

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 226 of 2019

BETWEEN : **MAHENDRA KISHORE SINGH** of 1589 Meadowview Rd,
Sacramento, CA 95832

PLAINTIFF

AND : **ITAUKEI LANDS TRUST BOARD** a body corporate duly
constituted under the Native Lands Trust Act of 431 Victoria
Parade, Suva

1st DEFENDANT

AND : **RAJ SINGH aka RAJENDRA SINGH** originally of 19
Panorama Street, Bray Park, Queensland 4500, Australia

2nd DEFENDANT

Coram : **Banuve, J**

Counsels : **Jiten Reddy Lawyers for the Plaintiff**
ILTB Legal Department for the 1st Defendant
No Appearance for the 2nd Defendant

Date of Hearing : **17 June 2024**

Date of Ruling : **14 November 2025**

RULING

A. Introduction

1. A Writ of Summons was filed on 8 July 2018 and amended on 2 August 2019 filed by the Plaintiff as the registered lessee of property described in Agreement for Lease Ref No- 4/14/2303, Nasesara Subdivision, Lot 1 No 5, Nausori, Tailevu containing an area of 1173 m², to expire on 2054 (the subject property)
2. The First Defendant is sued as Lessor and the Second Defendant as the person occupying the property and causing nuisance to the Plaintiff
3. That in 2019, the Defendants unlawfully entered the premises of the Plaintiff took possession of the subject property and advised the latter that the property in the Agreement had been transferred to the Second Defendant
4. The Plaintiff alleges that he has no knowledge of the property being transferred to the Second Defendant as he is still paying the yearly rent for the property and the lease payments are still being received by the First Defendant,
5. That the Plaintiff has made substantial contribution to the property through the past 15 years and the Defendants actions were unlawful whereby the Plaintiff has suffered loss and damage and seeks the following relief;
 - a. A Declaration that the Plaintiff is the registered lessee of the property comprised and described in the Agreement for Lease Ref No 4/14/2303 Nasesara Subdivision Lot 1 No 5, Nausori, Tailevu containing an area of 1173 m².
 - b. That the Plaintiff is entitled to occupation and enjoyment of the property without interference from the Defendant or its servants and agents or any one else.
 - c. An order restraining the First and Second Defendants either by themselves or by their servants and/or agents from in any way interfering or causing nuisance to the Plaintiff in the peaceful occupation and enjoyment of the said lease.

- d.* That the Second Defendant by himself or his servants and/or agents do give up immediate vacant possession of the property
 - e.* Costs of this action.
6. A Statement of Defence and Counter-Claim was filed by the First Defendant on 7 August 2019.
 7. A Reply to the Statement of Defence and Counter-Claim was filed on 6 August 2020.
 8. No Defence was filed by the Second Defendant, nor did he participate in the hearing of this matter.

The First Defendant's Defence and Counter-Claim

9. The First Defendant states;

- (i)* The Plaintiff is no longer the lessee of the Agreement of Lease for Residential purpose on the land known as Nasesara Subdivision Lot 1 in the Tikina of Nausori, and has no locus standi to bring this action.
- (ii)* It denies that the Plaintiff complied with all lease conditions and paid rent.
- (iii)* The land was previously an Agricultural Lease with an area consisting 5 acres registered to Rajendra Singh (f/n Ganpat Singh) on 4 August 1998 on Transfer No 20048. The lease expired in December 2002. Constructed on the land is a double storey house, upstairs consist of a 4 bedroom home whilst fround floor construction is still incomplete.
- (iv)* The Second Defendant , a resident of Queensland, Australia submitted an authority letter dated 30 June 1998 to the First Defendant authorizing his nephews Nand Kishore Singh and Mahendra Kishore Singh to use and occupy the property, be responsible for rent, maintenance and other requirements.

- (v) On 6 October 2003 the First Defendant wrote to the lessee advising them of the expiry of the lease. The letter was received by the nephews as it was a clear understanding between all parties that they will advise the Second Defendant of the letter's contents.
- (vi) Instead of receiving a lease renewal application from the previous lessee, the First Defendant received an application from the Plaintiff on 10 August 2004, which was processed.
- (vii) The Plaintiff was offered a sum of \$3,719.30 to lease for residential purposes the area where the house is located on the understanding that the Second Defendant was aware of the application. The Plaintiff mortgaged the lease to the Fiji National Provident Fund (FNPF), to finance the offer.
- (viii) The Second Defendant came to know the lease had been issued to the Plaintiff, his nephew, whom he had entrusted to be the caretaker of the property without being informed of the lease renewal.
- (ix) The Plaintiff has migrated to Sacramento, California and has rented out the property without first obtaining the consent of the First Defendant,
- (x) The First Defendant places the Plaintiff on strict proof of direct claims made against it in relation to the subsistence of the lease in his name despite it being repossessed and affirm that a Notice of Lease termination dated 5 February 2016 was issued to the Plaintiff and it was terminated on 8 May 2019. It would refund all monies paid by the Plaintiff, included that obtained from his FNPF Account.
- (xi) That the Plaintiff deliberately failed to disclose crucial information on the Notice of Expiry of Lease to the Second Defendant and thereby fraudulently obtained the lease known as Nasesara Subdivision Lot 1 in the Tikina of Nausori, Tailevu from the First Defendant by submitting false information.

B. Analysis

10. The Plaintiff seeks a declaration that;

- (i) The Plaintiff is the registered lessee of the subject property and that he is entitled to occupation and enjoyment of the property without interference from the Defendants their servants or agents.
 - (ii) An Order restraining the First and Second Defendants either by themselves or by their servants or agents from interfering or causing nuisance to the Plaintiff in the peaceful occupation and enjoyment of the said lease,
 - (iii) That the Second Defendant by himself, his servants and/or agents give up immediate vacant possession of the property
 - (iv) Costs on a Solicitor/Client basis
11. Whilst relief are sought both against the Defendants, the Second Defendant did not file a Defence to the Claim, nor participate in the hearing of this matter
 12. The First Defendant filed a Defence and Counter-Claim as outlined earlier and provided oral evidence through a witness, Mr Kameli Ritova.
 13. The First Defendant states that it terminated the lease issued to the Plaintiff on 8 May 2019, (issued in 2004), over the land known as Nasesara Subdivision Lot 1 in the Tikina of Nausori, Tailevu because it had been fraudulently obtained by the Plaintiff deliberately failing to disclose crucial information on the Notice of Expiry of Lease to the Second Defendant, who was the Head Lessee.
 14. The evidence proffered by the First Defendant does not support the relief they seek. It alleges rather that the Plaintiff's lease was not terminated because of fraudulent conduct attributable to the Plaintiff but rather because of a contravention of its lease. There is a brief reference in paragraph 4(k) of the Statement of Defence to the lease contravention. It states;

“(k) Plaintiff has migrated and now resides in Sacramento, California in the United States of America, he rented out the property without first obtaining consent of the Defendant contravening clauses of the Lease Agreement.”(italics for emphasis)

15. Despite the First Defendant pleading fraud as the basis for a counter-claim against the Plaintiff, the grounds pleaded for terminating the Plaintiff's lease, was couched in terms of the contravention of a Lease condition.
16. The Counter-Claim is asserted against the Plaintiff in paragraphs 8-11 of its Statement of Defence and Counter-Claim filed on 7 August 2019;
 8. *THE Defendant repeats the contents of paragraphs 1 to 7 of the statement of Defence above.*
 9. *THAT the Plaintiff acted in bad faith.*
 10. *THAT the Plaintiff deliberately failed to disclose crucial information and Defendant's Notice of Expiry for the former lessee Rajendra Singh.*
 11. *THAT the Plaintiff fraudulently obtained the Lease from the Defendant by submitting false information*

WHEREFORE the Defendant prays that:

- (a) *Order that the Plaintiff fraudulently obtained the Agreement for Lease or land known as Nasesara Subdivision Lot 1 in the Tikina of Nausori at Tailevu with an area of 1173 m².*
 - (b) *Order that the Defendant acted in bad faith.*
 - (c) *Plaintiff's claim be dismissed*
 - (d) *Costs on a Solicitor-client indemnity basis; and*
 - (e) *Any other relief that the Honorable Court deems just*
17. The Court finds that the First Defendant conflates these 2 distinct issues as the basis for terminating the Plaintiff's lease. Whilst it pleads the contravention of lease obligations as the basis for terminating the Plaintiff's lease it appears to the Court that the issue of fraud is also critical to its decision to terminate, as it was initiated by a letter dated from 13 October 2014 from the Second Defendant to the Board.
18. It is necessary therefore that the Court reviews both issues given the disjunctive approach to pleading the First Defendant has taken in its Statement of Defence and Counter-Claim.

C. Fraud

19. The pleadings which the First Defendant rely on to establish fraud are contained in paragraphs 4 (c), (d) and (e) of the Statement of Defence;
- (c) *On 6th October 2003 the Defendant wrote to the Lessee advising them on the expiry of the lease, the letter was received by the nephews as it was a clear understanding between all parties that they will advice Rajendra Singh of the letter's contents and keep him updated of any progress regarding the lease.*
- (d) *The Plaintiff was occupying the subject property whilst his brother Nand Kishore Singh occupies and adjacent lot also along Naduru Road.*
- (e) *That instead of receiving the lease renewal application from the previous lessee the Defendant received the application from the Plaintiff. The Plaintiff informed the Defendant that Rajendra Singh had agreed to apply for the residential lease of the house site.*
20. The Court finds it difficult to comprehend how such pleading could establish fraud both in fact and in law. The reasons are summarized;

Facts

- (i) The letter dated 6 October 2003 from the First Defendant was sent to the 'Lessee.' It is instructive that the Defendant addresses the letter to the '**lessee**', because, at the time the person registered on Native Lease No. 9331-TLTB Ref: 4/14/2303 was Phulesar (f/n Deo Narayan Singh)¹, who was alive at the time. The registered lessee was not Rajendra Singh, the Second Defendant.
As recorded in the Transcript of Proceedings;²

Mr Reddy: Look at P3 that letter. Its addressed to Phulesar and not Mr Singh.

Mr Ritova: Correct

¹ Tab 1-First Defendant's Bundle of Documents

² Page 42 of 68-Transcript of Proceedings

Mr Reddy: Do you have knowledge that Phulesar was alive on the 6th of October 2003? Do you have knowledge?

Mr Ritova: Correct

Mr Reddy: So she was alive when this letter was addressed to Phulesar. And the contents of this letter was brought to the attention of Phulesar by the Plaintiff, which he has stated. Right?

Mr Ritova: Correct

This issue is important because the allegation of fraud made by ILTB is premised on the fact that the Second Defendant was the registered lessee at the relevant time,³ who was not notified about the expiry of the lease by the Plaintiff. It would appear from ILTB's own record that the registered lessee was not the Second Defendant, but Phulesar his mother, and therefore the Notice of Expiry was correctly sent to her.

- (ii) The letter dated 6 October 2003 notifying the expiry of the lease was sent some 10 months after the lease had expired on 31 December 2012. Pursuant to the scheme of the *Native Lands Trust (Leases and Licenses) Regulations* [Cap 134] the 'Notice of Expiry' ought to have been sent before the lease expired in order for the lessee, if so minded, to apply for a renewal of the lease within the prescribed period; i.e. "not earlier than two years and not later than one year before the expiration of the current term, serve on the Board a notice in writing of such his desire (hereinafter referred to as a "notice to renew")"⁴ The regulation cited suggests that the failure to notify the Second Defendant of the expiry of the lease cannot be the basis for alleging fraud against the Plaintiff because firstly, the obligation to notify has been discharged by the Board notifying the registered lessee who was Phulesar, not the Second

³ The transfer may have been stamped or registered with the Register of Deeds but it was not registered with the Registrar of Titles

⁴ regulation 18(2) *Native Land Trust (Leases and Licenses) Regulations* [Cap 134]

Defendant, Rajendra Singh,⁵secondly, the notice of expiry was sent well after the lease had expired.

- (iii) Alternatively, if Rajendra Singh was deemed the registered lessee by the Board, (which is not admitted), then he clearly had breached clause 3⁶ (“**conditions, restrictions and covenants**”) of the subject lease (Native Lease No.9331-ILTB REF: 4/14/2303) by subletting the subject leased property to his nephews (Nand Kishore Singh and Mahen Kishore Singh) without applying for/or obtaining the consent of ILTB before authorizing his nephews, “*to use and occupy my said property so long as they wish to occupy peacefully.*

*AND they are to be responsible for payout of all land rent, maintenance in the dwelling house and any other requirement.*⁷(underlining for emphasis).

It is clear that this was a sub-lease because his nephews Nand Kishore Singh and Mahendra Singh basically took over the lease in its entirety.

The underlined authority provided by Rajendra Singh cannot be construed as a consent in writing by ILTB to sub-lease the subject to his nephews. There is no material before the Court to confirm that Rajendra Singh, the Second Defendant, had sought the consent of the Board by way of application⁸in accord with the standard format prescribed by ILTB. In the Court’s view, if the Board considers the Second Defendant as the registered lessee then he clearly has breached the terms of the lease by sub-leasing the subject land to the Plaintiff without the consent of ILTB.

Law

- (iv) Upon the registration of a dealing regarding Torrens system land, indefeasibility of title is conferred, regardless of any invalidity or defect in the instrument registered, or in the process leading up to registration, subject to a number of exceptions, the relevant one, in this instance being

⁵ An Application to Consent and a Transfer was signed by Phulesar for the transfer of the subject native lease to Rajendra Singh (Tab 2 and 3-First Defendant’s Bundle of Documents), however this transfer appear not to have been registered with the Registrar of Titles and ILTB continue dto recognize Phulesar as the registered lessee.,

⁶ (3) The lessee shall not alienate or deal with the land hereby leased or any part thereof whether by sale, transfer or sub-lease or in any other manner whatsoever without the consent in writing of the lessor first had and obtained,

⁷ Authority signed by Rajendra Singh dated 30 June 1998 (Tab 4-First Defendant’s Bundle of Documents)

⁸ See ILTB standard form for ‘Application for Consent to Sub-Lease’ Tab 3 Plaintiff’s Bundle of Documents filed on 20 October 2020

fraud, i.e, dishonesty of some sort, not what is called constructive or equitable fraud-*Assets Co Ltd v Mere Roihi* [1905] AC 178.

At the relevant time, when the alleged fraudulent conduct of the Plaintiff occurred, the Second Defendant was not the registered lessee over the subject leased property. It follows that the fraud exception to indefeasibility cannot apply to the Second Defendant, as he was not the registered title holder at the time the subject lease expired.

21. There is little merit in the manner fraud was pleaded or in the lack of cogent evidence offered by the First Defendant to justify terminating and re-entering⁹ the lease¹⁰ held by the First Defendant, in the manner it was done, 14 years after it was granted to him. In order to invalidate title, fraud needs to be brought home to the registered proprietor, ¹¹and the party alleging it must establish actual fraud, not constructive or equitable fraud.
22. As confirmed in the transcript of evidence the registered proprietor at the relevant time, Phulesar was notified on 6 October 2003 of the lease expiry on 31 December 2002, by the Plaintiff, and on the balance of probabilities, must have been taken to have been fully aware of the Plaintiff's intention to apply for a new lease since he resided with her on the subject Nasesara property . There is no room in this narration to substantiate or affirm a finding of fraud, in law or fact, against the Plaintiff.
23. In any event, the issue of fraud and the counter-claim based on it has been abandoned by the First Defendant, as it has accepted that it had granted the Plaintiff a valid lease from 2004, judging by the fact that it has terminated the lease rather by the contravention of a lease condition (illegality by performance)

D. Contravention of Lease Condition

24. As stated, the actual basis for the termination of the lease which is pleaded in paragraph 4(k) of the Statement of Defence and Counter-Claim;

⁹ Re-Entry Notice dated 8 May 2019 (**Tab 17-First Defendant's Bundle of Documents**)

¹⁰ **Agreement for Lease dated 20 January 2005 (Tab 14-First Defendant's Bundle of Documents)**

¹¹ *Assets Co Ltd v Mere Roihi* [1905] AC 176 at 210

k) *Plaintiff has migrated and now resides in Sacramento, California in the United States of America. He rented out the property without first obtaining consent of the Defendant contravening clauses of the Lease Agreement.*

25. Section 12(1) of the ILTA covers the restriction on dealing with native land. It states;

(1) Except as may be otherwise provided by regulations made hereunder it shall not be lawful for any lease under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sub-lease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting or withholding of consent shall be in the absolute discretion of the Board and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void.

.....

(2) For the purpose of this section "lease" includes a sublease and "lessee" includes a "sublessee"

26. The Court has reviewed the transcript of proceedings and the oral and documentary evidence provided by the parties and particularly by the ILTB, as First Defendant, to support its allegation that a '**dealing**' was entered into by the Plaintiff that breached the requirement of section 12(1) of the Act, and warranted it forfeiting the lease granted to the Plaintiff in 2004.

27. The Court is of the view that there is no evidence proffered by the Board to substantiate its position pleaded in paragraph 4(k) of its Statement of Defence that a '**dealing**' that contravened section 12 of the said Act took place without its consent. This position maybe further illustrated;

(i) The wording of section 12 anticipates that there must be a written dealing or agreement which is required for consent-*Harnam Singh & Anor v Bawa Singh* [1958] 6 FLR 31 at 41, also *Kulamma v Manadan* –Privy Council Appeal No 7 of 1966 (from Fiji Court of Appeal).

No evidence was proffered by the Board at hearing, of a written sub-leasing agreement that would have necessitated that prior consent be granted by it.

An Application for Consent to Sub Lease¹² on its own (without an attached sub-leasing agreement attached) is not a 'dealing' caught under section 12 of the Act.

- (ii) No evidence was proffered at the hearing that a tenant under the sub lease actually entered the subject property and took over all rights and obligations of the Plaintiff, as head lessee under the Agreement of Lease dated 20 January 2005.
 - (iii) On the contrary, the evidence before the Court was that the Plaintiff continued to pay the rental for the subject land from 2014¹³ (when the land was supposedly sub-leased to a tenant) until 2022.
 - (iv) It is necessary to point that whilst the Board purportedly re-entered the Plaintiff's lease on 8 May 2019,¹⁴it continued to accept rental from the Plaintiff as of 27 July 2022.¹⁵ The Court considers this acceptance by the Board of rental some 3 years after it purportedly entered the Plaintiff's lease as constituting a waiver of the forfeiture and re-entry of the said lease.
- 28.** In conclusion, the Court is constrained to point out that it must find for the Plaintiff against the Defendants firstly, because the Second Defendant not did not defend the allegations made against it and secondly, the disjointed nature of the Defence proffered by the First Defendant, coupled with the poor state of its records on the administration of the subject leased land (Agreement for Lease Ref No-4/14/2303-Nasesara Subdivision, Lot 1 No 5, Nausori, Tailevu) which seriously prejudiced the interest of the Plaintiff.
- 29.** The Counter-Claim filed by the First Defendant against the Plaintiff in the Statement of Defence and Counter-Claim filed on 7 August 2019 is dismissed in its entirety.
- 30.** The orders in the Findings that follow are jointly made to be actioned by the First and Second Defendants.

¹² Plaintiff's Bundle of Documents filed 20 October 2020-**Tab 7**

¹³ Plaintiff's Bundle of Documents – Tabs 16-23 and Amended Bundle of Documents-**Tab 10**

¹⁴ First Defendant's Bundle of Documents filed on 2 March 2021-**Tab 17**

¹⁵ See footnote 13

FINDINGS:

1. The orders sought by the Plaintiff in the Amended Writ of Summons filed on 2 August 2019 are granted as follows:
 - (a) A Declaration that the Plaintiff is the registered lessee of the property comprised and described in Agreement for Lease Reference No 4/14/2302 being Nasesara No 5 Subdivision Lot 1 in the Tikina of Nausori in the Province of Tailevu containing and area of 1173 m².
 - (b) The Plaintiff is entitled to the occupation and enjoyment of the property without interference from the Defendants, its servants and/or agents or any one else.
 - (c) An Order restraining the First and Second Defendants either by themselves, or by their servants from in any way interfering or causing nuisance to the Plaintiff in the peaceful application occupation and enjoyment of the said lease
 - (d) That the Second Defendant by himself or his servants and/or his agents do give up immediate vacant possession of the property
 - (e) The Counter Claim filed by the First Defendant against the Plaintiff is dismissed in its entirety.
 - (f) Costs summarily assessed at \$1500.00 to be paid by the First Defendant to the Plaintiff and \$1500.00 to be paid by the Second Defendant to the Plaintiff. Both sums to be paid within 14 days of this Ruling to the Plaintiff.



Savenaca Banuve
Savenaca Banuve
Judge

Dated at Suva this 14th day of November, 2025.