullu Singh has been tenant of the Director of Lands since 1979 over the 164 acres of land included in the 1966 Tenancy at Will.
- xiv. On 18 .11. 2011 the first Defendant issued Plaintiff with purported offer of lease for land known as Tuisia in the Taikina of Bua, Province of Bua with an area of 32 hectares and 86.32 hectares (totaling 118.32 hectares) for a period of 30 years from 1 July, 2012 for a consideration of: \$5, 202.11.
- xv. On 12 .12. 2011 a payment of \$4, 068.11 was made to first Defendant under TLTB File Ref. 2/23611. TLTB receipt no. 216222 was issued in respect of that payment.
- xvi. On 22 .12. 2011 first Defendant issued Sarendra Singh with a revised offer in which the term increased from 30 to 50 years and the consideration increased to \$10,432.

[25] On 3 .1. 2012 a payment of \$4, 863.89 was made to first Defendant under File Ref. 2/23611 and a receipt no. 216646 was issued in respect of that payment.

[26] Purported offer of 22.12.2011 shows land area as 32 ha and 86.32 ha and letter of 12.12.2011 to Forestry office by first Defendant state that 213.204 acres was under Pine trees this denotes 86.32 ha . This is the area disputed in this action.

⁶ See Application to Agricultural Tribunal marked 29G

- [27] Second Defendant had counterclaimed against Plaintiff but abandoned the claim for Pine trees fell by Plaintiff .
- [28] Second Defendant sought damages for obtaining injunction that affected its planned felling of Pine trees.
- [29] The Plaintiffs amended statement of claim sought three declarations and they are found in prayer (i), (v), and (vi).
- [30] First declaration sought by Plaintiff is based on legal issue and Plaintiff is claiming that “ Second⁷ Defendant’s leasehold interest (if any) came to an end in respect of the land LD Ref No. 4/9/5371 comprised in NLC 48 and E/43 of 1991/also known as Tusia in the Tikina of Bua, Province of Bua, comprising of **118.32 hectares** of lease Application Case No. CO100-45675 ...’
- [31] It is to be noted that only part of said 118.32 ha is covered with Pine by Second Defendant and dispute is only regarding that part.
- [32] Second Declaration sought is “*the offer dated on 22nd of December 2011 from the 1st Defendant and the Plaintiff’s acceptance of the same constituted a contract of lease for the 1st Defendant to give to the Plaintiff an Instrument of Tenancy of all the Land contained in NLC 48 and E/43 of 1991/also known as Tusia in the Tikina of Bua*”
- [33] Third and final Declaration sought is an alternate remedy to above declaration and it sought “*Declaration of Tenancy in favour of the Plaintiff under Section 4 & 5 of the Agricultural Landowners (sic) and Tenants Act*”
- [34] Plaintiff’s main contention is that with the declaration of tenancy in favour of late Dulu Sigh for an area under Pine plantation, the Lease issued to second Defendant was cancelled. This is farfetched considering the legal as well as factual issues.
- [35] Apart from himself, the Plaintiff called two other witnesses. They were Mr. Osea Vuniyaya, the Officer in Charge of the Agricultural Tribunal in Lautoka and Mr. Asheesh Want Dayal a registered surveyor hired by the Plaintiff to carry out a

⁷ In the amended statement of claim in prayer (i) state erroneously 1st Defendant and this was pointed out at the commencement and parties agreed that it should be amended to read second Defendant and this was allowed without additional pleadings.

joint inspection. Mr. Vuniyaya's purpose as a witness was to tender copies of the exhibits which had been tendered before Agricultural Tribunal.

[36] The first Defendant called one witness, Mr. Menusi Nasorowale, an Estate Officer.

[37] The 2nd Defendant called one witness, Ms. Vika Fane the Manager of Second Defendant's northern operations.

Demarcation of Land

[38] The joint inspection had not resulted demarcation of the area under decision of Agricultural Tribunal and surveyor who gave evidence said that he was not given document 29D and 29 E , Potential Land Use Map and Sketch Plan of Agricultural Holding respectively.

[39] Even if such documents marked 29 D and 29E along with all the documents of Agricultural Tribunal record there was no map or area where late Dullu sikh used as grazing of his animals.

[40] If the contention of Plaintiff is correct there are two things that required to be proved and they are

- i. First Defendant had land area of 213.3014⁸ acres with Pine planted available to be leased.
- ii. Area is identified as the area of 159 acres declared late Dullu Singh used for grazing.

[41] The surveyor who gave evidence had not calculated the disputed land area under Pine plantation. In this case both above requirements were not met. There was no map to determine the area but entire 213.3014 acres which was planted with Pine by second Defendant and this was significantly larger land claimed by late Dull Singh. Surveyor had not identified this discrepancy which can be seen without additional calculation.

[42] It is not clear how such area was calculated by first Defendant, without providing a map or sketch. First Defendant's had some specific idea as to the area under purported offers for lease but this was not given in the purported offers made to Plaintiff.

[43] How did first Defendant reconcile with the decision of Agricultural Tribunal . This is also not clear. Said decision again not specific about the boundaries

⁸ See Document marked 31- letter to Forestry Officer of 12.12.2011

of the area on which tenancy was declared in favour of late Dullu Singh, based on usage as grazing land.

[44] Plaintiff was purportedly offered significantly larger 213.3014 acres of Pine planted area for felling in terms of Document marked D31 issued by first Defendant to Forestry Office.

Did decision of Agricultural Tribunal invalidate the Lease issued for Pine Plantation?

[45] Late Dullu Singh instituted an action in Agricultural Tribunal 14.6.1991 after he was served with notice of 18.2.1991 to vacate of the disputed land which was already planted with Pine by the lessee of the Lease, in early 1989 according to report marked 29 C.

[46] This report was submitted to Agricultural Tribunal and site visit was on 21.6.1989 It also stated that there was land suited for grazing, and forestry . **Late Dullu Singh had used the land for grazing except an area where rice and some crops planted** and this area was approximately about five acres. So disputed Pine planted area was approximately 159 acres at that time. This needs to be contrasted with significantly large area of 213.3014 acres which is more than one third more than area where late Dullu Singh was using as grazing land for his heads of cattle and goats under Tenancy at Will that was cancelled in 1979.

[47] Any area under Pine Plantation cannot be leased to Plaintiff or offered for lease without cancellation of the leasehold right of second Defendant for that area.

[48] The time of planting of Pine was not disputed and from the evidence of second Defendant it was proved that Pine planting happened in 1989 this is evidenced from document 29C .

[49] Analysis of evidence proves Pine trees were planted in the disputed area in this action by second Defendant in 1989 and the usual mature age is thirty five years and second Defendant had planned for harvesting including the processing and the export of the produce from Pine trees.

[50] Late Dullu Singh had used 159 acres (and additional five acres for farming rice and mixed crops) for grazing of about seventy heads of cattle and about two hundred goats.

[51] Neither Agricultural Tribunal nor reports submitted to it had demarcated this area in order to identification of the area. This is paramount considering total area was more than 159 acres. This area was leased and planted with Pine

by the lessee evenly. So there is a requirement define boundaries clearly for identification in order to implementation of the said decision or for issuance of instrument of tenancy for grazing of 159 acres.

- [52] When Pine Plantation commenced in early part of 1989 and there was no evidence of late Dullu Singh objecting to such plantation till he was served with 'Notice to Quit and Vacate' on or about 18.2.1991, nearly two years from Pine Plantation.
- [53] This is evidenced from document marked 29 C relied by Plaintiff and not disputed by Defendants . This fact is corroborated by the evidence that Pine trees are fully mature and need for harvesting around thirty five years and their cones getting infected with pathogens and loss of value.
- [54] Decision of Agricultural Tribunal also stated even second Defendant⁹ '*did not object to the Applicant's (Dullu Singh's) continuous occupation and cultivation*'. Second Defendant's predecessor had not even participated in the proceedings before Agricultural Tribunal as there was issue of losing its Pine plantation to late Dullu Singh who had used the land only as grazing land .
- [55] Late Dullu Singh was cultivating about five acres that was not suitable for Pine plantation. So second Defendant had not objected it and rest of area under the Lease was planted with Pine in 1989 and late Dullu Singh had also not prevented second Defendant planting Pine trees which was used for grazing, till he was issued with notice to vacate entire land including his cultivation about five acres.
- [56] The inspection for Land Use Classification was conducted on 6.6. 1989. It was a memorandum to Divisional Surveyor Labasa which was marked as 29 C in this court and part of the documents submitted to Agricultural Tribunal.
- [57] Late Dullu Singh instituted an action in Agricultural Tribunal for 164 acres from which about 159 planted with Pine.
- [58] It declared '*tenancy exist and that Applicant (late Dullu Singh) has been a tenant of* Director of Lands who was , then first Defendant's successor to the land area of about 164 acres. Out of this about 159 acres was planted with Pine plantation of second Defendant in early 1989 and , and at the time of decision of Agricultural Tribunal the plantation was more than five years old and this plantation was maintained by second Defendant using its resources.
- [59] Section 5(1) Agricultural Landlord and Tenant Act 1966 (ALTA) states,

⁹ FPC predecessor of second Defendant

“[ALT 5] Application to declare existence of tenancy

5 (1) A person who maintains that he or she is a tenant and whose landlord refuses to accept him or her as such may apply to a tribunal for a declaration that he or she is a tenant and, if the tribunal makes such a declaration, the tenancy **shall be deemed to have commenced when the tenant first occupied the land**, provided that **rent shall only be recoverable** where the tribunal is satisfied that it is just and reasonable so to order.” (emphasis added)

[60] There was no dispute that late Dullu Sigh commenced using the land for grazing from 1966.

[61] It is not clear how Agricultural Tribunal deviate from statutory provision as Section 5(2) of ALTA and declared that tenancy ‘*since 1979*’. There is an exception to Section 5(1) of ALTA but it has no application to late Dullu Singh.

[62] Apart from the land not being identified with a sketch or plan this is another legal impediment for implementation of decision of Agricultural Tribunal. So the Lease granted to Plaintiff on a map contained in the Lease for specific area cannot be cancelled for undefined portion, by decision of Agricultural Tribunal handed down on 24.3.1994.

[63] Late Dullu Singh was not granted written instrument of tenancy by Director of Land or first Defendant who later *vested*¹⁰ with such land belonged to ‘*extinct mataqali*’. The land area of 159 acres used for grazing and planted with Pine was not identified with a map. According to Document marked 31 the Pine planted are under the purported offer was 213.3014 acres and this shows that the area was not identified despite engaging a surveyor who had failed to

¹⁰ **iTLT 19 Extinct mataqali lands to vest in the Board**

19 (1) If any mataqali shall cease to exist by the extinction of its members its land shall vest in the Board to be allotted to the qali of which it was a part or other division of the people which may apply for the same or to be retained by the Board or dealt with otherwise upon such terms as the Board may deem expedient.

[subs (1) am Act 12 of 2002 s 4, effective 30 November 2000; Decree 8 of 2011 s 3, effective 1 March 2011]

calculate the area under Pine on the ground. If he calculated the area under Pine trees he could have seen the large discrepancy.

[64] Since 1989 this area was under part of the Lease issued to second Defendant, by Director of Lands. By virtue of statutory provision, contained in Section 19 C¹¹ of iTaukei Land Trust Act 1940, first Defendant became the successor to the same land and presently first Defendant is vested with land under the Lease issued to second Defendant by Director of Lands. It is not disputed that payments were made to relevant lessors since 1989 for the Lease. Second Defendant and its predecessor had paid lease rentals for the Lease and at no time it received notice of cancellation of the Lease area disputed by Plaintiff, or late Dullu Singh.

[65] Late Dullu Singh had sought an instrument of tenancy from Department of Lands and Survey, in terms of decision of Agricultural Tribunal, but this had not eventuated before his death. There were number of issues to be ironed out before issuance of such a written instrument as there was no identification of land area of grazing land of late Dullu Singh's farm animals.

[66] Agricultural Tribunal did not declare the Lease of second Defendant *null and void* in terms of Section 18(2) of ALTA. This is not mandatory requirement in all determinations as cancellation of a written instrument and rights derived from that may not be need to cancel in every type of tenancy. It is an optional, power and the discretion vested with Agricultural Tribunal considering factors such as improvements and compensation for that.

[67] Section 18(2) of ALTA states,

“(2) Where a tribunal considers that any landlord or tenant is in breach of this Act or of any law, the tribunal may declare the tenancy or a purported granted by such landlord or to such tenant as aforesaid, null and void and may order such amount or compensation (not being compensation payable under the provisions of Part 5) paid, as it shall think fit, by the landlord or by the tenant, as the case may be order all or part of the agricultural land the subject of an unlawful tenancy to be assigned to any tenant or any make any determination or order that tribunal may make under the provisions of this Act.”

¹¹ **19C (1)** All contracts, agreements, conveyances, deeds, leases, licenses and other instruments or undertakings which-

- a. Were metered into by or made with and addressed to the Director of Lands (whether alone or with any other person);
- b. Were in force as at 30 November 2000; and
- c. Relate to land allotted or dealt with under section 19(1) before 30 November 2000, are binding and enforceable by or against the Board after 30 November 2000.

- [68] So when Agricultural Tribunal 'considers' that a party had violated a law there is discretion granted for declaration of an instrument null and void and this is also subject to an amount of compensation. So the contention of Plaintiff cannot be accepted.
- [69] Agricultural Tribunal had not exercised the power to cancel the Lease granted to second Defendant despite declaration of tenancy over part where Pine Plantation on the basis of it being used as grazing ground for farm animals.
- [70] The contention of Plaintiff that decision of Agricultural Tribunal cancelled the Lease , is without merit.
- [71] Lease hold right which is a legal estate in land and declaration tenancy over the same land by Agricultural Tribunal , on the basis of usage as grazing, did not invalidate the Lease.
- [72] So, Pine Plantation on the land area of 159 acres remained with second Defendant as the person who had planted and maintained it for more than five years and as lessee at that time of decision of Agricultural Tribunal was handed down.
- [73] Even if I am wrong on above this declaration was made in favour of late Dullu Singh and he had died without obtaining an instrument of tenancy over a defined land. Plaintiff is not entitle to Pine Plantation on disputed land, on declaration made to his grandfather.
- [74] The declaration of tenancy in favour of late Dullu Singh on the basis of grazing for his farm animals did not invalidate the Lease issued to second Defendant in 1989 .
- [75] Second Defendant had planted Pine trees under the area of the Lease obtained on 30.5.1989 for an estimated area of 123.4292 ha (305 acres) for a period of sixty years. The lease commenced from 1.2.1989. The conditions are contained in the Lease
- [76] Plaintiff in the submission relied on the condition of the Lease which reads
- “(5) In the event of it being shown by survey that the land approved for lease forms part of any land the subject of an existing **freehold or leasehold title**, this notice of approval of lease shall be deemed to be cancelled , without prejudice to loss to the Government’ (emphasis is added)

- [77] The above condition applied when there existed a freehold or leasehold title for the land leased to Plaintiff . There was no leasehold or freehold title regarding any area under the Lease , so the above condition cannot be relied by Plaintiff.
- [78] According to submission of Plaintiff the Lease became *null and void* due to decision of Agricultural Tribunal handed down on 24.3.1995 . This cannot be accepted as Agricultural Tribunal only determined the existence of tenancy of late Dullu Singh and no cancellation of the Lease to second Defendant.
- [79] It is undisputed part from approximately five acres where the farming by late Dullu Singh major part of the land was planted with Pine in early 1989. Evidence of second Defendant's witness explained how the land was prepared before planting Pine seedlings and how it took care of the seedling till maturity.
- [80] In terms of interpretation section of ALTA agricultural land is defined exclusively and state
- “**agricultural land** mean land, together with any buildings thereon, used or proposed to be used predominately for the growing of crops, diary farming, forestry, horticulture, bee keeping, poultry keeping or breeding or the breeding, rearing or **keeping of livestock**”
- [81] According to document 29C marked by Plaintiff there were grazing land remained despite Pine plantation of second Defendant. Accordingly decision of Agricultural Tribunal by itself cannot render the Lease *null and void*.
- [82] Decision of Agricultural Tribunal recognized the existed tenancy rights of late Dullu Sigh for cultivation of about five acres which was unsuitable for Pine and the rest was grazing land for farm animals.

Can Plaintiff Claim independently for purported offers made by first Defendant in 2011.

- [83] Plaintiff received two purported offers for lease in 2011 from first Defendant, and they were marked 30 and 32 . Total area purportedly offered in both remained same. First offer only stated total area of 118.32 ha . Second offer had shown the area as 33 ha and 86.32 ha and time period stated was increased to fifty years in document marked 32, accordingly sum to be settled was also increased \$10,432.00 and this was paid by Plaintiff.
- [84] Plaintiff also claims the Pine Planted by second Defendant , on the basis that late Dullu Singh was '*declared lessor*' by Agricultural Tribunal. There is no

issue as to the decision marked as Document 29 but it had not declared any leasehold right to late Dullu Sigh.

[85] Decision handed down on 24.3.1995 stated finally, (page 11)

'I am satisfied that the provisions of section 4(1) of ALTA applies and that the Director of Lands have been unreasonable in not granting consent **at least over some portion of the subject land**, and Applicant for that matter have under Section 5(1) rightfully sought the assistance of this Tribunal.

I will **declare that a tenancy exist** and that Applicant has been tenant of the 1st Respondent since 1979.'(emphasis added)

[86] Late Dullu Singh was declared as tenant as opposed to lessee as contended in the submissions by Plaintiff. A tenancy can exist under a lease . A leasehold right cannot get cancelled by declaration of tenancy unless specifically stated. Tenancy can co-exist with lease hold right which is an estate in the land. Tenancy is a licence and can be restricted to some specific use, such as grazing.

[87] He was not declared a tenant for cultivation of the entire land of 164 acres. At the time of the institution of the proceedings in Agricultural Tribunal late Dullu Sigh had entered a land area disputed 164 acres in 1966 but had used only around 5 acres for cultivation for nearly thirty years after entry to the land , and remaining 159 acres used for grazing of his farm animals. In the light of that late Dullu Sigh's tenancy declared for 159 acres of land should also confined to grazing of his animals and for this, report of 'Land Use Classification' also needs to be considered. It was not a windfall to acquire Second Defendants Pine Trees.

[88] So the decision of Agricultural Tribunal cannot be elevated to declaration of tenancy not enjoyed by late Dullu Singh, but a declaration of *status quo* over notice issued by Director of Lands to vacate the land.

[89] It should also be noted second Defendant had not participated in the said proceedings and there was no issue of late Dullu Sigh claiming for Pine Plantation which was more than five years old when the decision of Agricultural Tribunal was handed down. The Tribunal had also observed that second Defendant had not objected to the occupation of late Dullu Sigh .

[90] So, Plaintiff cannot claim a right for Pine Trees on the basis that they are on '*his land*'. There was no declaration of an estate in the land even for late Dullu Singh, so Plaintiff's claim for the land is without merit.

- [91] The estate on the land area of 159 acres was with second Defendant in terms of the Lease and this was not cancelled fully or partially. So first Defendant could not offer an area of 213.3014 acres (or even Lessor area) of Pine Plantation to Plaintiff for a lease .
- [92] Decision of Agricultural Tribunal was handed down on 24.3.1995 and Pine Plantation was more than six years old by that time and there was no award for compensation.
- [93] According to second Defendant it had taken care of the Plantation using its resources since planting them and they are mature and needs harvesting in accordance with its harvesting plan.
- [94] Plaintiff's position is that the land is his due to purported offers which were paid by Plaintiff hence the trees on it belonged to him. Similarly purported offers for second Defendant's Pine Plantation and payment for that did not create a right to obtain lease over land already leased and planted with Pine.
- [95] So the Lease over the disputed land remained despite declaration of tenancy. It is also noted disputed area was planted with Pine in early part of 1989 and major part of land was covered with Pine by 21.6.2021¹²
- [96] The dispute arose not at the time of plantation of Pine and preparation of the land 1989, but when late Dallu Singh was issued a notice to vacate the land by Director of Lands. ¹³
- [97] Plaintiff's action is based on purported offer for area of 118.32 ha which included Pine Plantation belonging of second Defendant planted and maintained since 1989.
- [98] Apart from that said purported offer letters read with letter to Forestry Office marked as 31 did not refer to the land area with a sketch or map . Without sufficient identification of land no contract can be made as the offer did not contained such demarcation and was not provided to Plaintiff or produced at hearing by Plaintiff . So the purported offer was not for properly ascertained land area and remained incomplete and unenforceable in a court of law. So the purported offers through Documents marked 30 and 32 were incomplete as to the boundaries of the Pine planted area. So by acceptance and payment Plaintiff cannot claim unascertained area of Pine trees.(See *BSC v Cleveland*

¹² See Document marked 29C

¹³ See decision of Agricultural Tribunal which had observed held at page 7 '*Even Pine Commission who was assigned the lease of the 164 acres Crown Schedule A portion of the 250 acre TAW holding , did not object to the Applicants continuous occupation and cultivation*'.

Bridge and Engineering Co Ltd [1984] 1 All ER 504 Ignazia Messina Co V Polskie Line Oceniczne [1995] 2 Lloyd's Rep 566 The Bay Ridge [1999] 2 All ER (Comm) 306 at 323 Petromec Inc v Petroleo Brasileiro SA Petrobas [2005] EWCA Civ 891

[99] Secondly, Section 4(4) of Limitation Act 1971 precludes an action being instituted based on a judgment and Plaintiff cannot rely on decision of Agricultural Tribunal decided on 1995 for this action .

[100] Plaintiff had attempted to harvest the Pine in 2012 in terms of said purported offer of first Defendant . First Defendant had issued a letter for to relevant licensing authority marked as Document 31. This letter read with purported offers contained in Documents marked 30 and 32 did not invalidate the Lease issued to second Defendant in 1989.

Declaration of Instrument of Tenancy

[101] It is axiomatic that jurisdiction in terms of Section 5(1) ALTA is vested with the tribunal created in terms of Section 16 of ALTA. This is a special legislation. Plaintiff's grand father late Dullu Singh had instituted an action and obtained a declaration on the basis of grazing of his animals for around 159 acres .

[102] Plaintiff's evidence is based on the Pine Plantation on that area which was planted in 1989 by second Defendant and maintained by it and also monitored and inspected for growth and other related issues such as overgrowing of weeds and climbers and clearance using labour from villages. Plaintiff's evidence that he maintained such a vast area cannot be accepted.

[103] So Plaintiff cannot be declared a tenant over any part of Pine planted by second Defendant. These Pine Plantation remained with second Defendant despite declaration of tenancy to late Dullu Singh.

Fraud and Conspiracy

[104] As pleaded in amended statement of claim under '*Particulars of Fraud and Conspiracy*' after institution of this action 'Defendants' had committed 'fraud and conspiracy' in the following manner;

"unlawfully and fraudulently conspired and agreed together to cheat and defraud the Plaintiff and to hoodwink and deceive the Plaintiff from acquiring an Instrument of Tenancy in his favour and

allowing the second Defendant to remove all the pine trees from the said Land before hearing of these proceedings.

[105] The alleged acts of conspiracy are pleaded in paragraph 29 as,

- a) The 1st Defendant denied that there was in existence a piece of the Land described as Lease Application case number CO 100- 45675, TL TB Reference: 2/2/3611 in Tusia in the Tikina of Bua, Province of Bua (the Land).
- b) The Defendant asserted that it has cancelled the offer to the Plaintiff dated 22nd December 2011 and had refunded him the monies of the offer when no such cancellation was done or refund made.
- c) The 1st Defendant failed to cancel the Instrument of Tenancy of the relevant portion of the land after the Declaration of then Tenancy was made in favor of Dullu Singh.
- d) The 1st Defendant continued to collect rent from the 2nd Defendant after a Declaration of Tenancy was made in favor of Dullu Singh.
- e) The 1st defendant misrepresented the Court that its consent was not required by the 2nd Defendant to undertake of pine trees over the disputed land known as
- f) The 1st Defendant encouraged the 2nd Defendant to continue occupation (and remove pine trees) of the disputed land being described as Tusia where the 2nd Defendant had no right in law and in equity.
- g) The 1st Defendant failed to exercise due diligence and made false allegations to deny the Plaintiff from acquiring Tenancy.

[106] Particulars stated from (a) to (c) was due to not identification of land area by Agricultural Tribunal and no instrument could be issued without a map. The circumstances were discussed in this judgment and this is not due to fraud or conspiracy while this action was pending for hearing for five years.

[107] Collection of money from Plaintiff by first Defendant cannot constitute a fraud. Plaintiff needs to pay for undisputed area where there is no Pine plantation. Any overpayment can be set off from future rentals for undisputed area or return of them which first Defendant offered from disputed letter marked as D1. Plaintiff deny the receipt of it, but the fact remains that first Defendant is willing to return the rentals paid by Plaintiff.

[108] It is also pertinent to note Forest Act 1992 applies to second Defendant's Pine Plantation. Section 12 of Forest Act 1992 states

“[FOR 12] Provision related to planted trees

12 (1) The planting of trees, the management of the land on which trees have been planted and the harvesting of the planted trees shall be subject to applicable standards under this Act.

(2) **A licence to fell or extract planted timber shall be issued upon verification that the applicant is entitled to the timber** and that the **lodging plan submitted** is in compliance with any applicable logging standards under this Act.

(3) A licence to fell or extract planted timber **shall not be** subject to the payment of royalties prescribed under section 16(2) of this Act.

(4) The prior consent of the iTaukei Land Trust Board shall not be necessary for the issue of a licence to fell or extract planted timber on State land.

[subs (4) am Decree 7 of 2011 s 4, effective 1 March 2011]”

[109] Section 59(1) of ALTA reads;

- “ 59 (1) The provisions of this Act shall be subject to the provisions of –
- a) The state Acquisition of Lands Act 1940;
 - b) The Forest Act 1992; and
 - c) The Mining Act 1965.”

[110] It is clear that Plaintiff is not entitled to any part of Pine Plantation. Second Defendant had planted Pine and had also used labour to monitor their growth till maturity. Accordingly the claim for fraud and conspiracy is without merit.

[111] In terms of Section 12 of Forest Act 1992 read with Section 59(1) of ALTA also management of planted trees including removal of them are subjected to Forest Act 1992, and ALTA is subject to provisions of it. This shows that provisions of Forest Act 1992 take precedence over ALTA relating to Pine Plantation as they are 'planted trees'.

[112] There was no map or diagram attached to the purported offer letters issued to Plaintiff marked as 30 and 32 in this action. They are incomplete and cannot be legally enforced .

[113] So the claim that Defendants conspired while this action was pending is without merit. Plaintiff had also made two applications for injunctions and was only successful in obtaining a restraining order for a three months in its second application and this was dissolved subsequently this also proves .

[114] There was no fraud or conspiracy proved on the evidence and the said claim is struck off.

Trespass

[115] Plaintiff had pleaded trespass against second Defendant. Plaintiff had also obtained an offer for part of Pine Plantation by first Defendant and he had also paid for that. This was on the belief that decision of Agricultural Tribunal had cancelled or made the Lease void or cancelled.

[116] Second Defendant contend that by virtue of the Lease, it has both legal and equitable title to the land therein.

[117] According to letter of 12.12.2011 marked 31 , first Defendant was 'processing the agricultural lease (Grazing) ' to Plaintiff on the basis that there was no lease issued to other party. This is incorrect. Second Defendant was issued a lease to the land disputed where Pine trees stand.

[118] Paragraph 27 of the Amended Statement of Claim, paragraph 27 stated particulars of trespass as;

“(a).The 2nd Defendant together with their servants or agents entered without the permission and approval from the lawful lease holder the Plaintiff in to the woodlot belonging to the Plaintiff.

(b)The 2nd Defendant together with their servants or agents and without the permission and approval of the Plaintiff began harvested(sic) pine within the woodlot specified in the lease lawfully belonging to the Plaintiff by way of the Agricultural Tribunal Judgement”.

[119] The basis upon which the Plaintiff's claim to ownership of the land in dispute is founded on the lease offer given to him on 18 .11. 2011 (Document 30) and subsequent letter of the same Estate Officer who wrote to Forestry (Document 31).The purported offer of 18.11.2011 was later revised on 22 12. 2011 (Document 32).

[120] Clearance from weeds and other climbers required labour and it had the mechanism to execute such work from hired labour according to its forest

management in terms of Forest Act 1992. Provisions in ALTA are subjected to provisions contained in Forest Act 1992. So apart from conditions stated in ANL issued to second Defendant Pine Plantation is subjected to Forest Act 1992.

- [121] Plaintiff and or late Dullu Singh had not planted Pine in the disputed area. Plaintiff is claiming over 213.3014 acres of Pine Plantation as described in document 31 . According to that total area under purported offer was 292.3751 acres and both these are significantly increase from 164 acres and 250 acres claimed by late Dullu Singh respectively.
- [122] This show Plaintiff had no knowledge about late Dullu Singh's claim before Agricultural Tribunal and the area that was disputed in the Tribunal.
- [123] Plaintiff is accusing first Defendant and second Defendant colluding to cheat him , but the analysis of evidence is far from that. As stated earlier in terms of Section 12 of Forest Act 1992 there is no requirement for first Defendant to consent to harvesting of Pine as pleaded in the statement of claim.
- [124] For the alleged entry onto what the Plaintiff describes as the "the woodlot specified in the lease lawfully belonging to the Plaintiff by way of the Agricultural Tribunal judgement " There was no lease issued in term of decision of Agricultural Tribunal and before that land needs to be identified and purposes of tenancy such as cultivation or grazing should be separated considering report submitted marked 29 C .
- [125] So the land use classification should be considered before such instrument of tenancy granted to late Dullu Sigh and before that he had died.

Declaration in favour of Second Defendant and Importance of Harvesting of Pine.

- [126] Second Defendant is seeking a declaration that Plaintiff is not entitled to any part of Pine Plantation. This is clear from the reasoning in this judgment.
- [127] The declaration based on the trees planted and maintained by second Defendant . Plaintiff's contention that these trees belongs to him due to decision of Agricultural Tribunal's declaration of tenancy to late Dullu Singh. According to Plaintiff he had obtained a right for the land. This was rejected for reasons given in the judgment.

- [128] Second Defendant had planted Pine trees in disputed area in early 1989 according to document 29C. So Plaintiff cannot be declared a tenant for any area under Pine Plantation even for grazing on the evidence before the court. Witness for second Defendant stated that there were no cattle or goats grazing in the area where Pine Plantation. Plaintiff did not state in his evidence using are under Pine Plantation for grazing similar to his grandfather who had even improves such grass land.
- [129] Plaintiff stated that no one from second Defendant or its predecessor came to maintain Pine Tress. This cannot be accepted in the analysis of evidence . Witness called by second Defendant (Vika Fane) stated in detail the preparation of the land how second Defendant maintains it. They were periodically examined and maintained the Pine trees till its maturity.
- [130] Neither Plaintiff nor late Dullu Singh had knowledge or skills to maintain such a large Pine Plantation. If so how they maintained it needs to be elaborated. Instead Plaintiff contends that it is his land and trees on that belonged to him. This is not correct position.
- [131] So the statement that after plantation of Pine trees they were abandoned by second Defendant cannot be accepted. Plaintiff is not truthful as to certain facts such as to year in which late Dullu Singh died .
- [132] The area under purported offer is 118.3 ha and according to Document marked 37 dated 3.3.2021 '*subject land inspected is mostly covered with pine trees*'. This was pursuant to '*joint inspection of the subject land*' directed by the court. So there was no joint survey as contended by Plaintiff in the written submissions.
- [133] Plaintiff is required to prove his case and if he desired could have obtained an order from the court for such survey at his cost, but this was not done. Plaintiff could have also sought discovery of any maps or drawings held by any defendants and or even third parties in terms of High Court Rules 1988, since institution of this action.
- [134] Plaintiff cannot institute an action and use it for fishing expedition. So the contention that Defendant did not engage a surveyor for joint inspection ordered by the court and elevate it to '*joint survey*' cannot be accepted.
- [135] The issues for joint inspection were proposed by second Defendant contained in document marked 13 dated 26.2.2024. They were precise and clearly scope of joint inspection stated.

[136] This was more than four years after institution of this action. Plaintiff had ample time to obtain a survey without waiting for direction from the court for joint inspection, if he thought evidence of survey was vital for its action.

[137] The crux of the matter is the legal position the Lease issued to second Defendant. It is not disputed apart from five acres all the remaining disputed area is planted with Pine by second Defendant pursuant the Lease in 1989. (Page 3 of decision of Agricultural Tribunal handed down on 24.3.1995). This plantation remained and now fully matured to be harvested and if delayed its commercial value decreases with time. So there is paramount importance of harvesting of the trees and accordingly any application for injunctive relief against second Defendant and also restraining order sought by Plaintiff against first and second Defendants refused.

[138] Witness for second Defendant also stated importance of harvesting according to a plan and analysis of her evidence indicate following factors in favour of harvesting

- b. Pine trees become mature after approximately 35 years and if not harvested its top get rotten and this can destroy the plant and it becomes worthless.
- c. Rotten pine tops due to fungal infection can also spread to other plants which may can create an undesired or unintended consequence including and not limited to damage new or young plantations and also reduction in harvest
- d. Second Defendant had also contracted with overseas buyers for supply of Pine Wood Chips for making paper and hefty penalties imposed if on time deliver is not made. Witness described strict compliance as to the time require by its buyers.
- e. Second Defendant is harvesting according to a plan considering maturity of the plants in selected lots and this cannot be relocated as suggested by Plaintiff to another area due to pre-determined planning and delivery required on time to the shipments due to the mode they adopted.
- f. Reduction in quality of the pine wood after maturity.
- g. If the harvesting is delayed re planning is also delayed, hence there is an opportunity cost to second Defendant as the Lease is for sixty years.

[139] Accordingly, it is paramount consideration that the harvesting of Pine planted by second Defendant should continue as planned and approved by stake holders such as Ministry of Forestry. The significance of this is not only for economic benefit or damage in default of supply for export orders secured and possible penalties. Any delay in harvesting after maturity , devalue the quality of the wood produce and which is waste and there is possibility of harmful

pathogens infecting the top or 'cones' when they get rotten. This can lead to some unintended consequences such as spread of harmful pathogens and its impact on environment including other Pine trees or re planting and growth of them .

[140] Plaintiff cannot use the threat of injunction and irreparable loss that can result from any injunctive order, for his advantage. This was clear from repeated injunctive applications sought in this action despite court rejecting such interim relief, Counsel for the Plaintiff at the commencement of this hearing as well as at close of hearing again sought orders for 'status quo' to remain till delivery of judgment. This oral request, was objected by second Defendant and this shows the importance of rejection of injunctive relief sought by Plaintiff.

[141] There was evidence that Plaintiff was using some illegal means to prevent the harvesting of Pine by second Defendant. (see Document marked 6) This was despite Plaintiff's interim injunction being refused by the court more than six months prior to such actions to block the access to harvest. This should not be repeated and second Defendant and its agents should be able to harvest according to the scheduled harvesting plan approved by Forestry officials to mitigate environmental effects.

[142] A declaration is granted that Plaintiff is not entitled to any part of Pine Plantation .

Cross - Undertaking for Damages for Interim Injunction.

[143] Second Defendant had counterclaim against the Plaintiff. The first was based on the certain harvesting activities carried out within the Lease However, second Defendant has elected not to pursue that aspect of the counterclaim.

[144] The second counterclaim is based on the interim injunction the Plaintiff obtained on 2 .5.2024, which remained in place until 31 .7. 2024. So the time period was less than three months. Defendant should prove that it caused damages during this time period (eg loss of a contract or buyer or any other loss due to this delay) which can directly attributed to interim injunction.

[145] In UK decision of Lilly Icos Llc & Ors v 8pm Chemists Ltd & Anor [2009] EWHC 1905 (Ch) (31 July 2009) discussed the principles relating to cross undertaking and assessment of damages .

“Principles applicable on an inquiry under a cross-undertaking

General principles

A cross-undertaking in damages is normally required as a condition for the grant of an interim injunction. Its purpose is to ensure that the parties affected by the injunction are compensated if it later turns out that the injunction was wrongly granted. This purpose is fundamental to the courts' approach to the grant or refusal of interim injunctions, particularly since American Cyanamid Co v Ethicon Ltd [1975] AC 396. It follows that the cross-undertaking is a very important means of ensuring that justice is done.

The basic principle applicable to an inquiry under a cross-undertaking is that the cross-undertaking should be enforced in accordance with its terms. In the case of a cross-undertaking expressed in terms such as those set out above, this involves two questions. First, **has the order or carrying it out caused loss to the beneficiaries of the cross-undertaking**, here 8PM and RDA? Secondly, **if so, should the beneficiaries be compensated for that loss?**

It follows that the court's **primary task is to compensate the beneficiaries, not to punish the parties that obtained the injunction or to require those parties to make restitution of any benefits that they may have gained as a result of the injunction.** It has been held that **aggravated damages may be awarded** on a cross-undertaking (Columbia Picture Industries Inc v Robinson [1987] Ch 38) and it has been suggested that exemplary damages may be available (see Smith v Day (1882) 21 Ch D 421 at 428 and Digital Equipment Corp v Darkcrest Ltd [1984] Ch 512 at 516), but **no such claim is raised in the present cases.**

It is well established that the **Court has a discretion to refuse to order an inquiry under a cross-undertaking even if the injunction in question is discharged:** see Balkanbank v Taher [1995] 1 WLR 1056 and the earlier authorities discussed therein. In the present cases inquiries have been ordered, and the Claimants do not contend that an order for the payment of compensation should be refused on purely discretionary grounds. Nevertheless, for reasons that will appear, I shall have to return to this point below.”(emphasis added)

[146] So, Defendant cannot seek damages for an injunction as of right. It is discretionary remedy of the court and generally exercised in favour of the beneficiary which an interim injunction, discharged when there is *prima facie* claim for damage. In this action due to injunctive order the logging operations as planned and approved by Department of Forestry had stalled. So there is *prima facie* facts , to exercise the discretion in favour of second Defendant for an inquiry in to damages it had occurred.

- [147] Assessment of damages in terms of cross-undertaking is not to punish Plaintiff who had made repeated applications to court and had obtained an injunction for nearly three months, in his second attempt.
- [148] The scope of inquiry is not to compensate second Defendant to the extent it got affected by application of 'but for' test.
- [149] Plaintiff had previously applied for an injunction which was refused on 11 .9. 2023 with costs of \$800 to be paid to both Defendants. In obtaining the interim injunction, the Plaintiff deposed an affidavit in support filed on 1.5. 2024. Plaintiff in provided an undertaking as to damages stated as follows:
- "I am capable of giving my undertaking as to damages in the event sustained by the Defendants by reasons of any orders of this Honourable Court. My assets include....."
- [150] Second Defendant's witness, in her evidence explained how the Pine in the area was selected for harvesting at the particular time under a plan with the approval in order to mitigate environmental impact such as adverse weather. The Pine plantation affected was on a wet area.
- [151] Considerations such as that it was part of their wet weather block, being close to the Wairiki mill, and time suitable for clearance of Pine trees were some of them.
- [152] She explained that at the time, the primary purpose for which pine was earmarked was the shipment of Pine chips to Japan, in terms of an order.
- [153] She also stated the consequences of a delayed shipment was that a penalty of US\$100,000. She elaborated that if the target was not met or the shipment was delayed, the penalty would be imposed, regardless of the circumstances,
- [154] When inquired she stated that this fine was not paid due to some mutual arrangement with the buyer . So there was no proof of damage due to delay.
- [155] Second Defendant had pleaded particulars of the damage in paragraph fifty of the statement of defence and counter claim. Plaintiff had sought general damages , loss of profits for specific sum stated, additional cost for deviating to another site and legal cost. As equitable compensation general damage can be ordered but considering circumstances this was not ordered.
- [156] There was no evidence that second Defendant had shifted to another location due to interim injunctive orders that prevailed for three months. There was no

proof of loss of profit due to interim relief that prevailed till 31.7.2024 for these months. These claims are special damages and second Defendant being a commercial entity should be able to produce evidence to support their claim. Accordingly the claim damages based on undertaking dismissed.

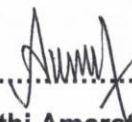
CONCLUSION

[157] Plaintiff is not entitled any part of Pine Plantation on disputed land area. There is no identification of the disputed area where Pine is planted. Second Defendant is issued with the Lease for larger area which included 159 acres of land used as grazing land by farm animals of late Dullu Singh. So the declaration of tenancy in favour of late Dullu Singh did not cancel the Lease fully or partially. Accordingly purported offers made for an area of 213.3014 acres of Pine Planted area is was not available to be offered to Plaintiff. The claim based on cross undertaking is struck off as the damage to second Defendant from interim injunction for about three months was not proved. No general damages ordered considering circumstances of this case. Considering circumstances and importance of legal issues no cost awarded.

FINAL ORDERS;

- a. Plaintiff's Statement of Claim is struck off.
- b. A declaration is granted that Plaintiff is not entitled to any part of land where pine trees planted.
- c. Counter claim of Second Defendant struck off.
- d. No order as to costs.




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Deepthi Amaratunga
Judge

At Suva this 13th day of August, 2025.

Solicitors

Sens Law

iTaukei Land Trust Board

Young and Associates