

BETWEEN:

SHANKARAN NAIR
s/o Raman Nair

Plaintiff

A N D :

NATIVE LAND TRUST BOARD

Defendant

Messrs. Gordon & Company

Counsel for the Plaintiff

Mr. A. Qetaki

Counsel for the Defendant

J U D G M E N T

One Hari Pal held a lease from the Native Land Trust Board for a small plot of land in Lautoka City. Since he believed that the plot was too small, or of the wrong shape to enable him to build on it a house suitable for his requirements, he wished to dispose of it. The plaintiff was willing to take over the plot, the terms of which he was willing to do so apparently being that he would reimburse Hari Pal the \$700 he had originally paid for the plot, and the rates he had already paid to or owed the City Council. Since the plaintiff claimed that the current value of the plot was about \$4,000 the terms seem very favourable to him.

However on this understanding - and there was no more than an understanding (e.g. there was no binding agreement), the two of them went to the offices of Native Land Trust Board Lautoka and saw there Augustus Reddock an administrative officer, who at the time seemed to be in charge of the sale of lots in this subdivision. He told them that it would be necessary for Hari Pal first of all to surrender his lease, and then for the plaintiff to make application for the plot, together with \$700 which was the price of the plot. Apparently when and if the transaction went through the \$700 would be returned to Hari Pal. According to the plaintiff when they went to see Mr. Reddock he first checked whether all the rates were paid up to date. Since they were not so paid up the plaintiff and Hari Pal went to the Council offices and the plaintiff paid the outstanding rates. They then returned to the Native Land Trust Board. The plaintiff said that Mr. Reddock filled in a surrender form and gave it to Hari Pal to sign. Hari Pal handed over the surrender form and the original lease for the plot. Mr. Reddock then filled out an application form and the plaintiff signed this and gave it to Mr. Reddock together with a cheque for \$700 and \$20 fees for the application form. Mr. Reddock then told him the plot was his and the lease would be sent

to Suva for a transfer to be effected. He got a receipt for the \$700 - which refers to "development charges" - but if he got a receipt for the \$20 fees he did not produce it. (Incidentally Mr. Reddock said only \$10 in fees were paid - for the application form).

When he did not get his lease documents the plaintiff went back to the Native Land Trust Board offices and this time saw Mr. Noakes. Mr. Noakes said he would follow it up. The next thing that happened was that the plaintiff received from the Native Land Trust Board a refund of his \$700, without any explanation - or at least proper explanation. He would not accept it and contacted his solicitor. Later he got a letter explaining that his application was rejected and also pointing out that Hari Pal was no longer proceeding with the surrender of his plot.

The plaintiff then initiated this action claiming that there was a specific contract between himself and the defendant, an order for specific performance of the contract or damages for breach of contract.

He called Hari Pal ^{as a} witness, and Hari Pal's evidence agreed substantially with his own. Hari Pal also said that Mr. Reddock filled up a surrender form for him ^{he} and then signed it. However the surrender form in question was produced by the defendant and it is clear that it was never filled in at all. Hari Pal apparently signed a blank surrender form - and signed it in the wrong place. Later when he went back to enquire what was happening he was asked to sign in the right place. But the form was never filled in, Hari Pal's signature was never certified, as it should have been, no fees, or stamp duty were paid, and the form was never sent to the Registrar of Titles for registration. It could ^{never} have been registered in its present form, it was a worthless piece of paper, and the surrender never became effective. It will never become effective now since Hari Pal no longer wishes to dispose of the plot, and has in fact built a house upon it. If there ever was an agreement or arrangement between Hari Pal and the plaintiff with regard to the plaintiff taking over the plot, that agreement or arrangement has long since been terminated, and it is to be noted that no action has been taken against Hari Pal. Quite clearly the plaintiff's claim for specific performance against the defendant only cannot be taken seriously. Equally clearly if there were a contract between the plaintiff and the defendant for the plaintiff to take over Hari Pal's plot, it could only, at most, be contingent upon Hari Pal's surrender becoming effective. Unless and until the surrender became effective, the Native Land Trust Board could never contract to transfer it to the plaintiff.

The plaintiff seemed to think that when he and Hari Pal had gone together to the Native Land Trust Board offices they had done everything necessary to effect the surrender and transfer of the plot. He and Hari Pal were both mistaken about the surrender form. It was not filled in, and was

quite worthless. I cannot see that the plaintiff or Mr. Reddock could have concluded an agreement to transfer the plot to the plaintiff. I have not seen the application form signed by the plaintiff but I presume it was only an application form, and could not be construed in any way as a written contract. So that I have only the plaintiff's evidence that Mr. Reddock at the meeting said "Now the land is yours" or words to that effect. Mr. Reddock denied this and said that approval would have to come from Suva. Mr. Reddock seemed to be a rather inexperienced young man, whose handling of the affair left much to be desired. Perhaps it would be best to be charitable towards him because, as Mr. Noakes pointed out, he was doing work for which he was not qualified because at the time the Native Land Trust Board were short of properly qualified staff. Since then the position has changed, more trained staff have been recruited and clearly serious efforts are being made to improve the Native Land Trust Board image and efficiency. But even Mr. Reddock could hardly have treated the matter as settled when the question of the surrender by Hari Pal was still outstanding. Until there was a properly filled out surrender form registered with the Registrar of Titles there was no plot of land available for the plaintiff to acquire.

I don't believe Mr. Reddock said the land was the plaintiff's, I don't believe that there was or could be any binding agreement between the Native Land Trust Board represented by Mr. Reddock and the plaintiff that the plot would be transferred to the plaintiff. I believe that at the time there was no more than a proposal by Hari Pal to surrender his plot, and an application by the plaintiff to have that plot transferred to him, if and when the surrender was effected. The \$700 was no more than the normal pre-payment expected by the Native Land Trust Board from applicants for plots, and nothing more should be read into that payment of the cheque.

The plaintiff's claim is therefore dismissed with costs to be taxed if not agreed.

LAUTOKA,
25th June, 1980

(sgd.) G. O. L. Dyke

JUDGE