IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Civil Jurisdiction
Action No. 45 of 1977

BETWEEN:

MUNSAMI NAIDU s/o Changappa Naidu — Plaintiff

\- and -

IBRAHIM s/o Kammu Kutty — Defendant

Mr. S. Matawalu, Counsel for the Plaintiff
Mr. S.M. Koya, Counsel for the Defendant.

JUDGMENT

The plaintiff and defendant are cane farmers near Nadi Airport and they held their farms until 1973 from the C.S. R. and thereafter from the N.L.T.B.

It is not disputed that the plaintiff has hitherto passed over a road on the defendant's land in order to travel between his farm and the public road.

In his pleadings the plaintiff identified his cane farm by reference to a sugar cane contract namely No. 9687 made with the C.S.R. who let him into possession and he similarly describes the defendant's lease by reference to cane contract No. 9697. He alleges in para 3 of his statement of Claim that he has used the road across the defendant's land far more than 20 years; that the defendant has recently fenced off the road and prevented the plaintiff from gaining access to part of his land which he had prepared for planting cane and rice. Consequently he claims to have suffered damage equal to the nett value of the crops he could have grown.

The defendant admitted the plaintiff's use of the road but stated that the plaintiff was permitted to use it only with the defendant's express permission. He also admits blocking the plaintiff's access to the road but alleges that it gives rise to no cause of action in the plaintiff because the defendant personally built the road at his own expense and the plaintiff simply had a revocable licence to pass along it. He

pleads that the user was not in the nature of an easement, that there is no presumed grant and anyway the defendant had no authority to grant an easement over the land he occupied because he did not own it and cannot bind his landlord by the purported grant of an easement over the latter's land.

The two pieces of land were admittedly carved out of a large lease which was held by the Colonial Sugar Refining Company from the N.L.T.B. for a period of 30 years commencing on 1st January, 1953. The large C.S.R. lease was registered on 21/9/62 as Native Lease No. 11273 and measures over 1150 acres. The C.S.R. no longer operates but its functions in purchasing cane from farmers and crushing it are carried on by the F.S.C.

The plaintiff said in evidence that the C.S.R. had leased the land to him as long ago as 1957 that the road was then in existence and the C.S.R. permitted him to use it.

During cross-examination of the plaintiff, Mr. Koya, for the defendant, introduced a plan Ex.D2 and he also referred to Ex. P3 which is the cane contract between the plaintiff and the C.S.R. The agreement Ex. P.3 is a standard printed form of cane contract which was arranged between the C.S.R. and cane growers and bears the contract No. 9687. It grants a right of occupation to a cane grower of a delineated acreage with identifiable boundaries as is illustrated by the various plans submitted during the trial. The occupier agrees to farm the area described in his cane contract and produce, as far as possible, an agreed tonnage of cane. Where almost 1200 acres are carved up in this way, in leases of about 10 acres, it is difficult to avoid having farms in the centre which are surrounded by other farms and it is essential that the farmers be able to gain access to public roads even if this means crossing over surrounding farms. Such means of access was secured by the C.S.R. inserting into the cane contracts the clause 4(d) which requires each farmer to permit his neighbours to cross over his land where it is necessary for them to do so in order to farm their land and fulfil their cane contracts with the C.S.R.

P.W.3 works for the F.S.C., the national sugar manufacturing company, which is the successor to the C.S.R. He says that he has lived in the area since 1947 when the area

in question was a pineapple farm and that the disputed road was in existence then. I have no hesitation in believing him and he added that the road was in existence when the defendant was allocated his farm area.

For some reason the defendant did not give evidence and Mr. Koya called defence witnesses to show that it would be possible for the plaintiff to reach his land without passing along the road over the defendant's land. However, since he occupies one of the internal farms it is apparent that he would have to pass over someone's land to gain access to the public road.

In 1973 the C.S.R. surrendered its head lease to the N.L.T.B. but the parties herein and other farmers who held as sub-tenants from the C.S.R. are still in occupation of the farms allocated to them.

At present a temporary injunction exists in the plaintiff's favour enabling him to cross over the defendant's land and in his affidavit in support thereof the plaintiff drew attention to clause 4(d) of the standard contract between growers and the C.S.R.

During cross-examination Mr. Koya asked the plaintiff if he was relying upon clause 4(d) and he put it to the plaintiff that in the past the defendant was simply complying with clause 4(d) in allowing the plaintiff to cross his farm. The plaintiff simply said it was his (the plaintiff's) road. When asked if he claimed it by reason of user or as a way of necessity he simply replied that he had to have a way over the defendant's farm. He agreed that he had lodged no caveat in support of a claim to a right of way.

The plaintiff's interest in the land i.e. whether it is a lease or licence is difficult to assess on the evidence and on the pleadings. However, Ex. P2, which was put in by consent, is a letter from the C.S.R. to the plaintiff notifying him that as from 1973 they will have surrendered their lease to the N.L.T.B. Ex. P2 describes the plaintiff as a sub-tenant holding from the principle tenant, the C.S.R., and informs him that following the surrender he will become the direct tenant of the N.L.T.B. No exception was taken to this by the defence and they did not challenge the accuracy of that letter. The

plaintiff and many of the neighbouring farmers appear to be uncertain as to whether their status has been affected by the said surrender. The defendant took some positive action to clarify his position. Ex. D4, is an order which he obtained from the Agricultural Tenancy Tribunal. It declares that Ibrahim s/o Kamma Kutti, the defendant herein, is an agricultural tenant and entitled to the protection of the A.L.T.O. and it orders the N.L.T.B. to continue his tenancy under the A.L.TO. It reveals that the defendant claimed that he had been paying rent to the C.S.R. although his cane contract with the C.S.R. did not reveal this. The Tribunal obviously believed the defendant's claim to have been paying rent to the C.S.R. and regarded him as a sub-tenant of the C.S.R.

D.W. 1, the Secretary of the N.L.T.B., said in evidence that the defendant has no greater right to a tenancy from the N.L.T.B. than the plaintiff or other persons and that it is the Board's intention to grant leases to them all. Although D.W. 1's reference to the rights of the farmers such as the plaintiff and defendant may only be his opinion as to the legal position it demonstrates their landlord's attitude.

D.W.4, had a farm from the C.S.R. on the same leasehold area. She (D.W.4) says she had no cane contract and only grow rice. She described the C.S.R. as her landlord.

The evidence from both parties points to the persons who held from the C.S.R. on the 1200 acre leasehold as being sub-tenants. Apparently it is only a matter of time before the N.L.T.B. confirm the plaintiff's status, and that of all the other farmers, as tenants holding directly from the Board instead of holding from the C.S.R. as sub-tenants.

I find that the road in question on the defendant's land was not built by the defendant but by the C.S.R and that it was in existence before the parties occupied their respective farms and that the plaintiff and other farmers were lawfully entitled to use it by virtue of the mutual covenants in their respective leases. It is obvious when an area of almost 1200 acres is divided into farms of 10 to 20 acres that the internal farms must have an outlet over the farms which surround them. Clearly the C.S.R. when leasing the numerous farms provided for this contingency by the introduction of a mutual covenant between

the farmers in the form of clause 4(d) into their cane contracts.

The existence and effect of clause 4(d) has not been pleaded by the plaintiff but I think that I am entitled to consider its effect because there is evidence of its existence and the defendant made reference to it in cross-examination of the plaintiff. The C.S.R. was in a position to ensure its observance. It is noteworthy that it was n t until after the C.S.R. had surrendered their 1200 acre lease to the N.L.T.B. that the defendant began to block the plaintiff's way across the defendant's farm.

The plaintiff's case has been badly pleaded, badly prepared and badly presented but I do not think he should suffer by reason of the failings of his legal advisors.

The N.L.T.B. could, on surrender of the land by the C.S.R., only take it as they found it. That is t say the Board has to accept such tenants as were on it and to concur in the conditions and obligations contained in the tenancy agreements. The plaintiff's tenancy was not extinguished by the surrender and until such time as it is terminated he continues to enjoy it under the original terms and conditions. As far as the defendant is concerned he has not, in my view, obtained a new lease but simply an extension of his old lease by the order of the Agricultural Tribunal in Ex. D4. He cannot say that he was not aware of the plaintiff's right to cross his farm. It was one of the conditions on which he was granted a farm by the C.S.R. The road was on his land long before he first went on to it in 1953. He cannot contend that because the reversions of the sub-leases have become vested in the owner (N.L.T.B.) the mutual covenants for rights of way have been extinguished. It would have been different had the N.L.T.B. lawfully assumed possession of the land at the same time I fail to see how it has become necessary for the plaintiff to register a right to cross over the defendant's land in order to preserve it against the defendant simply because there has been a change in the common immediate landlord. It is apparent from the evidence that the defendant himself has not yet got a registered lease; his lease is being processed. In the circumstances

it would be difficult for the plaintiff to register his easement against a lease which does not yet appear on the Register.

The plaintiff succeeds on his claim to the right of way over the defendant's land which he has hitherto enjoyed.

Turning now to the claim for damages this was not supported by the evidence. It was referred to by the plaintiff in a very vague and unsatisfactory fashion. I am not satisfied on his evidence that he has suffered any loss. His claim for damages is dismissed but his claim to the right of way he has hitherto enjoyed over the defendant's land succeeds.

The defendant will pay the plaintiff's costs.

LAUTOKA,
22nd September, 1978.

(Sgd.) J.T. WILLIAMS,
JUDGE.

Messrs. S. Matawalu & Co, Counsel for the Plaintiff
Messrs Koya & Co., Counsel for the Defendant.

Date of Hearing: 24th April, 1978 &
11th August, 1978.