

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
DISTRICT REGISTRY

HBC 306 of 2003

BETWEEN : **ABDUL GAFOOR** and **MOHAMMED AIYUB DEAN** sons of
Din Mohammed of Solovi, Nadi, and Farmers respectively.

PLAINTIFFS

AND : **NATIVE LAND TRUST BOARD** (now the iTaukei Lands Trust
Board, a body corporate duly constituted under the Native Land
Trust Act Cap 134.

DEFENDANT

R U L I N G

1. Before me is a Notice of Motion filed by Messrs Patel & Sharma under **Order**

32 Rule 2 of the **High Court Rules 1988** seeking the following Orders:

That one third (1/3) of the monies retained by this Court pursuant to Order of this Court made on 29 September 2006 be paid into the trust account of Messrs Patel & Sharma for the Plaintiffs to harvest sugar cane proceeds.

2. The Order of the Court in question (of Mr. Justice Connors) that was made on
29 September 2006 is reproduced below:

THAT two third (2/3) of the monies (deposited in this Honourable Court, pursuant to the Consent Order of this Honourable Court in the matter herein dated the 16th day of October, 2003) be paid to the trust account of Messrs Patel & Sharma, Barristers & Solicitors, Nadi for distribution there from and the remaining one third (1/3) to be retained pending further order of this Court.

3. The affidavit in support of the motion sworn by Abdul Gafoor on 21st day of
September deposes as follows:

1. **THAT** I am the first named Plaintiff in the action herein and am duly authorised to make this Affidavit for and on behalf of the second named Plaintiff.
2. **THAT** in as far as the contents of this affidavit are within my personal knowledge they are true and as far as they are not within my personal knowledge, they are true to the best of my knowledge and information and belief.
3. **THAT** I refer to all the pleadings filed herein and more specifically my Affidavit sworn on the 3rd day of September 2003 and filed on the 4th day of September 2003.
4. **THAT** I am facing financial difficulties in harvesting sugar cane this year.
5. **THAT** I therefore pray for the orders sought in the Notice of Motion filed herein.

4. It is that remaining one third (1/3) which is the subject of this application.
5. From all the above, I gather that some monies were paid into court of which 2/3 has been paid out to the plaintiff. When the payments were made into and out of court, and/or how much payment was made into and out of court, is not immediately clear from the court records. The plaintiffs have not bothered to set these out in their affidavits.
6. I refuse to grant Order in Terms of the motion.

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Anare Tuilevuka

Master

At Lautoka
01 July 2013.