

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 57 OF 2012

BETWEEN : AMEERUL NISHA HUSSEIN

PLAINTIFF

AND : TALIM HUSSAIN

1ST DEFENDANT

AND : I-TAUKEI LAND TRUST BOARD

2ND DEFENDANT

Counsel : Mr. A. Kohli for the Plaintiff

Mr. A. Sen for the 1st Defendant

Mr. S. Vukica for the 2nd Defendant

Date of Hearing : 21 November 2014

Date of Judgment : 21 November 2014

JUDGMENT

1. The statement of claim before this Court when summarised, states interalia that the Plaintiff has given money to the 1st Defendant for the purpose of obtaining a lease of the land known as Wairabia from the 2nd Defendant ITLTB.

2. The 1st Defendant is alleged to hold the said land "in trust of himself and for the Plaintiff." However, the 1st Defendant is alleged to have failed to keep this understanding. Accordingly the Plaintiff has filed this action and has sought the following orders:
 - (a) A declaration that the 1st Defendant is holding the land known as Wairabia being Lot 6 containing 0.1568 hectares in trust of the Plaintiff.
 - (b) An order restraining the 1st Defendant from dealing with the said land in any manner whatsoever.
 - (c) Alternatively the 1st Defendant refunds the Plaintiff the sum of \$17,109.17.
 - (d) Interest on \$17,109.17.
3. The 1st Defendant filed his statement of defence and in a summary, inter alia he denied the allegations of the Plaintiff and stated that the lease had been granted to him with the consent of the 2nd Defendant as the 1st Defendant had met the necessary requirements. However, he acknowledged receiving money as a gift from the Plaintiff and moved for the dismissal of the action.
4. The 2nd Defendant in their statement of defence has stated that they were unaware of any relationship and prior arrangements between the Plaintiff and the 1st Defendant. But acknowledged that the land had been leased to the 1st Defendant as he had met the formal requirements, and had sought to be struck off as a defendant and moved for the dismissal of the case.
5. This case was taken up for hearing before me on 20th November 2014 and both counsel informed Court that they were seeking a short adjournment to see whether this case can be amicably settled between the parties. Accordingly the Court adjourned the matter to 21/11/2014. When the case was taken up on 21/11/2014 the Plaintiff as well as the two Defendants was represented by their respective solicitors and the parties too were present before Court.

6. The counsel for the Plaintiff with the consent of the 1st Defendant's counsel informed Court that an agreement had been reached between the Plaintiff and the 1st Defendant to amicably settle the disputes between them and submitted to the Court the hand written agreement between Talim Hussain and Ameerul Nisha Hussein. The hand written agreement is signed by the Plaintiff and the 1st Defendant in the presence of witnesses. The Plaintiff and the 1st Defendant submits that this will be a full and final settlement of the dispute before this Court.
7. However, both parties wanted the Court to deliver a consent Judgment incorporating the contents of the agreement.
8. As both parties were before Court, the Court Clerk read the contents of the hand written agreement to the parties in the presence of their counsels and the parties agreed with the contents and the execution of the agreement.
9. As per the agreement, parties have agreed to the following: The agreement is reproduced

"20/11/14

Agreement between Talim Hussain and Ameerul Hussain

- i) *Ameerul claims of giving \$21,000.00 to Talim Hussain.*
- ii) *Talim Hussain is agreeing to pay the sum of FJ\$500.00 per month to repay the money.iii) The money will be paid into the Macuata League's account every month and shall be collected by Ameerul every 2 months.*
- iv) *The payment will begin in January 2015 and all payments to be made by the first week of the month.*

Witnessed by: M. Bilal

Signed: Ameerul Hussain

Hazeem Hussein

Signed: Talim Hussain

M. Saheed

Mohammeed Hakim"

10. The counsel for the 2nd Defendant informed Court that he has no objection for consent judgement being entered as per the above agreement between the Plaintiff and the Defendant.
11. Accordingly this Court enters consent Judgment:
- (a) For the Plaintiff in the sum of \$21,000.00
 - (b) 1st Defendant to pay the Plaintiff the above sum in instalments of \$500.00 per month commencing first week of January 2015 and thereafter in the first week of each and every month until the whole sum is paid.
 - (c) The payments to be made to the account of Macuata Muslim League Fiji account number – 901 502 00000232 – Bank of Baroda and the plaintiff to collect it in every two months.
 - (d) In the event of default the plaintiff is entitled to execute the judgment for the remaining amount.
 - (e) No order as to cost.




Mayadunne Corea

JUDGE