

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE HIGH COURT**

**CIVIL APPEAL NO. ABU 0095 OF 2018**  
**(Lautoka High Court Civil Action NO. HBC 92 of 2012)**

**BETWEEN** : **G.P. REDDY COMPANY LIMITED**  
*Appellant*

**AND** : **PAC INVESTMENTS & DEVELOPMENT LIMITED**  
*Respondent*

**Coram** : **Basnayake JA**  
**Lecamwasam JA**  
**Guneratne JA**

**Counsel** : **Mr. R. Gordon for the Appellant**  
**Ms. S. Ravai for the Respondent**

**Date of Hearing** : **12 May 2022**

**Date of Judgment** : **27 May 2022**

**JUDGMENT**

**Basnayake JA**

[1] This is an appeal filed by the Plaintiff/Appellant (hereinafter referred to as the Plaintiff) to have the judgment of the learned High Court Judge dated 6 July 2018 set aside (pgs. 1 to 30 of the Record of the High Court (RHC)). By this judgment the learned Judge has dismissed the Plaintiff's action. The learned Judge also declined the prayer for loss and damages as claimed in the counter-claim in paragraph 71 of the statement of defence.

However the learned Judge awarded general damages in favour of the defendant to be assessed before the Master, \$30,000.00 as punitive and exemplary damages together with interest and costs in a sum of \$15,000.00.

- [2] In an amended statement of claim (pgs. 37-42) the Plaintiff prays for, (i) Judgment for the plaintiff in the sum of \$5000.00 stated in paragraph 32 (c), (ii) The Defendant to do all things to ensure that the plaintiff obtains a lease of the area of 3257 square meters and that the same does not go to Punja & sons or William and Goslin or other parties.
- [3] The Plaintiff states in the amended statement of claim that the Plaintiff entered into a Memorandum of Agreement with Lautoka Land Development Fiji Limited (LLD) on 15 July 1993 to purchase an area of 5831 square meters of state land (MOA at pgs. 168-172). This was entered into on 11 September 1992. The LLD was a developer and the holder of an Approval Notice of Lease. By this agreement the Plaintiff as Lessee agreed to purchase Lot No. 5 on Plan No. SO 2502 comprising an area of 5831 square meters in Navutu Industrial sub division in Lautoka. The plaintiff as lessee agreed to pay the LLD a sum of \$170,000.00 in the manner laid down in the MOA. Possession was to be given upon the execution of this agreement. Its states that possession was given to the Plaintiff in 1994.
- [4] The Plaintiff states that the LLD was wound up by the High Court. It states that he was given Crown Lease No. 13851 (pg. 176) with an extent of 2574 (as shown in plan No. SO 2502 (pg. 178)) square meters by the Director of Lands (DOL). The Plaintiff (paragraph 12 at pg. 39) states that he was prepared to pay a reasonable sum in respect of the balance area of 3257 square meters. It states that his occupation of 5831 s/meters (inclusive of 3257 s.m.) was with the knowledge and consent of the DOL.
- [5] This action was filed in the year 2012. Even in 2012 the Plaintiff was prepared to pay for the balance 3257 SM. to the DOL. This shows that a payment was not made by the Plaintiff to anyone in respect of 3257 SM up to 2012. It states in the plaint that (paragraph 17) by letter dated 23.9.1993 the DOL had agreed with the Plaintiff's lawyers Messers.

Chandra S. Akhil to give a lease over the full area of 5831 SM. It also states that the DOL had asked the Defendant to regularize the Plaintiff's position as an occupant and lessee.

[6] It appears from the RHC that the DOL has issued two leases which were registered by the Registrar of Titles (ROT) on 12 January 2012 bearing the Nos. 18760 (pg. 258) and 18764 (260). The entire area of 3257 SM that the Plaintiff is claiming in this case falls within the areas covered by leases 18760 and 18764. The plan relating to these two leases is SO 6312 (Pg. 259). These two leases were given by the DOL to the Defendant. The land leased by No. 18760 is lot 1 in plan 6312. The land leased by 18764 is Lot 5 in plan No. 6312. The Plaintiff claims an area of 5831 SM. That is on the strength of the MOA. The plaintiff by Crown Lease No. 13851 lawfully obtained 2574 SM. That is lot 5 of plan No. SO 2502. Out of the balance area of 3257 SM, the defendant was given 2337 SM by Crown lease No. 18760. The entire land of the lease 18760 is 9407 SM. By lease No. 18764 the defendant was given 8401 SM. Of this 920 SM is disputed by the Plaintiff who states that the Plaintiff had been in possession of this 920 square meters and 2337 square meters totaling 3257 square meters from the year 1994 on the strength of the MOA entered into with the LLD.

[7] The writ of summons in this case was filed after the issuing of the leases Nos. 18760 and 18764 by the DOL in 2012. The property that is subject to these two leases absorbs the entire land of 3257 square meters claimed by the plaintiff. While lease No. 18760 absorbs an area of 2337 square meters, Lease 18764 absorbs the balance area of 920 square meters.

[8] The Plaintiff filed Civil Action No. HBC 418 of 1996L against the Receiver, who was appointed for LLD due to liquidity, the DOL and Another on 17 December 1996 to claim 5831 square meters which the Plaintiff got after the MOA in 1992 and gone into possession in 1994. This case was settled on 11 April 2007. In the settlement (pgs. 265-271) the following facts were revealed, namely,

*“5. The Plaintiff on 11 September 1992 entered into a Sale and Purchase agreement for lot 5 on SO 2502 being more or less 5831 square meters for ....\$170,000.*

*6. The Plaintiff made a part payment....\$51,950.00 and took possession on 11 September 1992. “*

[9] In this action one of the reliefs the Plaintiff sought was a declaration (para 11b) that it is the Lessee and entitled to a lease over the property. The lease the plaintiff claimed was for 5831 square meters.

[10] This case was settled. The settlement is as follows:

*“17. In this Deed unless inconsistent with the context, “settlement sum” means the sum of FJD 82,000.00. “Site” means Lot 5 of SO 2502, Navutu Industrial Estate (part of) as described in CL 13851 comprising 2574 square meters...*

*28. This Deed may be pleaded as a bar to any claim or action taken by the Plaintiff or the Defendant in the future concerning the site.”*

[11] Although the Plaintiff had been in occupation of 5831 square meters on the strength of the MOA (168) it was given a Crown Lease only for 2574 square meters (Lease No. 13851 at page 176) in plan SO 2502 (pg. 178). This plan shows an area of 2574 square meters. The Plaintiff has agreed to operate this settlement as a bar to any claim or action taken by the Plaintiff or the Defendant in the future **concerning the site** (emphasis added).

[12] The Plaintiff does not have a lease outside 2574 square meters of land occupied by him on the lease No. 13851. The Plaintiff by agreement is barred from bringing any action concerning the land for which action HBC 418 of 1996L was filed. Instead of an area of 5831 square meters the Plaintiff has chosen now to receive a lesser area, namely 2574 square meters. Entering into this settlement means that the Plaintiff has now abandoned the claim for the balance area, namely 3257 square meters. The Plaintiff has no claim to the land outside the land given to the Plaintiff by lease NO. 13851.

[13] It is abundantly clear that the Plaintiff is again now agitating in this action to claim the lost 3257 square meters of land which the Plaintiff was in occupation. The learned counsel for the Plaintiff submits that at the time of the settlement the defendant was not a party to the settlement. The defendant had been given two leases by the DOL in 2012 which absorb the 3257 square meters. The defendant has become the lawful owner by virtue of the new leases. The Plaintiff cannot claim to be the legal owner for this 3257 square meters of land.

[14] I am of the view that the Plaintiff is barred from bringing any action against the Defendant. The Defendant's rights flow from the DOL who has the authority to grant leases. If at all a cause of action has arisen for the Plaintiff against the DOL. The Plaintiff cannot bring an action against the DOL due to the settlement in case No. HBC 418 of 1996L. In the same way the Plaintiff cannot be allowed to agitate on the same issue against the defendant as the Defendant steps into the shoes of the DOL who has a duty to warrant and defend the title of the Defendant. Therefore I am of the view that the Plaintiff's action has been rightly dismissed by the learned Judge. I am of the view that this appeal is without merit as far as the dismissal of the Plaintiff's action is concerned.

#### Counter claim

[15] The learned Judge also declined the Defendant's counter claim for loss and damages in terms of paragraph 71 of the Statement of Defence (pg. 61). This paragraph is reproduced below:

*BY reason of the matters aforesaid, the Defendant has been deprived the use and enjoyment of the occupied land and thereby has suffered loss and damage and also unable to transfer the said lots to Punja and Sons Ltd and William and Gosling.*

#### Particulars of Loss and Damage

- a) *Bank interest due to delay in project and settlement from October 2018 till November 2011 in the sum of \$428,898.69 at Colonial National Bank of Fiji.*

- b) *Refinancing due to delay in settlement from Colonial National Bank now Bank of the South Pacific to Fiji Development Bank – refinancing cost \$77,756.00.*
- c) *Bank interest due to delay in project and settlement from 26<sup>th</sup> September, 2011 till 24<sup>th</sup> June, 2012 in the amount of \$155,763.42 from Fiji Development Bank which continues to accrue.*
- d) *Re-scheming of development scheme to accommodate for illegal occupancy by the Plaintiff to facilitate transfer and settlement of other titles \$24,150.00.*
- e) *Contractors delay in works due to illegal occupancy penalty of \$150.00 per day:*

<i>October 2008 92 days</i>	<i>\$13,800.00</i>
<i>2009 x 365 days</i>	<i>\$54,750.00</i>
<i>2010 x 365 days</i>	<i>\$54,750.00</i>
<i>2011 x 365 days</i>	<i>\$54,750.00</i>
<i>Total</i>	<i>\$178,050.00</i>
- f) *Total \$1,042,668.11”*

[16] The learned Judge has declined loss and damage. There is no cross appeal filed against this decision. In the prayer the defendant in addition to what is claimed in paragraph 71, claims (Under para c of the prayer) general damages to be assessed. The learned Judge in paragraph 24 (pg. 28) states under a heading, Claim for General Damages, as follows: *“Considering the nature of the case, and the damages could, possibly, have been caused to the Defendant by other means, and being satisfied that the damages have been caused to the Defendant, I am of the view that the damages under this head should be assessed at a separate hearing”.*

[17] Ground 23 of the grounds of appeal is concerning the learned Judge’s ordering a separate hearing on general damages before the Master. The learned counsel states that the court is only empowered to refer the matter to the Master for assessment of damages where either there has been a split trial with liability being determined first and where the parties deliberately and by choice have called no witnesses and led no evidence of damages

knowing that the issue of damages would be the subject of a subsequent and later trial before the same Judge or Master. This was not the situation here.

[18] In this case there was no issue of having two hearings. Therefore there is nothing for a Master to decide. It appears that the learned Judge has not given his mind to this aspect and made this order as he has to provide an answer to prayer “c” of the Amended Statement of Claim. Therefore, I am of the view that the learned Judge has erred in making this order to send the case before the Master.

#### Exemplary & Punitive Damages

[19] Paragraph c and d at page 28: With the refusal by the learned Judge to grant relief claimed under paragraph 71, I am of the view that the only other award that the Defendant would be entitled to is costs. There is no appeal filed by the Defendant against the refusal to grant relief claimed in paragraph 71. Under this paragraph the Defendant claims a sum of \$1, 042,668.11 for depriving the use and enjoyment of the occupied land and the loss and damage suffered thereby. The Defendant under paragraph 71 under a heading, Particulars of Loss and Damage, has given a detailed account of the loss suffered by the Defendant. This claim the learned Judge has declined. Once that claim is declined the only other liability would be costs.

[20] By way of costs the learned Judge has awarded a sum of \$15,000.00. The learned counsel for the Defendant was generous enough to agree in court for a sum of \$5000.00 by way of costs. I am of the view that \$5000.00 costs is reasonable. Therefore I set aside the order of \$15000.00 and order costs in a sum of \$5000.00 in favour of the Defendant.

[21] I am of the view that the learned judge was correct in dismissing the Plaintiff’s action. Therefore I dismiss the Plaintiff’s appeal with regard to the order of dismissal. However with regard to the counter claim I am of the view that there is no basis for the court to send this case before the Master to assess general damages. I therefore set aside the order

to send the case before the Master. I also set aside the order with regard to \$30,000.00 awarded as punitive and exemplary damages.

[22] This appeal is mainly with regard to the dismissal of the Plaintiff's action. As I have decided to dismiss the appeal with regard to the dismissal of the Plaintiff's action the Defendant is entitled to costs in this Court which I assessed at \$5000.00. This sum is in addition to the \$5000.00 costs in the High Court.

[23] The Grounds of Appeal

1. *The Learned Trial Judge erred in law and/or in fact when he decided and/or ruled to deliver his judgment without first giving the parties a reasonable opportunity of making submissions and/or closing speeches and/or addressed;*
2. *The Learned Trial Judge erred in law and/or in fact by relying on irrelevant facts and/or evidence and/or by not relying on relevant facts and/or evidence;*
3. *The Learned Trial Judge erred in law and/or in fact by not assessing and/or weighing all the relevant and admissible evidence in totality individually and cumulatively;*
4. *The Learned Trial Judge erred in law and/or in fact when he found and/or ruled and/or concluded and/or observed that the oral evidences led for and on behalf of the parties, had only a little role to play in the resolution of the core issue in this matter;*
5. *The Learned Trial Judge erred in law and/or in fact when he found and/or ruled and/or concluded and/or observed that the pivotal issue that begged adjudication was the identification of the actual extent of land given to and taken by the plaintiff in terms of the MOA dated 11<sup>th</sup> September 1992 and the Deed of Settlement entered into by and between the Plaintiff and the receiver of LLD on 7<sup>th</sup> April 2007 the action No. HBC 418 of 1996;*
6. *The Learned Trial Judge erred in law and/or in fact when he found and/or ruled and/or concluded and/or observed that the evidences adduced by way of Documents at the trial are more articulate and convincing than the major parts of the oral evidence led at trial;*
7. *The Learned Trial Judge erred in law and/or in fact when he proceeded to analyse and/or consider only a select and limited and/or subjective selection of the evidence led at trial by both parties;*



8. *The Learned Trial Judge erred in law and/or in fact when he without basis and/or foundation and/or justification found PW3 Mr. Anand Sachin Kumar to be a evasive witness and/or giving evasive answers, not an independent witness, and that his report and purported survey sheets no. 2, 3, 4, 5 7 & 6 marked as P-X were concocted for the purpose of the case and self-serving and should be rejected totally along with his evidence;*
9. *The Learned Trial Judge erred in law and/or in fact when he found and/or concluded that the evidence of PW-4 Mr. Tonga Karutake further fortified the position of the Defendant and this was not debilitated by the Plaintiff through re-examination or any other evidence in preponderance and that the Plaintiff through this witness had not been able to adduce any tangible evidence for a favourable consideration of the reliefs it has prayed for in the prayer to the Statement of Claim;*
10. *The Learned Trial Judge erred in law and/or in fact when he found and/or concluded that the Plaintiff has been granted a lease for 2754 square meters in Lot 5 of SO Plan 2502 as per the terms of settlement entered in the HBC 418 of 1986 and it cannot ask anything more, which it has expressly relinquished;*
11. *The Learned Trial Judge erred in law and/or in fact when he delved and/or relied too much on the previous litigations and/or the previous litigations parties and/or the previous litigations outcomes and/or misconstrued their relevance and/or applicability and/or meaning and/or effect;*
12. *The Learned Trial Judge erred in law and/or in fact when he misconstrued and/or failed to adequately and/or properly identify the issue and/or issues in dispute between the parties;*
13. *The Learned Trial Judge erred in law and/or in fact when he incorrectly answered the issues he purportedly and/or incorrectly imposed on the parties;*
14. *The Learned Trial Judge's judgment and/or reasons for judgment lack any proper and/or adequate analysis of the applicable law and/or fact in issue;*
15. *The Learned Trial Judge's judgment and/or reasons for judgment lack and/or fail to explain the actual path of reasoning in sufficient detail to enable the Appellant to understand why it was unsuccessful and to enable an appeal court to determine whether the decision involved appealable error;*

16. *The Learned Trial Judge's judgment and/or reasons for judgment lack and/or fail to express in its own language conducive to meeting the requirement to enable the Appellant to understand why it was unsuccessful and to enable an appeal court to determine whether the decision involved appealable error and to showing that it engaged with the losing party's case;*
17. *The Learned Trial Judge's judgment and/or reasons for judgment show that he failed to engage with the Appellant's case;*
18. *The Learned Trial Judge erred in law and/or in fact when he ignored procedural law that governs conducting legal proceedings;*
19. *The Learned Trial Judge was not impartial, fair, or independent;*
20. *The Learned Trial Judge failed to interpret the law and/or interpret the law correctly;*
21. *The Learned Trial Judge erred in law and/or in fact when he misapplied and/or incorrectly applied and/or misinterpreted and/or incorrectly interpreted the principles and/or reasoning and/or method in assessing and/or calculating quantum of damages;*
22. *The Learned Trial Judge erred in law and/or in fact when he awarded exemplary and punitive damages of \$30,000.00 and/or interest on the same and/or when the same was not adequately and/or properly pleaded and/or had any evidential basis of being awarded and/or claimed;*
23. *The Learned Trial Judge erred in law and/or in fact when he ordered that general damages be assessed by the Master when the Trial Judge heard the matter and all evidence was presented and the Judge was seized of the matter and the Master therefore had and/or has no jurisdiction to now and/or then assess general damages and the Judge and/or the Master are functus officio;*
24. *The Learned Trial Judge erred in law and/or in fact when he awarded \$15,000.00 as summarily assessed costs."*

[24] It is very depressing to observe a large number of grounds of appeal raised with no relevance to the real issue. Counsel are merely raising stereotyped grounds and camouflage the real dispute. Counsel must be sternly warned to refrain from wasting the

time of court by so doing. I do not find any grounds that are really appealable. I have explained in plain language the dispute in this case. Counsel are needed to assist court and not to show off their ability. I have observed that the learned counsel although raising grounds such as not allowing extra time, even time to file written submissions, failed to address court on these and made the court to understand that these grounds are not to be taken seriously. When unnecessary grounds in large numbers are raised the court may even slip important ones.

[25] As I have answered all the intricate problems in this case I do not think I have left out any questions unanswered. For these reasons I do not think it is necessary to answer each and every ground of appeal individually. Taken together, I answered the grounds in favour of the Respondent excepting the grounds relating to final orders Nos. 3, 4, and 5 of the High Court.

#### **LecamwasamJA**

[26] I agree with the reasons, conclusions arrived at and orders proposed by Basnayake JA.

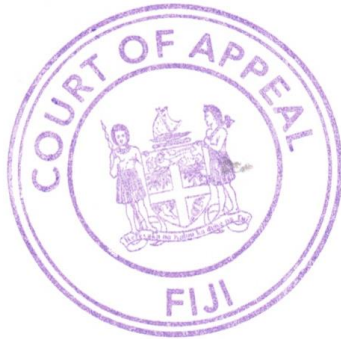
#### **Guneratne JA**

[27] I agree with the reasons, conclusions and orders contained in the judgment of Basnayake JA.

#### **Orders of court are:**

- 1. Appeal is dismissed subject to the amendment of the orders Nos. 3, 4 and 5 of the High Court Judgment.*
- 2. Orders Nos. 3, 4 and 5 of the High Court Judgment are set aside.*
- 3. Costs awarded in order No. 5 is reduced to \$5000.00.*

4. *The Appellant is also ordered to pay costs in this court \$5000.00 within 28 days from the delivery of this Judgment to the Respondent.*



.....  
**Hon. Justice Eric Basnayake**  
**JUSTICE OF APPEAL**

.....  
**Hon. Justice S. Lecamwasam**  
**JUSTICE OF APPEAL**

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**Hon. Justice Almeida Guneratne**  
**JUSTICE OF APPEAL**