

In the High Court of Fiji at Suva

Civil Jurisdiction

Civil Action No. 102 of 2009

Amitesh Prakash

Plaintiff

The Director of Lands and Mineral Resources

First defendant

The Attorney General of Fiji

Second defendant

Appearances: Mr V Maharaj for the plaintiff

Mr A. Pratap for the first and second defendants

Dates of hearing: 27 September, 2012

JUDGMENT

1. In these proceedings, the plaintiff seeks a declaration that he is entitled to a lease of a land from the first defendant, for a period of 30 years, alternatively for damages. The plaintiff claims that he had a legitimate expectation of the lease, following the allocation of land to him, by the first defendant. It is alleged that the first defendant acted in bad faith, by withdrawing the lease agreement.
2. ***The statement of claim***
 - 2.1. The statement of claim recites that the plaintiff was in occupation of a land comprised in lot 2 on SO 1575 and lot 5 on SO 1629 consisting of 10 acres and situated at Nagavugavu and Lami (part of) Lomaivuna, Naitasiri, bearing reference no. LD 4/14/1227,(the land) since 1997.He had expended money to remove shrubs, level, plough, fence, plant vegetables and graze cattle on the land.
 - 2.1.1. In July, 2007, the first defendant invited applications for lease of the land.
 - 2.1.2. The plaintiff applied.

2.1.3. On 5th November,2008, the first defendant made a formal offer to the plaintiff.

2.1.4. The plaintiff accepted the terms and conditions of the offer. He then, spent more money on cultivating the property, as the first defendant was aware.

2.1.5. On 19th January,2009, the first defendant withdrew the lease agreement.

2.2. The statement of claim proceeds to state that the plaintiff became entitled to an equitable lease for a period of 30 years. It is alleged that the first defendant acted in bad faith by “*purportedly cancelling and/or withdrawing*” the lease agreement unilaterally, on the ground that the previous lessee had entered into an agreement with a third party.

2.3. The plaintiff contends that he had a legitimate expectation that the property would be allocated to him. The defendant is estopped from cancelling or reneging from the agreement validly entered into.

2.4. The plaintiff claims he has suffered loss and damages.

3. *The statement of defence*

3.1. The defendants state that the plaintiff was not issued a lease. He should never have been in occupation of the property.

3.2. The property was leased to a Mr Jai Shandil, from 30th September, 1988. His lease expired in September,2006.

3.3. The defendants recapitulate the facts pleaded in paragraphs 2.1 to 2.5 above.

3.4. Finally, the defendants state that the plaintiff was never issued a lease, to occupy the property, and all losses alleged were at his own risk.

4. *The hearing*

4.1. *PWI*

4.1.1. The plaintiff said after he left school in 2001,he did farming in a bare land adjoining his father’s property. That land was 7 acres, in extent. It was owned by Jai Shandil, now in New Zealand. Jai Shandil lived on the land for 4-5 years. He did not engage in farming, but allowed the plaintiff to do so. The plaintiff cleaned and fenced the land with three rows of barbed wire. In 2008, he planted dalo and cash crops. He sold the produce, at the Nausori market. He made inquiries from the Land dept, to lease the land.

- 4.1.2. The first defendant advertised the land in July, 2007. The plaintiff applied for a lease of the land. He was called for an interview. On 5th November, 2008, the first defendant informed him that the allocation of the land to him was approved, subject to four conditions. The plaintiff accepted the conditions. He signed the duplicate of the approval letter and forwarded it, to the first defendant. He believed that the lease would be issued to him.
- 4.1.3. Thereafter, he expended more money on cultivation, as he believed that approval would be given for the lease. On 19 January, 2009, he received a letter, that the approval was cancelled. His lawyers wrote to the Lands dept. There was no response. He instituted these proceedings.
- 4.1.4. He made a complaint to the Police on 30th March, 2009, that his crops were harvested by another person. The complaint was produced. He produced photographs of the barbed wire fencing, jungle cleared, dalo planted and cows grazing on the land. His father gave him cattle. Others, he bought. He said he had 3 acres of dalo. He had a hybrid variety of dalo and tausala. This would have harvested a month after the lease was cancelled. There was a house on the land.
- 4.1.5. As a result of the cancellation, he lost \$ 22,040 annually.
- 4.1.6. Mr Pratap, counsel for the defendants, at the commencement of his cross-examination, elicited that the plaintiff was not issued a lease. It also emerged that when the plaintiff applied for lease of the property, he was not married. In response, the plaintiff referred to his letter dated 23 July, 2007, attached to his offer, stating the reason he did not get married.
- 4.1.7. He said he worked on the land for 8 to 10 years, since 1998. At that stage, he did not know he had to obtain consent from the Dept of Lands. He said he fenced the land with barbed wire, before he obtained approval. The cattle were grazing, since 2005, before he obtained approval. He planted varieties of dalo, since March, 2008. Prior to that, he planted cash crops such as cabbage and beans, which mature in a short time. Dalo takes 9 months to mature. He admitted he did not have title to land, when he commenced cultivating. The cash crops were cultivated, for his own use and for sale.
- 4.1.8. In re-examination, he said that at the stage of the interview, he was married. He married on 16th January, 2008. The lessor knew he was cultivating.

4.2. *PW2*

4.2.1. P.Tuilevu, Head of the Agricultural Trade and Internal Relations Unit, testified as regards the prices of dalo. He explained how the average price of dalo was reached. He produced a graph of trends of annual price of dalo for the years 2008, 2009, 2010 and 2011. He said that on an average, 10 tons is expected for each hectare. At \$ 1 per kilogram, the sale price of a ton would be \$ 1000.

4.2.2. It transpired in cross-examination, that the witness had not assessed the cultivation on the land in dispute. Crop assessment must come through the Police. He said that it was difficult to tell the particular variety of dalo crop depicted in the photographs shown to him.

4.3. *DWI*

4.3.1. Ilatia Bulaina Vukasavari, Principal Technical Officer, Ministry of Lands said he had visited the land on two occasions, in 2010, and two weeks ago. The condition of the land was the same on both occasions-overgrown with bush, except the old house on lot 5 that was occupied by an I-Taukei couple. The lease was transferred to Jai Shandil, in 1992, and expired in 2006. Before the expiry of the lease, Jai Shandil had an arrangement with an I-Taukei couple, to purchase the land. The sale and purchase agreement was drafted. The consent of the Director of Lands was pending.

4.3.2. When the lease expired in 2006, since there was a significant arrears of rentals, the Director of the first defendant decided to advertise the land. In terms of the criteria set out in the advertisement, it was mandatory that an applicant had to be married. The plaintiff was not married, as at the date of his application, namely 23 July, 2007.

4.3.3. Ilatia Bulaina Vukasavari further said that the plaintiff was in illegal occupation of the land. The consent of the landlord was not obtained, to sublet. After the interview, when the recommendation came to the Director of Lands, these anomalies were discovered. It was also found that the I-Taukei couple had been unfairly treated. The Director of Land withdrew the approval granted to the plaintiff. There was no money exchanged between the plaintiff and first defendant.

4.3.4. It emerged in cross-examination, that a substantial amount of money had been exchanged between Jai Shandil and the I-Taukei couple. The receipts produced depicted that \$ 25,000 was paid by the I-Taukei couple, for the transfer of the lease. By 2006, Jai Shandil's lease had expired. The witness agreed that a lease that had expired, could not be assigned .

4.3.5. The report of the final inspection made by the first defendant on 22 December, 2008, provided that 3 acres of dalo were planted by the plaintiff. The witness said he was not aware who planted the dalo.

4.3.6. Mr Maharaj, counsel for the plaintiff, in cross-examination, put it to this witness that the recommendation to withdraw the offer made to the plaintiff, was false. The witness said he had no idea why the consent of the Director of lands was not given to the I-Taukei couple.

5. The determination

5.1. The question for determination in this case is whether the plaintiff had a legitimate expectation, that the land would be leased to him.

5.2. The starting point is the advertisement by the first defendant, inviting applications for lease of the land . The criteria set out in the advertisement, was as follows:

*To qualify for consideration, applicant should be a Fiji citizen and should have farming experience, **be married** and neither the applicant nor the spouse should have any other holdings.(emphasis added)*

5.3. The plaintiff applied for a lease.

5.4. By letter dated 17 June,2007,the defendant acknowledged the application and called the plaintiff for an interview on 4th July,2007. He was requested to bring his marriage certificate, among other documents .

5.5. On 5th November,2008, the defendant wrote to the plaintiff, as follows:

*I am pleased to advise that **the above lot has been approved for allocation to you, subject to your acceptance of the following main conditions:-***

i) Issue of 30 years lease for Agricultural purposes commencing from 1st January 2009.

- ii) *Accept the rental of \$295.00 per annum with provisions for further reassessment every five (5) years thereafter.*
- iii) *Lease will be subject to state Lands Act and Land Transfer Act.*
- iv) *All costs involved in the preparation of lease documents to be borne by you.*

Please inform in writing as to whether or not the above conditions are acceptable to you before further action is taken.

Should the above conditions be acceptable, please sign the duplicate copy of letter attached and return to us.
(emphasis added)

5.6. The plaintiff accepted the conditions, signed the duplicate copy and sent it to the first defendant.

5.7. The plaintiff was interviewed by the first defendant on 7th August, 2008.

5.8. Then comes the nub. The first defendant by letter of 19 January, 2009, withdrew the offer letter, in these terms:

It has come to our notice that the previous lessee, Jai Sanil Shandil, had already signed a Sales and Purchase Agreement with a Mr and Mrs Mele Drivationo in May 2002 to transfer this lease to this couple before the subject land was advertised in June 2007.

Due to this oversight, we regret to advise that our offer letter dated 1/12/2008 is hereby withdrawn as the above commitment needs to be honoured.

We sincerely apologise for the inconvenience caused.
(emphasis added)

5.9. The words I have emphasised in the letter of 5th November, 2008, as reproduced above, makes it quite clear that a contractual offer was made to the plaintiff, subject to four conditions. The conditions were accepted by the plaintiff.

5.10. Mr Pratap, confirmed that a letter of acceptance was sent. At the commencement of the hearing, he amended the statement of defence, by deleting the words “*but no reply was received*”, that appeared after the words “*a letter of acceptance was sent to him*”.

5.11. I find that the ingredients of a valid contract exist. In my judgment, the first defendant breached the contract, by withdrawing his offer. It follows that the plaintiff had a legitimate expectation that the land would be leased to him.

5.12. Mr Pratap, in his closing submissions, argues that albeit the plaintiff’s acceptance of the offer, the Director of Lands decided not to issue the lease for three reasons.

5.12.1. First, that the plaintiff was in illegal occupation of the land.

5.12.2. Secondly, the applicant was not married, as at the date of his application.

5.12.3. These two grounds were also adduced by DW 1.

5.12.4. Thirdly, that the Director of Lands acted under section 16 of the State Lands Act(cap 132).

5.13. None of these grounds were set out in the letter of withdrawal nor pleaded in the statement of defence. In my view, it is evident that these grounds are raised in hindsight, for the following reasons.

5.13.1. The interview panel on 7th August, 2008, had recommended that the land be allocated to the plaintiff, since he had been “*farming the same land for 10 years*”. The final Inspection Report of the first defendant dated 5 January, 2009, confirmed that the plaintiff “*was allocated lot 2 SO 1575 & Lot 5 SO 1629 as recommended by the panel, since he is occupying the land illegally, whilst the Transferee was still waiting for our endorsement of Consent of Transfer*”(underlining mine), and recommended:

1. *That we do complete the process of Application for Consent to transfer on p.73 and min (101), and Mele and Eroni Drivationo and apologise for the delay.*
2. *We do withdraw our offer letter on p.94 and advise Amitesh Prakash accordingly of the error made. (emphasis mine)*

5.13.2. The interview panel had also noted that the plaintiff was married. In his application for the lease of 23rd July, 2007, the plaintiff had stated he was

married, when he was not. In a letter forwarded with the prescribed application, he stated that he has been using the land and explained that he was not married at that time, since he did not want to live with his step-mother. Subsequently, he got married on 16th January, 2008, as evidenced in his marriage certificate.

5.14. It transpired in the cross-examination of DW1, that a substantial amount of money had been exchanged between the original lessor, Jai Shandil and the I-Taukei couple, for the transfer of lease, pursuant to the sale and purchase agreement referred to in the letter of withdrawal.

5.15. In the above circumstance, I would grant the plaintiff, the alternative remedy of damages, he has sought.

5.16. **Damages**

5.16.1. The report of the interview panel of 7 August, 2008, provides that the plaintiff had been “*farming the same land for 10 years.. some dalo. Ploughed about 4 acres and ready for planting-recommended*”.

5.16.2. DW1 confirmed that three acres of dalo and one care of cash crop was planted on the land, as contained in the Inspection Report dated 5 January, 2009. The Report provides that “*3 acres of dalo (and) 1 acre of pumpkin, okra and toroi*” were cultivated on Lot 2 SO 157.

5.16.3. The plaintiff states that he expected an income of \$ 22,040, for the year 2008, calculated as follows:

<i>Cash crops</i>	:	\$ 8000.00	
<i>Dalo</i>	:	\$ 24000.00	<u> </u>
			\$32,000.00
<u><i>Less Expenses</i></u>			<u>9,960.00</u>
<i>Expected Profit</i>			<u>\$22,040.00</u>

5.16.4. PW2, the Head of the Agricultural Trade and Internal Relations Unit produced a graph of the trends of the annual price of dalo for the years 2008 to 2011. This graph provides that the average price for a kilogram of dalo was \$1.18 for the stated period.

5.16.5. The plaintiff has claimed special damages in a sum of \$ 22,040 for each year of the period commencing January, 2009, to 2012.

5.17. I award the plaintiff as damages, a sum of \$16530 for each of the four years, aggregating to a sum of \$ 66120, making a 25 % adjustment for contingencies that would ordinarily arise in the usual course of things.

5.18. In the exercise of my discretion, I award interest at 3 % per annum on the annual income, as follows:

- i) For the year 2009 to 2012 : 1487.70
 - ii) For the year 2010 to 2012 : 991.80
 - iii) For the year 2011 to 2012 : 495.90
- \$ 2975.40

6. The plaintiff is entitled to a sum of \$ 66120.00, as damages and \$ 2975.40 as interest.

7. **Orders**

I make order as follows:

- a) The first defendant shall pay the plaintiff a sum of \$ 69095.40.
- b) The first defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 3000.

25th September, 2013

A.L.B. Brito- Mutunayagam

Judge