

**IN THE HIGH COURT OF FIJI
AT LAUTOKA
EXERCISING CIVIL JURISDICTION**

CIVIL ACTION NO-HBC- 191 of 2023.

BETWEEN : **NILESH REDDY aka NEELAM NILESH REDDY**, of 12, Woodridge Drive, Flagstaff, Hamilton, New Zealand, formerly of Lomawai, Sigatoka, Businessman and Investor.

PLAINTIFF

AND : **MUNI CHANDRA** of Olosara, Sigatoka Businessman.

DEFENDANT

APPEARANCE : Ms. Mudaliar - for Plaintiff
Defendant absent and no representation

DATE OF HEARING : 31st July 2025.

DATE OF JUDGMENT : 4th November 2025.

JUDGMENT

1. This claim arose out of a sale and purchase Agreement entered into on 7th July 2016 between the Plaintiff and the Defendant for the sale and purchase of the property described as Crown Land Property bearing **Lease No- 16405 Lot-16 SO 5271 LD Ref 4/11/1888 Known as Muasara (pt of District – Sigatoka province Nadroga) Area; 836 m2**, for a sum of \$45,000.00 (Forty Five Thousand dollars) wherein the Plaintiff was the purchaser and the Defendant was the Registered proprietor and/ or owner, the seller. This Agreement was marked as “P Ex-A” at the hearing.
2. As per clause 2.1 (a) thereof a sum of \$25,000.00 said to have been paid and acknowledged at the time of the execution of the Agreement, and the balance sum of \$20,000 was agreed to be paid at the time of settlement.
3. However, as per the statement of claim and evidence, while waiting for the consent from the Director of lands for the transfer, on the request of the Defendant, the Plaintiff claims to have paid the Defendant a further sum of \$2,000.00 towards the sale price as acknowledged by the Defendant on 26th April 2017 in terms of the acknowledgement marked as “P Ex-F”.
4. Among other things, in clause 8.1 of the Agreement, it was agreed that if the Vendor (the Defendant) makes any default on his part in the performance or the observance of any stipulation contained in the Agreement, and if such default continues for a space of

thirty (30) working days from the due date, then and in any such case the Purchaser, without prejudice to any other remedies available to him, may at his option exercise all or any of the following remedies namely,

- a. May rescind this contract of sale and thereupon all monies theretofore paid or under the terms of sale applied in reduction of the purchase money shall be refunded to the purchaser within 4 months of the Notice by the purchaser without reduction.*
 - b. May sue for specific performance of the Agreement.*
 - c. May sue for special and general damages.*
5. I gather from the Agreement that the dealing is subject to the consent of the Director of Lands and it has been signed by both parties before their common Solicitor one **Krishneel Prasad**. Further, as per the Document marked as "P Ex -B", Messrs. Rams Law have on 27th July 2016 lodged the consent for transfer by paying \$109.00.
6. Subsequently, the Plaintiff was made aware that the State Land office by its letter dated 2nd February 2017 had informed that a total sum of \$4,874.00 was due as penal rental owed by the Defendant, which was causing delay in granting the consent to transfer. Accordingly, the Plaintiff through Messrs. Robinson Prasad Lawyer's letter dated 21st September, 2017 requested the Defendant to take action to make the payment or allow the Plaintiff to do the same in order to have it deducted from the balance sale price that was to be paid at the settlement. But the Defendant delayed and failed to make the said payment or allow the Plaintiff to pay the same to have the consent and transfer finalized. This is substantiated by the annexure marked as "P Ex-D".
7. As nothing materialized towards the final settlement, the Plaintiff through his Lawyers lodged a Caveat affecting the said property, which was registered on or about 25th May 2022, following which the same was notified to the Defendant by way of Notice of Caveat dated 27th June 2022 by the Registrar of Titles as substantiated by annexure marked as "P Ex-D".
8. The plaintiff, accordingly filed his Writ of Summons and the Statement of Claim on 24th August 2023 claiming the following reliefs against the Defendant;
 - a. That the Defendant to comply with the Sale and Purchase agreement dated 7th July 2016 and transfer the property comprised in Crown Land Property in Lease No-16405 Lot 16 SO 5271 LD Ref 4/11/1888 known as Muasara (pt of District- Sigatoka Province – Nadroga) Area; 836m2.*
 - b. That in the absence of the Defendant in his failure, the Deputy registrar of the Court to execute the Transfer and all documents for the transfer to be affected.*

- c. *That in the alternate judgment in the sum of \$27,000.00,*
 - d. *Damages (Punitive, Aggravated & Exemplary), and*
 - e. *Costs.*
9. The Writ of summons and the Statement of Claim being, reportedly, served on the Defendant on 2nd September 2023, and despite filing the acknowledgment of service in person on 15th September 2023, the Defendant did not file his Statement of Defence.
 10. Accordingly, the Plaintiff on 8th December 2023 filed his Ex-Parte Notice of Motion seeking, *inter alia*, for the matter to be fixed for Formal Proof hearing seeking for the reliefs sought in the Statement of claim.
 11. The above Application being allowed, when the matter came up for formal proof hearing on 31st July 2025, the Plaintiff, who had come for the hearing all the way from New Zealand, gave his oral evidence substantiating the averments in his statement of Claim and the contents of the annexures marked by him as "PEX-A" to "PEX-F".
 12. The claim arises out of the Agreement marked PEx-A" entered into by and between the Plaintiff and the Defendant for the sale of the subject matter land owned by the Defendant unto the Plaintiff for a sum of \$45,000.00. The Plaintiff, at the time of the execution of the Agreement, had paid the Defendant a sum of \$25,000.00, the receipt of which is acknowledged and admitted by the Defendant as per the said Agreement. Thereafter, on the request of the Defendant, the Plaintiff has also paid a further sum of \$2,000.00 to be deducted from the balance purchase price of \$20,000.00 payable at the time of the settlement.
 13. The contents of the Agreement marked and annexed as "PEx-A" entered into in writing between both parties, which is strictly formal, are very clear as to what the parties had intended expressly and impliedly, and particularly what was the main stipulations the Defendant was obliged to perform on his part, namely obtaining the consent from the Director of Lands. As per the evidence, the consent was to be obtained only by paying the arrears of the Penal Rent in a sum of \$4874.90 by none other than the Defendant being the owner of the subject land.
 14. Though, the Defendant was duly notified of this and asked to pay and settle it in order to facilitate the obtaining of the Consent, the Defendant, as per the evidence of the plaintiff, has failed and neglected to do so. As a result, nothing has progressed towards the final settlement and transfer of the subject property unto the plaintiff as per the Agreement. This proves that the Defendant has violated the main term and condition of the Agreement, which eventually has made the Plaintiff entitled to seek relief in terms of clause 8 ;1 of the Agreement.

15. In keeping with the obligations on his part, the Plaintiff has duly paid the advance of 25,000.00 and a further sum of \$2,000.00 and thereafter remained with the hope that the Defendant would abide by the terms of the agreement on his part. But, the Defendant, despite the Letter marked "P Ex-D" sent by the Plaintiff's Lawyers, and filing of the Caveat marked as "PEX-E" on 27th June 2022 affecting the property, of which he got notice, has failed and neglected to fulfill his part towards the settlement and transfer of the subject property unto the plaintiff.
16. The Plaintiff, through his evidence, has proved that the Defendant on his part has failed and neglected in fulfilling his obligation of obtaining the consent of the Director of Lands. Had the Defendant paid and settled the Penal Rental, there would not have been any hindrance in obtaining the consent. As a result, the plaintiff could not have the transfer finalized and has sustained loss and damages.
17. Though, the writ of summons, together with the Statement of claim, were duly served on the Defendant, for the reason best known to him, he has decided not to contest the claim and challenge the evidence adduced by the Plaintiffs as aforesaid. Thus, the claim made by the Plaintiff against the Defendant remain uncontested.
18. The Plaintiff is seeking specific performance of the contract or alternatively seeks for the refund of the Monies paid, and for damages with Costs for breach of the contract.
19. The HCR, O. 19 Rule 6 allows the Plaintiff to enter judgment for mixed claims against the Defendant, who has failed to file the Statement of Defence, after the expiry of the prescribed period. Therefore, the Plaintiff summons to enter judgment against the Defendants should succeed.
20. The issue, at the formal proof hearing, was whether the Plaintiffs can ask for specific performance? The Plaintiff has not deposited the balance sum of the purchase price or at least given an undertaking to deposit the same before the transfer. Further, in the absence of the payment of the arrears of penal rental, no consent would be granted by the Director of Lands. This Agreement was entered into in the year 2016 and the action was filed in the year 2023 which still remains undisposed. Further delay cannot be ruled out in the event the specific performance is ordered. No evidence before the Court that the Subject Land remains intact without being dealt with. Thus, ordering the specific performance is not prudent under the aforesaid circumstances.
21. The Plaintiffs has fully relied on the Agreement marked as "Pex-A and parted with his money in a sum of \$27,000.00 with the belief that the Defendant would honor the Agreement by obtaining consent and transfer the subject property. But the Defendant failed and neglected to perform his part.
22. I find no reason to disbelieve and disregard the Plaintiff's evidence. I, therefore accept his evidence to be truthful. There is overwhelming evidence to conclude that the

Defendant has breached the Agreement entered into with the Plaintiff. Therefore, I find that the Plaintiff is entitled for a judgment in his favor for the refund of the purchase price already paid unto the Defendant and for damages for breach of the Agreement.

23. Accordingly, this Court decides to allow the Plaintiff's claim and grant the alternative relief as prayed for in his statement of claim together with damages and costs.

Quantum of Damages.

24. My next task is the determination on the quantum of damages that the plaintiff is entitled on account of breach of contract, apart from obtaining the refund of the purchase price. The Plaintiff has proved the breach of the Agreement on the part of the Defendant. Damages for breach of the contract are available, as of right, to the Plaintiff.

25. In **Photo Production Ltd v Securicor Transport Ltd [1980] UKHL 2; [1980] AC 827**, Lord Diplock said at p.849:

"Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract-breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for loss sustained by him in consequence of the breach..."

26. The basic rule of recovery of compensation in the case of breach of contract is that the non-breaching party is to be put into the position it would have been in had the contract been performed as agreed (See **Golden Strait Corporation v Nippon Yusen Kubishika Kaisha, The Golden Victory [2007] UKHL 12, [2007] Bus LR 997, [2007] 2 WLR691**). The Plaintiff suffered losses on breach of the contract. The Plaintiff placed trust in the Defendant that he would transfer the subject matter land in the Plaintiff's name. The Plaintiff has paid the Defendant a sum of \$27,000.00 as the advance for the sale of the subject Land.
27. Accordingly, having taken all into account, I decide to order the Defendant to pay unto the plaintiff as general damages in a sum of \$8,000.00, along with a sum of \$27,000.00 being the refund of the purchase price paid as aforesaid, totaling to \$35,000.00 (Thirty-Five Thousand Fijian Dollars).
28. Considering the circumstances, this Court orders the Defendant to pay the Plaintiff a sum of \$2,500.00 (Two Thousand Five hundred Fijian Dollars) being the summarily assessed costs of this action. No pre-judgment interest awarded as the plaintiff has not prayed for. However, the Plaintiff is entitled for post-judgment interest at the statutory rate.

FINAL ORDERS

- a. Judgement is entered against the Defendant for a sum of \$ 27,000.00 in favour of the plaintiff, being the refund of the purchase price.
- b. General damages in a sum of \$8,000.00 (Eight Thousand Fijian Dollars) for the breach of contract by the Defendant.
- c. Costs which I summarily assess at \$2,500-00 (Two Thousand Five Hundred Fijian Dollars)
- d. The Plaintiff is entitled for 4% post-judgment interest on the aforesaid amounts from the date of this judgment until the total sum is fully paid and settled.


A.M. Mohamed Mackie
Judge



At the High Court of Lautoka on this 4th day of November 2025.

SOLICITORS:

For the Plaintiff: Messrs. PRIKANS Law, Barristers & Solicitors
The Defendant absent and unrepresented.