

IN THE HIGH COURT OF FIJI
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC No. 164 of 2015

BETWEEN: **GOINDAMMA** OF Suva, Domestic Duties as the Executor and Trustee of the **ESTATE OF FRED EDWARD** of 31 Nayavu Road, Valelevu, Suva, Deceased, Testate.

PLAINTIFF

AND: **VIJYAN CHAND** of Valelevu, Nasinu, driver

DEFENDANT

Date of Trial : **28 May 2025**

For the Plaintiff/Respondent : **Ms. Dean S. and Ms. Ram N.**

For Defendants : **Not Present**

Before : **Waqainabete-Levaci, SLTT, Puisne Judge**

Date of Ruling : **13 March 2026**

J U D G E M E N T

BACKGROUND

1. The Plaintiff, as Executor and Trustee of the Estate of Fred Edwards obtained a Grant of Probate on 4 October 2010.
2. By verbal agreement on or about 18 April 2006, it is alleged that the Defendant induced the late Fred Edwards to acquire a vacant land described as Certificate of Title No 35875 being Lot 5 on Deposit Plan No 9019 containing an area of 4827 sqm (referred to as the 'said land') to be registered together as joint owners in order

to subdivide the land as individual residential lots for future sale without making any partial contributions to the purchase of the land. The defendant agreed to bear the costs of survey and subdivision of the land treating it as financial contribution to the purchase of the said land.

3. In reliance on this representation, it is alleged in the claim that the late Fred Edwards paid the total sale price for \$40,000 to one Vijay Madhavan, the owner of the said land from his FNPF as the Defendant did not have funds to finance the acquisition.
4. Subsequently, on 25 August 2006 the land was transferred to both the late Fred Edward and the Defendant in equal shares. The Defendant had then engaged a registered surveyor who conducted the land and applied for approval of the proposed subdivision of land on 12 March 2007. The approval was granted for 2 years.
5. On 4 February 2010 the late Fred Edwards passed and after his death no progress was made on the subdivision of lands.
6. The Plaintiff, as Executor and Trustee of the Estate of the late Fred Edwards, alleges that despite numerous requests and a letter dated 24 September 2014, the Defendant has refused to proceed with the subdivision nor provide his financial contribution to the acquisition of the land as per the verbal agreement.
7. The Plaintiff, as Executor and Trustee of the Estate of the late Fred Edwards seeks the following reliefs:
 - (i) Declaration that the Defendant has failed to provide valuable consideration to acquire the said land.
 - (ii) A declaration that the Defendant had made fraudulent representations to the deceased to acquire a half share equally.
 - (iii) An order that the Defendant transfer his share of land to the Plaintiff as Executor and Trustee of the Estate of Fred Edward or alternatively the subsequent transfer be setaside by virtue of fraudulent representation;
 - (iv) That the Chief Registrar execute all necessary documents to enable transfer of the title to the Plaintiff.
 - (v) Alternatively, an Order for the Defendant to complete the survey and subdivision of land as per the proposed subdivision approved on 22 January 2008.
8. The Defendant, in their Defence argued that the claim was statute barred and the reliefs following on from the claim should be dismissed and that the Defendant had also financially contributed by paying for the scheme plans, development and

leveling of the land, legal costs for the transfer, negotiating sale price, personal skills and serves and running expenses for the planning of the subdivision of the lands.

9. Since 18 November 2019 the Defendant nor his Counsel had failed to appear in Court. A Ruling of the Master on 19 August 2022 explained the chronology of events in Court:

- (i) After Writ was served, Defendant failed to enter appearance or to file their Notice of Intention to Defend hence on 10 May 2016 an Order 25 Rule 9 Notice was issued with the Plaintiff filing their Affidavit to show cause on 13 June 2016 and Statement of Defence was filed thereafter.
- (ii) On 18 August 2016 the Master held the Defence in abeyance whilst the parties were in settlement, striking out the Order 25 Rule 9 Notice;
- (iii) Defendant filed their application for Leave to file Statement of Defence out of time on 27 February 2017;
- (iv) Despite a hearing date assigned it was vacated from 3 October 2017, 5 June 2018, 15 May 2019 and 18 November 2019.
- (v) On 18 November 2019 their application for Leave to file Statement of Defence out of time was struck out and the Plaintiffs application for Summary Judgement filed on 4th July 2016 was affixed for Ruling.
- (vi) Despite the Defendant re-applying for re-instatement of their 27 February 2017 application, it was again struck out for non-appearance and want of prosecution on 8 December 2020.

10. In addition, the following chronology continued thereafter:

(vii)The Master then determined in her Ruling of 19 August 2022 that the Summary Judgement application be dismissed as the Statement of Defence had already been filed.

(viii)A Summons was filed by the Plaintiff on 2 September 2022 to strike out the Statement of Defence as it disclosed no reasonable action was dismissed by the Master on 6 July 2023 and time given for the Plaintiff to file their Reply to Defence out of Time and Defence to Counterclaim as well as the Defendant to file their Reply to Defence to Counterclaim with an unless order that failure to comply within 6 months will require the Court to issue an Order 25 Rule 9 to show cause why the matter should not be struck out for prosecution;

(ix)On 25 October 2023, the Plaintiff sort to amend their Statement of Claim and filed an application for Leave to Amend. By a Ruling dated 15 April 2024, the Master granted leave to file their amended Statement of Claim with orders for the claim to

be struck out if there is non-compliance with timelines. Given these timelines the Plaintiff filed and on granting of Leave, the Plaintiff advertised the amended Writ and Claim after failed attempts for service.

(x)Application for Summary Judgement was filed on 18 December 2024 and was advertised on 25th March 2025 after leave was granted. However, the Master ruled that the matter should proceed to Trial on an undefended basis before a Judge and rendered the Summary Judgement redundant and dismissed.

11. The Court thereafter affixed the matter for Trial on 21 November 2025 on an undefended basis as the Defendant was not present and hence the Statement of Defence and Reply to Counterclaim was struck out.

EVIDENCE

12. The Plaintiff, who is now of vulnerable age, gave her evidence in Court on Oath as well as filed her Affidavit in Evidence in Chief, after leave was granted.

13. In her sworn testimony she admitted she is 67 years of age and did not attend school. She confirmed her husband was the late Fred Edward and she recalled her husband acquiring a property in Saweni and when attending church in Saweni, they met the Defendant. She admitted an Affidavit of her Evidence was prepared on her behalf, which was also read out to her and she confirmed it was hers as she had applied her thumbprint which was witnessed before a lawyer.

14. She deposed in her Affidavit in Evidence in Chief the following:

(3) I am the lawful widow of the Deceased, the late Edward Fred and was appointed as Executrix and Trustee in the Estate of Fred Edward by virtue of Grant of Probate No 50114 issued by the High Court Probate Registry of Fiji;

(4) The Defendant is currently a party owner together with my deceased husband of a vacant land legally described as Certificate of Title No 35875 being Lot 5 on Deposited Plan No 9019 containing an area of 4827 square meters and situated at Davuilevu, Nakasi, Fiji, (hereinafter referred to as ‘the said land’’) which was jointly transferred to the Defendant and my husband sometimes on or about the 8th of September 2006.

(5) That my husband was medically unfit and suffered from a stroke, hypertension and type 2 diabetes mellitus with renal impairment and had been a patient at CWM Hospital from 3rd November 2005 due to the aforesaid medical conditions.

(6) That the Defendant and my deceased husband did not have any familial relations and only went to the same church, however, my husband relied on the Defendant to do errands for him as the Defendant was a taxi driver by profession and due to my husband's medical condition.

(7) That I was told by my husband prior to his demise that the Defendant had falsely represented my deceased husband that all costs pertaining to the land being surveyed and subdivided would solely be borne by the Defendant which would be carried out within a reasonable timeframe wherein the Defendant would carry out all the necessary works by the Defendant required to obtain the titles from the registrar of Titles in order to induce him to agree to transfer the said land jointly to the Defendant despite my husband paying for the whole monetary contribution required to acquire the land by using his Fiji National Provident Fund ('FNPF'). My husband told me that the Defendant had falsely represented the costs in surveying and subdividing the said land would be equivalent to the monies paid by my husband to purchase the said land.

(8) That my husband relied on the representations made by the defendant and paid a sum of \$40,000 from his FNPF account to the Vendor, one Mr. Vijay Madhavan to purchase the said land.

(9) At the time that Defendant made or caused to be made the said representations, he was aware that the representations were false or untrue, or made it recklessly not caring whether they were true or false. My husband informed me that he relied on the representations made by the Defendant and acted in good faith and the belief that the representations were true and my husband was induced to purchase the land jointly with the Defendant for which only my husband paid the whole purchase price of \$40,000.

(10) At the time the land was purchased, the Defendant did not have any funds to finance the acquisition of the land and as such my husband solely paid for the purchase of the land by withdrawing his superannuation funds in the sum of \$40,000 based on the representations of the Defendant.

(12) At the time of purchase of the said land, no Sale and Purchase Agreement had been prepared and executed between my late husband and the Defendant to record the particulars concerning the sale of the said land and I was told by my late husband that the Agreement between them was verbally made.

(13) At the time that the land was being purchased, the initial transfer document dated 21 July 2006 which had been prepared by Neel Shivam Lawyers, the common solicitors who acted for both parties for the conveyancing matter, had only stated my late husband as the Transferee.

(14) Subsequently the second transfer document dated 25th August 2006 had been prepared to reflect the Defendant as one of the Transferees as a joint proprietor of the said land.

(15) The latter joint transfer instrument which stated my husband and Defendant as joint proprietors had been lodged and registered based on the representations made by the Defendants.

(16) That after speaking with the former registered owner, Mr. Vijay Madhavan, I was informed that he was only aware that my late husband was the purchaser and of the said land as he had solely paid the purchase price.

(17) The FPNP addressed a letter dated 5 June 2006 to my husband that enclosed certain conditions which had to be successfully met in order for the FPNP Housing Finance Assistance Scheme to be deemed successful in order for the \$40,000.00 to be lent as security. The said letter was solely attention to my late husband and did not include the Defendant. A letter of 14 June 2006 from FPNP confirmed approval of release of funds requested.

(18) On 21 July 2006 a Land Sales Declaration was filled by Mr. Vijay Madhavan whilst her late husband executed an Application for Conditional Exemption from Stamp Duties and a Statutory Declaration.

(20) Despite the Land Sales and Stamp Duty declaration made by the transfer document dated 21 July 2006, the land was transferred to my deceased husband and the Defendant (Transfer Dealing No 594492 dated 29 August 2006) in equal shares.

(21) Upon the transfer being successfully registered at Registrar of Titles sometimes on or about the 8th September 2006 the Defendant had engaged services of Messrs. M. Jaffar to survey the land and have it subdivided into individual residential lots.

Subsequently the registered surveyor submitted the application to Department of Town and Country Planning on 12 March 2007 for the approval of the proposed

subdivision of land and the respective authority had granted the approval on 22 January 2008.

(23) The approval by the Department of Town and Country Planning stipulated that the approval was valid for 2 years.

(24) That Plaintiff's late husband had through his Solicitors, Mr. Neel Shivam Lawyers duly served a Demand Notice dated 20 November 2008 to the Defendant for payment of \$20,000.00 monies for the contribution to purchase and acquire CT 35875.

(25) After Plaintiff's late husband's death on 4 February 2010, the Defendant has not taken any further initiatives to subdivide the land. Her application for Grant of Probate was issued on 4 October 2010.

(27) That instruction was given and Neel Shivam Lawyers served a second Demand Notice to Defendant for performance of the verbal agreement dated 24 September 2014.

(28) Those legal proceedings began on 23 April 2015 and after being served, the Defendant wrote a letter to Messrs. Neel Shivam Lawyers as Estate Counsel, on 11 May 2015 seeking to honor the verbal agreement and that the delay was due to the Development Scheme Plan having expired and that a resubmission need to be done with the Department of Town and Country Planning.

(31) Despite numerous requests, the Defendant has failed to complete the survey and subdivide the works therefore alleging misrepresentation and refund of \$20,000 as payment for the half share as joint owner of the said lands.

(32) Annexed with the Affidavit were the following documentary evidence:

- (a) Marked as G-1 the copy of the Grant of Probate No. 5114;
- (b) Marked as G-2 is a certified true copy of CT 35975;
- (c) Marked as G-3 is copies of late Fred Edward medical reports;
- (d) Marked as G-4 is a copy of the cheque No 774 dated 18 July 2006 paid by FNPF;
- (e) Marked as G-5 copy of the Transfer Dealing;
- (f) Marked as G-6 copy of the second Transfer Dealing to include the Defendant as joint owner;
- (g) Marked as G-7 is the FNPF letter conditions for release of funds;
- (h) Marked as G-8 FNPF letter dated 14 June 2006 approving the release of funds;

- (i) Marked as G-9, G-10 and G-11 are the Land Sales Declaration, Application for Conditional Exemption of Stamp Duties and Statutory Declaration.
- (j) Marked as G-12 and G-13 are the Application for Approval of Plan for Subdivision and Approval of Subdivision of CT 35875.
- (k) Marked as G-14 is a copy of the Demand Letter dated 20 November 2008 and served on 25 January 2009.
- (l) Marked as G-15 is the second Demand Letter dated 4 October 2010.
- (m) Marked as G-16 Letter from Defendant on 11 May 2015 seeking to honor the verbal Agreement.

PART C: LAW AND ANALYSIS

WAS THERE AN AGREEMENT

- 15. In order for the Court to consider whether or not misrepresentation was made, the Court must first consider whether there was a verbal agreement between the parties.
- 16. The evidence by the Plaintiff is that her deceased husband entered into a verbal agreement to acquire a piece of land to be subdivided and sold individually. The Defendant agreed to subdivide the land provided the Plaintiffs late husband paid for the full acquisition price.
- 17. In the Affidavit of Evidence before the Court, the deponent admitted that her husband had told her that he had relied upon the promise by the Defendant verbally to subdivide the lands if he purchased the full purchase price for the said lands.
- 18. The Plaintiff submitted documentary evidences by way of a Transfer Dealing No 594492 which was registered on 8 September 2006, the BSP Cheque for payment of the purchase price from FNPF with the letter from FNPF approving payment as well as the Certificate of Title No. 35875 which contained the registration of the Plaintiffs late husband and the Defendant with equal shares on the said land, Application for conditional exemption from stamp duties by the Plaintiff late husband.
- 19. All documents confirmed that the Plaintiffs late husband had purchased the said land for both he and the Defendant to have equal shares.
- 20. Section 59 of the Bailment, Guarantee and Indemnity Act specifies no action subsists where the parties agreed verbally and there was no memorandum or note thereof in writing. The provision is as follows:

Promises or agreements by parol

59. No action shall be brought-

(d) upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or

(e) upon any agreement that is not to be performed within the space of one year from the making thereof,

unless the agreement upon which such action is to be brought or some memorandum or note thereof is in writing and signed by the party to be charged there or some other person thereunto by him lawfully authorised.

21. Hence from the evidences tendered before the Court, there was a Transfer of Dealings confirming that the parties had agreed to purchase and own the said land in equal shares.
22. The Plaintiff also relied upon documentary evidences of the Defendants' application for subdivision with the Director of Town and Country Planning which was later approved was evidences that the Defendant undertaking to apply for and obtain approval for subdividing the land.
23. The Court therefore finds there was an existence between the parties for the Plaintiffs late husband and the Defendant to purchase the said land in equal shares. The Plaintiffs late husband paid for the full acquisition price from his FNPF.
24. Therefore, the Court finds there was an agreement, orally and from documentary evidences showing that the parties had executed Transfer Dealing, made an acquisition by way of an FNPF payment and lodged an Application for Sub-dividing and Application for Development.
25. After having completed his side of the Agreement and given his sickly nature, the Plaintiff's late husband relied upon the Defendant to sub-divide the land as part of their verbal Agreement. There is circumstantial documentary evidence that the defendant had applied for approval for subdivision and development of the said land from the Department of Town and Country Planning by paying for a registered surveyor to do so to commence his responsibilities.
26. It was after the application was approved for a period of 2 years with annexed conditions, that the Defendant stopped and did not continue the sub-dividing process.

Was there a fraudulent misrepresentation?

27. The Plaintiff has argued that her late husband was fraudulently misrepresented by the Defendant that he would pay all costs for the purchase of the said land and to equally divide shares between them on the condition that the Defendant pays for the sub-division of the lots for sale purposes.
28. In the case of Kumar -v- Wati [2017] FJCA 2126; ABU0011.2014 (14 September 2017) Prematilaka in his judgement on an appeal from the High Court's decision holding that the Appellant had an equitable interest over the said property in which she had claimed for fraud against the Respondent, he stated:

"[113] The indefeasibility of title of the registered proprietor under sections 39 & 40 of Land Transfer Act Cap 131 subject to ' fraud ' has been upheld consistently by a long line of cases [see for e.g. Rup Wati and Shiu Charan v Estate of Shiu Charan Civil Appeal No. ABU 0027 of 2012 decided on 05 December 2013; [2103] FJCA 132, Star Amusement Limited v Prasad Civil Petition No. CBV 0005 of 2012 decided on 23 August 2013; [2013] FJSC 8 and Shiu Ajitya Charan v Rup Wati & Another Civil Appeal No. CBV 0007 of 2014 decided on 17 December 2014.

[114] Actual fraud or moral turpitude must therefore be shown on the part of the plaintiff as registered proprietor or of his agents Wicks v. Bennet [1921] HCA 57; [1921] 30 CLR 80; Butler v Fairclough [1917] HCA 9; [1917] 23 CLR 78 at p.97.

[116] Fraud is relevant in two situations. A previously registered proprietor seeks to set aside a transaction imputed by fraud or a holder of an unregistered instrument seeks to set aside a later registered instrument in favour of another on the ground that the other has been guilty of fraud. The general principle is that unless fraud can be brought home to the registered proprietor, registration will confer indefeasibility. The Respondent' case falls into the second category.

[117] There is no statutory definition of fraud in the Real Property Act in NSW or Land Transfer Act in Fiji. Fraud, wrote Sir Rupert Cross, is "one of those irritating words that seems more technical than it really is".[5] According to Lord MacNaghten in Reddaway v Banham [1896] UKLawRpAC 18; [1896] AC 199 at 221;

“Fraud is infinite in variety. Sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it.”

[118] Black’s Law Dictionary Seventh Edition at page 670 defines fraud as ‘A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment or a misrepresentation made recklessly without belief in its truth to induce another person to act’. Actual fraud (also termed fraud in fact, positive fraud and moral fraud) is defined at page 671 as ‘a concealment or false representation through a statement or conduct that injures another who relies on it in acting’. Constructive fraud (also named legal fraud, fraud in contemplation of law and equitable fraud) is defined at page 671 as ‘unintentional deception or misrepresentation that causes injury to another’.

[119] Fraud has been judicially defined as actual dishonesty, which can be attached to the registered proprietor’s title. Sometimes fraud is said to be “moral turpitude” (vide *Butler v Fairclough* [1917] 23 CLR 604 at 630) (emphasis mine). In the context of granting rescission of a contract it was held in *Derry v. Peek* (1889) 14 App Cas 337, HL that a fraud is proven when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, careless of whether it is true or false. The fraudulent party need not have acted with a corrupt motive (see *Polhill v. Walter* [1832] 3 B & Ad 114), but the false statement must have been made with the intent that it should be acted on (see *Peek v. Gurney* [1873] UKLawRpHL 19; [1873] LR 6 HL 377 and it must have been actually acted on by the other party (see *Smith v. Chadwick* [1884] 9 App Cas 187,HL).

[121] Generally fraud must occur in the lead up to registration and must be shown to have been practiced against the person who seeks relief. Mason CJ and Dawson J in *Bahr v Nicolay (No 2)* (supra) have suggested that post-registration conduct by the registered proprietor may be considered on the issue of whether there is fraud by the registered proprietor. This approach has been endorsed by Wood J in *Snowlong Pty Ltd v Choe* [1991] 23 NSWLR 198 at 212.’

29. Taking into consideration these principles the court considers the issues that must be established:

- (i) Was there a knowing misrepresentation of a fact or concealment of a material fact or made recklessly careless of whether he knew it was true or false?
- (ii) Was the person induced to act to his detriment?

Was there a knowing misrepresentation of a fact or concealment of a material fact or made recklessly careless of whether he knew it was true or false?

- 30. The Plaintiff relied upon documentary evidences and from the Affidavit in Evidence in Chief of the Plaintiff, there is clear circumstantial evidence that the Defendant had arranged for a registered surveyor to apply to subdivide the land for residential purposes, as per the verbal agreement between the parties.
- 31. The condition in the Approval for Subdivision of lands included that the Surveyor submitted Certificates from Local Authority confirming the subdivision was complete so that the Department of Town and Country Planning released the Survey Plans for approval and for the purposes of preparing Certificate of Titles. This was part of the letter dated 22 January 2008 from Director Town and Country Planning to the registered surveyor of the Defendants.
- 32. The Court therefore found that the failure of the Defendant to complete the process of sub-dividing the lands was a misrepresentation of facts until the expiry of the approval from the Director of Town and Country Planning two years later.

Was the person induced to act to his detriment

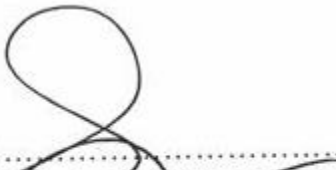
- 33. The Court also found that it was on the premise of this misrepresentation that the Plaintiff's late husband was induced to purchase the land and register the land ownership of the lands in equal shares share equally between the Plaintiffs late husband and the Defendant. It was also on this inducement that he had ensured his family were living on the same property to await the subdivision of lands which unfortunately he was unable to live to see.
- 34. That therefore the Defendant obtained benefit by registration of his name on the property by fraudulent misrepresentation.
- 35. The Court will therefore find that the Defendant had fraudulently misrepresented to the late husband of the Plaintiff resulting in him purchasing the lands and registering it in equal shares.

36. Hence as a result, this Court finds that the Defendant obtained registration of his half share of the land by fraud by failing to subdivide the said lands as was agreed upon.
37. The Court will grant order in terms.
38. The Plaintiff had conducted a trial for a day and documents had been filed to the benefit of the Plaintiff. Court will impose costs for the Plaintiff.

Orders

39. The Court Orders as follows:
- (i) A Declaration that the Defendant had made fraudulent representations to the deceased to acquire and register a half share of the said land;
 - (ii) An Order that the Defendant subsequently transfer his half share of the said land to the Plaintiff as Executor and Trustee of the late Fred Edward;
 - (iii) That the Chief Registrar execute all necessary documents to enable transfer of the title to the Plaintiff, if the Defendant refuses or is not located;
 - (iv) Alternatively, the Defendant is ordered to complete the survey and subdivision of land as per the proposed subdivision which was earlier approved on 22 January 2008 and has now expired.
 - (v) Costs to the sum of \$1000 payable to the Plaintiffs.




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Ms. Serileba LTT Waqainabete-Levaci
Puisne Judge