

**IN THE MAGISTRATES' COURT
AT BA
CIVIL JURISDICTION**

Civil Case No. 3 of 2019

BETWEEN: VIDYA WATI SHARMA

PLAINTIFF

AND: CHINA RAILWAY FIRST GROUP (FIJI) COMPANY LIMITED

DEFENDANT

Counsel: Mr. N. Padarath with Ms. M. Chand for the Plaintiff
Ms. D. Chan for the Defendant

Date of Hearing: 28 October 2024

Date of Judgment: 17 October 2025

JUDGMENT

Introduction

1. The Plaintiff has filed a claim against the Defendant alleging that the Defendant had trespassed on her land when it entered and installed pipes on her land.
2. The Plaintiff further alleges that the Defendant failed to exercise reasonable care and skill and was negligent in installing and fitting the pipes on the Plaintiff's land as such the Plaintiff has been deprived of the use and full employment of her land and premises and therefore has suffered loss and damage.
3. The Defendant denies that it trespassed into the Plaintiff's land and that it should not be liable for any of the contracted works it undertook.

Plaintiff's case

4. The Plaintiff is the registered proprietor of Native Lease 27512, land known as Vunivelo (Part of) Lot 3 on BA 2195 in the tikina of Nailaga in the province of Ba with an area of 10 acres ('the Plaintiff's land').
5. The Plaintiff's land has a farm registered under the Plaintiff's name with the Sugar Industry Tribunal as Farm No. 6647.
6. Sometime in 2013, the Plaintiff became aware of an ongoing Government Project in Moto where the Moto Road was to be upgraded. Around this time, the Plaintiff states that the Defendant's workers entered and started to install water pipes on the Plaintiff's land.
7. Concerns were raised that the Plaintiff's consent had not been obtained to allow any works to be carried out.
8. The pipelines placed by the Defendant's workers were 10 to 20 meters away from the road reserves with the Defendant's workers digging the land to lay the pipes but they failed to level it with the pipelines being barely covered.

9. Due to the Defendant's workers failing to properly install and secure the water pipes, this resulted in the water pipes bursting and causing damage to the Plaintiff's land.
10. The Plaintiff and others wrote to various agencies and institutions regarding the above.
11. For the years 2013 to 2018, the Plaintiff estimates that she has suffered loss to her sugarcane to the value of approximately \$5,000.00. The Plaintiff also estimates that she suffered a loss due to the damage of pineapples on her farm which is approximately \$4,905.00.
12. Moreover, the Plaintiff seeks that the Court orders that the Defendant maintains the water pipes on the Plaintiff's land.

Defendant's case

13. The Defendant through its witness Mr. Congjun Huang asserts that it was contracted to seal 5 kilometers of Moto Road which also included the relocation of water pipes on 27 August 2010.
14. The Defendant asserts that as its contracted work included the relocation of water pipes, it entered into a sub-contract with its sub-contractor to relocate, install and lay water pipes and that this was conducted under the supervision of a qualified engineer assigned by the Water Authority of Fiji.
15. Consequently, the Defendant is of the position that had it not laid, installed and secured the water pipes to the proper standard required, it would not have been issued with a Taking Over Certificate and Performance Certificate.
16. The Defendant is also of the contention it is not liable for any or all compensation for the loss of crops and use of land suffered by the Plaintiff.

Legal Provisions and Analysis

17. Before I proceed further, I wanted to address that in submissions filed by the Plaintiff counsel on 18 November 2024, it was highlighted that as the Plaintiff's lease is a Native Lease, the consent of iTLTB was required to carry out developments on or in relation to the land. Plaintiff counsel also relied on the case of *Ram v Water Authority of Fiji*; Civil Action No. 23 of 2015 (16 March 2017) wherein His Lordship Justice Mutunayagam referred to the case of *Prasad v Chand* [2001] FJLawRp 31; [2001] 1 FLR 164 (30 April 2001) where Justice Gates (as he then was) held that whatever the nature of permission had been granted to the Defendant by the Plaintiff to occupy the relevant State land, it was unlawful as it lacked the Director's consent.
18. I am mindful that Courts may, depending on the circumstances, allow evidence as to a particular fact that has not been pleaded, if the opposing party is not taken by surprise by it especially as it is difficult to plead each and every fact in detail (vide *Attorney General or Fiji v Chand*; Civil Appeal No. ABU0033 of 2009 (17 December 2010)).
19. The issue of consent from iTLTB was never pleaded by the Plaintiff in any of the pleadings filed, moreover, I also observed that no such evidence was led or even adduced by the

Plaintiff regarding the lack of consent from iTLB. As such, I will not address the same in my Judgment.

20. Turning to the issue at hand, in *Khan v Ratu*; Civil Appeal No. ABU 110 of 2019 (26 May 2023) the law on trespass to land and who was a trespasser was discussed as follows:

[21] Generally acknowledged as wrongs to property, **the tort of trespass to land is committed when an individual or the object of an individual intentionally, or negligently, enters the land of another without a lawful excuse.**

[22] Halsbury's Law of England (4th Edition, Vol 45) at para. 1384 defines it as:

"Unlawful entry. Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. A person trespasses upon land if he wrongfully set foot on it, rides or drives over it or takes possession of it, or expels the person in possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another or if he discharges water upon another's land, or sends filth or any injurious substance which has been collected by him on his own land onto another land."

[23] Street on Tort (16th Edition at Chapter 12) explains trespass to land as follows:

"This tort protects the interest of the claimant in having her land free from the unjustified intrusion of another. Because of this emphasis on physical interference with possession, it follows that it is not the function of the tort to protect ownership."

[24] A trespasser is defined in Clerk & Lindsell on Torts (15th Edition 1982) at p. 631 as:

"... a person who has neither right no permission to enter on premises."

(emphasis added)

21. In the matter herein, it is agreed by the Defendant that the Plaintiff is the registered proprietor of Native Lease 27512. Thus, the Plaintiff being the registered proprietor and being in possession of the said land can bring such an application to Court.
22. It was also not contested by the Defendant that on the Plaintiff's land there is a farm, registered under the Plaintiff's name with the Sugar Industry Tribunal as Farm No. 6647.
23. The Defendant agrees that it was contracted to seal 5 kilometers of Moto Road and thereafter there was a variation in its contract with respect to relocation of waterpipes. Given the variation, the Defendant also agrees that it engaged a sub-contractor to undertake the variation. However, it maintains that it was not its responsibility to obtain written approval or consent from the Plaintiff or any other person when undertaking its contracted works inclusive of the variation.
24. Nevertheless, I am mindful that in cross-examination, Mr. Huang who gave evidence on behalf of the Defendant, agreed that if consent had been obtained, it would have formed part of the documents in 'Appendix A Scope of Works' found in the Defendant's Affidavit Evidence

of Chief 'Annexure CH2' and which was tendered as 'PEX24'. He further agreed that when this document was prepared, the land acquisition and consent would have to be included.

25. Moreover, Mr. Huang also agreed in cross examination that if consent had been obtained then it would have been disclosed, and he further agreed that it was the responsibility of the Defendant before starting construction to obtain proper documents.
26. In the case of *Inspired Destinations (Inc) Limited v Graham & Ors* Civil Petition No. CBV 0003 of 2020 (28 October 2022), His Lordship Justice Keith stated:

*"There is in Fiji no general right to go onto someone else's land. You need the owner of the land's permission to do that. Otherwise, you would be committing the tort of trespass. **If you get the owner's permission to go onto their land, you are said to have been granted a licence to do that. A licence legitimises what would otherwise be a trespass.**"*

27. Thus, as per His Lordship Justice Keith, if it is shown that a person has the owner's permission to go onto the owner's land, the person is said to have been granted a licence and this licence validates what would instead be trespass.
28. Considering the absence of any such documents that would legitimize the Defendant's contention that consent had been obtained from the Plaintiff, I find and hold that the Defendant trespassed into the Plaintiff's land when it had relocated waterpipes on the Plaintiff's land.
29. Since that it has been established that the Defendant trespassed onto the Plaintiff's land, I will need to look at the damages that the Plaintiff is entitled to.
30. Firstly, the Plaintiff has sought special damages as follows:

<i>Loss of pineapple (2015)</i>	\$4,905.00
<i>Sugarcane (2013-2018)</i>	\$5,000.00
Total	\$9,905.00

31. The Plaintiff in evidence stated that a complaint had been lodged with the Ba Police Station regarding the damage to the pineapples. This Police Report was tendered as 'PEX6'. A letter from the Ministry of Agriculture dated 19 November 2015 was tendered as 'PEX13' which stated that a field visit had been conducted at the Plaintiff's property with the assessment being that the loss of pineapple amounted to \$4,905.00. The Plaintiff also tendered as 'PEX23' another letter from the Ministry of Agriculture dated 27 August 2024 which explained how the figure of \$4,905.00 had been reached.
32. Regarding the loss of sugarcane, the Plaintiff tendered as 'PEX17' a letter from FSC dated 29 June 2016 which highlighted that the Plaintiff's estimated loss of sugarcane was 9 tons. However, it was never explained how the amount of \$5,000.00 was reached for the loss of sugarcane between 2013-2018.
33. Thus, I find that the Plaintiff is entitled to special damages in the sum of \$4,905.00 only.

34. With respect to the damages that the Plaintiff is entitled to due to the Defendant's act of trespass, the Court is mindful of the case of *Chand v Kumari*; Civil Action No. HBC 300 of 2019 (1 March 2023) where it was stated by His Lordship Justice Amaratunga:

[26] The measure of damages for trespass according to Halsbury's Laws of England is the benefit accrued. It states.

"263. Measure of damages or compensation.

In such a case of trespass, damages will generally be measured by the benefit received by the trespasser; that will ordinarily be the price a reasonable person would pay for the relevant right of user. Thus, the measure of damages for the trespass on another's land by the carriage of minerals is the value of the land for the purposes for which it is used; compensation is measured by way leave rent in respect of the minerals carried, and the rate, if any, used in the neighborhood is adopted as a convenient measure." (foot notes deleted) (emphasis added)

35. There was no evidence as to the benefit derived by the Defendant, if any. However, as per the Defendant, they had sub-contracted the portion of the works relating to the installation and laying of waterpipes in 2012. These waterpipes remain on the Plaintiff's land to date but as stated in cross-examination by the Plaintiff, Water Authority 'have made' the pipes and are looking after it. However, counsel for the Defendant did not pursue any further questioning regarding when Water Authority started maintaining the waterpipes.
36. Thus, considering the time period from when this issue arose in 2012 and the fact that the Plaintiff's land is arable considering that it had sugarcane and pineapple growing on it, general damages in the sum of \$10,000.00 is granted.
37. The Plaintiff, in his claim against the Defendant had sought an order that the Defendant be required to maintain the waterpipes, however, by admission by the Plaintiff, Water Authority of Fiji is now maintaining the same. As such, no such orders will be made.

Determination

38. The Defendant is ordered to pay the Plaintiff special damages in the sum of \$4,905.00;
39. The Defendant is ordered to pay the Plaintiff general damages for trespass in the sum of \$10,000.00;
40. An order requiring the Defendant to maintain the pipes located on the Plaintiff's land is refused;
41. Interest is granted at the rate of 3% from the date of institution of this action to the date of judgment, that is, 18 January 2019 to 17 October 2025;
42. No order as to costs.


N. Mishra
Resident Magistrate