

IN THE HIGH COURT OF FIJI
WESTERN DIVISION, AT LAUTOKA
CIVIL JURISDICTION

CIVIL CASE NO.: HBC 86 OF 2012

BETWEEN : **SAILESHNI GEETA RAM** of Varadoli, Ba, Domestic Duties.

PLAINTIFF

AND : **ITAUKEI LAND TRUST BOARD** previously known as
NATIVE LAND TRUST BOARD a body corporate constituted
under the iTaukei Land Trust Act whose registered office is at
Rogorogivuda House in Lautoka.

1ST DEFENDANT

AND : **ASHOK BALGOVIND** of Suva, Architect as Administrator of the
ESTATE OF BALGOVIND late, Namosau, Ba, Farmer.

2ND DEFENDANT

Appearances:

Ms. Latianara M. for the Plaintiff
Mr Lutumailagi I. for 1st Defendant
Mr Chaudhary R. P. for 2nd Defendant

JUDGMENT

1.0 Statement of Claim

1.1 The Plaintiff filed a Writ of Summons on 20th April, 2012 claiming against the Defendant the following reliefs;

- (a) Specific Performance of Contract for Residential Lease;
- (b) Specific Performance of Contract for Agricultural Lease;
- (c) Exemplary and punitive damages in addition to Specific Performance;
- (d) General Damages to be assessed;
- (e) Interest pursuant to Law Reforms Miscellaneous Provisions (Death and interest) Act;
- (f) Costs of this action on indemnity basis;

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- (f) Costs of this action on indemnity basis;

(g) Such further or other relief as this Court deems just.

1.2 The summary of the facts stated in the Plaintiff's Statement of Claim are as follows;

- (i) On or about 16th November, 2011 the Defendant iTaukei Land Trust Board (iTTLTB) offered a residential lease to the Plaintiff over land known as Lomolomo Lot 1 DP 1418 in the Tikina of Nailaga, Province of Ba containing an area of 0.5893 hectares for a period of ninety nine (99) years commencing from 1st January, 2012 which offer was accepted by the Plaintiff on the same day.
- (ii) Pursuant to Contract for Residential Lease the Plaintiff on 16th November, 2011 paid a sum of \$8,283.58 which said sum is made up as detailed in paragraph 2 of the Statement of Claim.
- (iii) On the same day (16th November, 2011) Plaintiff also executed a Residential Lease over the Residential Property which was prepared by the Defendant and delivered the executed lease to the Defendant for its execution, stamping and registration.
- (iv) On or about 16th November, 2011 Defendant also offered a Agricultural Lease to the Plaintiff over land known as Lomolomo Lot 1 DP 415. Tikina of Nailaga, Province of Ba, containing 4.2795 hectares for a period of nine-nine (99) years commencing from 1st January, 2012 which was accepted by the Plaintiff on the same day.
- (v) Pursuant to Contract for Agricultural Lease the Plaintiff on 16th November, 2011 paid a sum of \$500.00 to the Defendant to enable the Defendant to attend to stamping and registration of the Lease.
- (vi) It was agreed between the Plaintiff and the Defendant that the balance premium, rental for one year, Lease Administration Fees and part of Lease processing fee was to be paid from cane proceeds after Plaintiff was issued with the Agricultural Lease.
- (vii) On the same day Plaintiff executed an Agricultural Lease over the Agricultural property prepared by the Defendant and delivered the lease to the Defendant for its execution, stamping and registration.
- (viii) The Plaintiff has at all material times performed her part of the Contract for Residential Lease and Contract for Agricultural Lease but the Defendant despite several requests from the Plaintiff has refused or neglected to perform its part by failing to execute stamp and register both the leases.

- (ix) Defendant wrongfully and/or unlawfully attempted to repudiate the Contract for Residential Lease which repudiation was not accepted by the Plaintiff but the Defendant still wrongfully refused failed and/or neglected to perform its part of both contracts.
- (x) Due to the Defendant's failure, negligence or refusal to issue Residential Lease to Plaintiff, the Plaintiff has to rent alternate premises at a rental of \$250.00 per month.
- (xi) As a result of Defendant's failure to issue the Residential Lease and Agricultural Lease the Plaintiff has been deprived of the use and cultivation of the Residential Lease and Agricultural Lease.

Particulars of Loss

(i) ***Residential Lease***

Loss of use at the rate of \$250.00 per month being rental paid by the Plaintiff for alternative premises from 16th March, 2012 until the Residential Lease is issued to the Plaintiff.

(ii) ***Agricultural Lease***

Loss of Profit to be quantified at the date of Trial.

2.0 **Statement of Defence**

2.1 The Defendant in defence to the Statement of Claim filed by the Plaintiff states in its Statement of Defence inter alia the following facts.

- (i) The Defendant admits offering the Plaintiff a Residential Lease, the payment made by the Plaintiff and receiving the executed lease from the Plaintiff but further states that the lease document was induced by the Plaintiff through acts of misrepresentation of facts. The alleged misrepresentation of facts by the Plaintiff are as follows;
 - (a) That Plaintiff is still living with her husband,
 - (b) That Plaintiff and her husband owned the residential dwelling erected on the land in question,
 - (c) That Plaintiff's husband is working overseas,
 - (d) That Plaintiff's husband supports her financially,
 - (e) That Plaintiff had been managing the printing press business in the building adjoining the residential dwelling and that she closed the same in 2009,

- (f) That Plaintiff's husband had been cultivating the cane land for the past three years.
- (g) That Plaintiff brought Dharam Singh into the property as a caretaker.
- (ii) The Defendant admits the contents of paragraph 4 to 8 of the Statement of Claim but states that the said offers were induced by the Plaintiff through acts of misrepresentation as averred in paragraph 3 of the Statement of Defence.
- (iii) The Defendant denies attempting to repudiate the Contract for Residential Lease wrongfully and/or unlawfully and states that the Contract was rescinded on the basis of the Plaintiff's fraudulent misrepresentation as averred in paragraph 3 of the Statement of Defence. The Defendant states further that it was the Plaintiff's scheme to swindle the land in question away from the members of her husband's family who were the beneficiaries of the Estate of Ram Dulari.
- (iv) The Defendant denies that the Plaintiff had to rent alternative premises at a rental of \$250.00 per month due to Defendant's failure, negligence or refused to issue Residential Lease to the Plaintiff and states that such a matter is only within the proper knowledge of the Plaintiff.
- (v) The Defendant denies that the Plaintiff has been deprived of the use and cultivation of the Residential and Agricultural lease due to Defendant's failure to issue the same and denies the claim and "particulars" contained in paragraph 11 of the Statement of Claim.
- (vi) The Defendant prays that the Plaintiff claim be dismissed with costs to the Defendant.

3.0 Agreed Facts and Issues as per the Pre-Trial Conference Minutes

3.1 Agreed Facts

- (i) On or about 16th November, 2011 the Defendant offered Plaintiff a Residential Lease over land known as Lomolomo Lot 1 DP 1418 in the Tikina of Nailaga, Province of Ba containing an area of 0.5893 hectares for a period of ninety-nine years commencing from 1st January, 2012 (hereinafter referred to as a "*Residential Property*") which offer was accepted by the Plaintiff on the same day (16th November, 2011) (hereinafter referred to as ("*Contract for Residential lease*").

- (ii) Pursuant to Contract for Residential Lease the Plaintiff on 16th November, 2011 paid a sum of \$8,283.58 which said sum is made up as follows: -

	Amount	Vat	Total
Premium	6000.00	135.00	6135.00
Rent (1 Year)	400.00		400.00
Lease Processing Fees	1000.00	150.00	1150.00
Documentation Fees	250.00	37.50	287.50
Stamp Duty	250.00		250.00
Registration Fees	3.00	0.38	3.38
Lease Admin Fees	50.00	7.50	57.50
Total			\$8283.58

- (iii) On the same day (ie. 16th November, 2011) Plaintiff also executed a Residential Lease over the Residential Property prepared by the Defendant and delivered the executed lease to the Defendant for its execution, stamping and registration.
- (iv) On or about 16th November, 2011 Defendant also offered a Agricultural Lease to the Plaintiff over land known as Lomolomo Lot 1 DP 415 Tikina of Nailaga, Province of Ba containing 4.2795 hectares for a period of ninety-nine (99) years commencing from 1st January, 2012 (hereinafter referred to as the *"Agricultural Property"*) which was accepted by the Plaintiff on the same day (16th November, 2011) (hereinafter referred to as *"Contract for Agricultural Lease"*).
- (v) Pursuant to Contract for Agricultural lease the Plaintiff on 16th November, 2011 paid a sum of \$500.100 to the Defendant to enable the Defendant to attend to stamping and registration of the Lease.
- (vi) It was agreed between the Plaintiff that the balance premium, rental for one (1) year, Lease Administration Fees and part of Lease Processing Fee was to be paid from cane proceeds after Plaintiff was issued with the Agricultural Lease.
- (vii) On the same day (ie. 16th November, 2011) Plaintiff executed an Agricultural Lease over the Agricultural Property prepared by the Defendant and delivered the lease to the Defendant for its execution, stamping and registration.
- (viii) That Plaintiff has at all material times performed her part of the Contract for Residential Lease and Contract for Agricultural Lease but the Defendant despite several requests from the Plaintiff has refused or neglected to perform its part by failing to execute, stamp and register both the leases.

3.2 **Agreed Issues**

- (i) Whether or not the offer for a Contract for Residential Lease was induced by the Plaintiff through acts of misrepresentation.
- (ii) Whether or not the offer for a Contract for Residential Lease was “subject to contract”.
- (iii) Whether or not the lease document was induced by the Plaintiff through acts of misrepresentation of facts.

Particulars of Misrepresentation

- (a) That she is still living with her husband,
 - (b) That she and her husband owned the residential dwelling erected on the land in question,
 - (c) That her husband is working overseas,
 - (d) That her husband supports her financially,
 - (e) That she had been managing the printing press business in the building adjoining the residential dwelling and that she closed the same in 2009,
 - (f) That her husband had been cultivating the cane land for the past three (3) years,
 - (g) That she brought Dharam Singh into the property as a caretaker.
- (iv) Whether or not the Contract for Agricultural Lease was induced by the Plaintiff through acts of misrepresentations.
 - (v) Whether or not the Defendant wrongfully and/or unlawfully attempted to repudiate the Contract for Residential Lease.
 - (vi) Whether the Defendant wrongfully refused, failed and/or neglected to perform its part of both contracts.
 - (vii) Whether or not the Plaintiff was relegated to renting alternative premises at a rental of \$250.00 per month due to the Defendant’s failure, negligence or refusal to issue Residential Lease to her.
 - (viii) Whether or not the Plaintiff has been deprived of the use and cultivation of the Residential lease and Agricultural Lease due to the

Defendant's failure to issue the Residential Lease and Agricultural Lease.

Particulars of Loss

(i) Loss of use at the rate of \$250.00 per week being rental paid by the Plaintiff for alternate premises from 16th March, 2012 until the Residential Lease is issued to the Plaintiff.

(ii) **Agricultural Lease**

Loss of profit to be quantified at the date of trial.

- (ix) Whether or not there should be specific Performance for the Contract for Residential Lease.
- (x) Whether or not there should be specific Performance for the Contract for Agricultural Lease.
- (xi) Exemplary and punitive damages, if any, payable to the Plaintiff in addition to specific performance.
- (xii) The quantum of general damages, if any, payable to the Plaintiff.
- (xiii) Whether the Plaintiff is entitled to be paid any interest.
- (xiv) Whether the Plaintiff is entitled to indemnity costs.

4.0 **Trial**

- 4.1 The Plaintiff gave evidence in support of her claim at the Trial of this matter. Mr Nemani Tamani, Estate of Officer of the Defendant Board gave evidence on behalf of the Defendant.
- 4.2 At the conclusion of the Trial the Court ordered the estate of Bal Govind to be added as a Defendant as per the Hon. Master's Ruling dated 2nd April, 2013. Accordingly the Plaintiff filed the amended Writ of Summons adding the Estate of Bal Govind as the 2nd Defendant. However, the Plaintiff did not claim any relief against the 2nd Defendant by her amended claim.
- 4.3 When the matter was taken up for further Trial on 31st May, 2016 Mr. Chaudhary appeared for the 2nd Defendant but no Statement of Defence was filed on behalf of the 2nd Defendant.
- 4.4 The Plaintiff giving evidence on the said trial date stated that she is not claiming any relief against the 2nd Defendant as she has not pleaded any cause of action against him.

5.0 Evidence

Plaintiff's Evidence

- 5.1 Plaintiff in her evidence said that her first husband was Sanjiv Kumar and they had two children out of that marriage. She said Sanjiv's father is Lekh Ram and Lekh Ram's father was Bal Govind. She said her father in law passed away and she is separated from her husband in 2009, 2010 after getting the divorce in 2002. She said she stayed with her husband after the divorce for some time.
- 5.2 She said she submitted an application to the iTaukei Land Trust Board (the 1st Defendant) to lease an Agricultural Land on 11th May, 2009. Copy of the said application was marked in evidence as "P5". She said this was an application for a new lease after the expiry of a previous lease. She said she paid \$3000.00 to the Landlord as goodwill payment and tendered in evidence the receipt issued acknowledging the said payment marked as "P8" and consent letter of the Mataqali marked as P7.
- 5.3 The Plaintiff testified further that the iTLTB by its letter dated 16th November, 2011 offered on lease to her the land named Lomolomo Lot DP 418 for a period of 30 years. The said offer letter was marked in evidence as "P9". She said according to the said letter she was requested to pay a sum of \$6443.01 on a scattered basis and she paid a sum of \$500.00 and informed the iTLTB that she will pay the balance from the cane proceeds after harvesting the land. She said further that she was asked by the iTLTB to pay the balance of \$5220.88 within two weeks by its letter dated 10th May, 2012 (marked as P11) and she paid the said amount so demanded to the iTLTB. In proof of payment she produced Official Receipt dated 5th June, 2012 marked as "P12". She said after the payment was made the lease was signed.
- 5.4 The Plaintiff tendered in evidence her application to lease a land for Residential purpose which she had submitted to iTLTB marked as "P13". The Landlord's consent for the application was tendered in evidence marked as "P14" and the receipt issued by the Landlord for the goodwill payment made by the Plaintiff was tendered marked as "P16". She said after investigations it took two years for the iTLTB to offer the lease and iTLTB officers never asked about her marriage status while the investigations were going on but towards the end they told her to bring her marriage certificate. She said they asked for the marriage certificate before making the offer and she complied with that request by tendering it to the iTLTB. She went on to say that the Manager of the iTLTB asked the relevant Officers to prepare the offer letter after she submitted the marriage certificate.
- 5.5 The Plaintiff said further as per the offer letter dated 16th November, 2011 she was asked to pay \$8,283.58. Offer letter sent by the Defendant to the Plaintiff

was marked in evidence as "P17". She said a lease was executed after she paid \$8,283.58 to the Defendant and they did not give a copy of the lease to her.

- 5.6 The Plaintiff said after she made the payments the iTLTB revoked the offer saying that she has misrepresented facts when she made the two applications for lease of lands. She said she never misrepresented facts as alleged by the 1st Defendant.
- 5.7 The Plaintiff produced several rent receipts marked as "P19" and said she is paying a monthly rental of \$250.00 to her Landlord as she did not get the residential lease to live on the land offered to her.
- 5.8 In cross-examination when she was asked whose house was on the land offered on lease she said she does not know whose house it was. She admitted that she was no longer with her former husband when the offer was made by the 1st Defendant. When she was asked whether Ashok and Lekh Ram's brother had any claim to the estate of Bal Govind she said she had no knowledge about it. She admitted that the house where she stays belonged to Bal Govind's family. When she was asked whether Lekh Ram and Ashok had a claim for the house, she said they don't have a claim to it.
- 5.9 When Plaintiff was asked in re-examination who is staying in the rented house of the Plaintiff when the Plaintiff was not there, she said her mother lives there and she looks after Plaintiff's belongings.

Evidence of the 1st Defendant's Witness.

- 5.10 The 1st Defendant's Estate Officer, Nemani Tamani testified that he is responsible for the current year's rent assessment, estate valuation and analysing sales. He said previous year he was with the team handling new lease applications.
- 5.11 The witness said he was given a cheque by the iTLTB to be delivered to the Plaintiff. He said he knows the subject land in this matter and he has also gone to the said land. According to his testimony the house situated on the land is built in 1980 and it looked old.
- 5.12 When he was shown a file note made by Lui Tavunawi and asked what it is, he said when a tenant applies for a lease they note the information given by the tenant in this manner. He said further that Lui who is the author of the file note is currently resigned. When he was asked to read what is written on top left hand corner of the file note he said Lui has written "Confirmed by Saileshini Geetha Ram". When he was asked to read what is written at the bottom he said it is written "They own both houses". The witness said according to the file note Plaintiff has stated to Lui that they own both houses. The file note was marked as "DE01".

- 5.13 The witness was next shown a letter written by Mr Ashok Bal Govind to the Manager NLTB Western, Lautoka. The witness said it's copied to the Hon. Prime Minister, General Manger, NLTB Suva, Commissioner of Police, Lautoka. The said letter was marked as DE2. When he was asked what he understood by Bal Govind's position regarding this lease the witness said before it was leased to Bal Govind.
- 5.14 When he was shown another letter written by Ashok Balgovind ("DE 3") to the Manager iTLTB Lautoka, he said this was a complaint letter by Bal Govind and the Board revoked the lease on the said complaint.
- 5.15 When a letter addressed to the General Manager iTLTB Suva ("DE 4") by the Permanent Secretary of the Hon. Prime Minister's Office was shown to the witness, the witness said action taken by the Board was in regard to the lease was in consequence of the said letter. He said Board was trying to give the land back to Bal Govind. He said if Bal Govind did not make a complaint Board would have given the lease to the Plaintiff.
- 5.16 In cross-examination the witness said he did not deal with the Plaintiff's application for lease and he did not interview her. When he was asked to explain procedure the iTLTB adopts when they receive a lease application he said they will first want to know whether the former owner is taking it and if a relation of the former owner is asking for the lease they will ask what relationship the Applicant has to the former owner. He also said before issuing a lease they interview the applicant about their Salary, etc..
- 5.17 When the witness was shown document no. 13 of the 1st Defendant's bundle of documents (marked as "PE21") he said it's a form to get information before a lease is issued. The witness said according to the screening form the Plaintiff is the applicant of the lease and she has stated therein that she is not occupying the land. When he was shown a set of documents marked "PE22" including the marriage certificate of the Plaintiff he said apart from the marriage certificate the other two documents being the Bank Statement of the Plaintiff and the Fiji Sugar Corporation Statements are required by the Board. He admitted, by giving an offer letter, it is assumed that the iTLTB had done the investigations and interviews.
- 5.18 He admitted that the offers for lease were made 8 days after Lui has made the file note.
- 5.19 When he was asked whether Bal Govind made a formal application for renewal of the lease he said "not to his knowledge". When he was asked "Did the iTLTB see whether or not any application made" witness said he has no idea about it. He admitted that the only reason for revoking the offer was the complaint made by Bal Govind.

5.20 In re-examination he said they believed that the Plaintiff is from Bal Govind's family.

6.0 **Analysis and Determination**

6.1 From the agreed facts recorded at the Pre-Trial Conference and the evidence led at the trial it is undisputed that the previous leases in respect to land known as Lomolomo Lot 1 DP 1418 Tikina of Nailaga, province of Ba and land known as Lomolomo Lot 1 DP 415 Tikina of Nailaga, province of Ba had expired, and the said leases were under the Estate of Bal Govind's family. The 1st Defendant also admits offering the said leases to the Plaintiff and the Plaintiff accepting the said offers by paying the amount required for the first lease and paying \$500.00 as part payment for the 2nd lease. It is a agreed fact that the 1st Defendant allowed the Plaintiff to pay the balance premium, rental for one year, lease administration fees and part of lease processing fee from cane proceeds after the Plaintiff was issued the Agricultural Lease.

6.2 First issue I would take up for determination is whether or not the offer for a Contract for Residential Lease was "subject to contract" as alleged by the 1st Defendant. It transpired in evidence that the 1st Defendant did the investigation before offering the Lease to the Plaintiff and the Plaintiff accepted the offer. It is also revealed in evidence that the lease was executed by the Plaintiff and delivered to the 1st Defendant for its execution. As such the question arises whether the said lease would be subject to Contract thereafter.

6.3 "Chitty on Contracts – General Principles" Vol-1, 27th Edition at page 89 it is stated as follows:

"General principles. There may be said to be three basic essentials to the creation of a contract: agreement, contractual intention and consideration....."

The normal test for determining whether the parties have reached agreement is to ask whether an offer has been made by one party and accepted by the other. Even where an agreement has been reached, it may fail to give rise to a binding contract because it is incomplete, or not sufficiently certain.

In deciding whether the parties have reached agreement, the Courts normally apply the objective test, which is further discussed in S.2-002 below. Under this test, once the parties have to all outward

appearances agreed in the same terms on the same subject matter, then neither can, generally, rely on some unexpressed qualification or reservation to show that he had not in fact agreed to the terms to which he had appeared agreed. Such subjective reservations of one party therefore do not prevent the formation of a contract”.

- 6.4 In this matter it is established in evidence that the 1st Defendant had offered two properties on lease to the Plaintiff and the Plaintiff had accepted the said offers. It is further established that the Plaintiff had executed the lease agreements provided by the 1st Defendant and submitted those to the 1st Defendant for execution and registration. Therefore I cannot agree with the 1st Defendant’s contention that the Residential Lease was “subject to contract”. It is clear from the above authority such subjective reservation of one party does not prevent the formation of a contract.
- 6.5 Next issue to be determined is whether or not the lease document was induced by the Plaintiff through acts of misrepresentation of facts. It is alleged by the 1st Defendant that the Plaintiff misrepresented the following facts:
- (a) That she is living with her husband.
 - (b) That she and her husband owned the Residential dwelling erected on the land in question.
 - (c) That her husband is working overseas.
 - (d) That her husband supports her financially.
 - (e) That she had been managing the printing press business in the building adjoining the Residential dwelling and that she closed the same in 2009.
 - (f) That her husband had been cultivating the cane land for the past three years.
 - (g) That she brought Daram Singh into the property as a Caretaker.

If the 1st Defendant proves the allegation of misrepresentation on a balance of probabilities contract becomes voidable and the innocent party gets the right to rescind the contract and/or claim damages.

- 6.6 The Plaintiff said in evidence that she applied for the two leases and the iTLTB waited nearly two years to do the investigations before they issued the offer letters. She said further that on the request of iTLTB Officer’s she submitted her marriage certificate to them before the offer letters were issued. She said the marriage certificate which was given to the iTLTB was the certificate of the present marriage. She also said at the time the investigation were done by the iTLTB Officers they never questioned her whether she was separated or whether her ex-husband owns the house on the land to be leased. She said the iTLTB Officers came to the land several times and she did not accompany them at such times.

- 6.7 In cross-examination she said she divorced her ex-husband in 2002 but stayed with him after the divorce for some time. She said she does not know who built the house on the land. She also said she does not know the name of the person who was occupying the said house and she does not know who brought him to the land. She admitted that she was not with her former husband when the offers were given by the 1st Defendant.
- 6.8 When the Estate Officer of the iTLTB was giving evidence a file note prepared by a former Trainee Estate Assistant was produced marked as "DE1". Looking at the said document the witness said when a tenant applies for a lease they note the information given by the tenant and this file note is on such note prepared by a former employee of the iTLTB. He said according to the said note the Plaintiff has told the iTLTB Officer that both houses on the Land are owned by them. But in cross-examination the witness admitted that the application screening form was signed by the same officer and in the said form it is noted that the Plaintiff is not in occupation of the land offered to her. He also admitted that by giving the offer letter it is assumed that the iTLTB has done the investigation. He admitted further that the offers have been given 8 days after Lui has made the file note and that such offers are given only when they are satisfied after investigations. However in re-examination the witness said they believed that the Plaintiff is married to Bal Govind's family if it was not there would have been a problem.
- 6.9 The file note marked "DE1" does not state that the Plaintiff has said she occupies the two houses. It only states that she has said they own both houses and the printing press. The said note reveals that the Plaintiff had in fact given information about the Bal Govind's estate to the Estate Assistant Lui. Furthermore the file note does not disclose that the Plaintiff is requesting the lease to be given to her due to the relationship she has with Bal Govind's family.
- 6.10 From the evidence as analysed above I find that the Plaintiff had applied for the two leases after the expiration of the earlier leases which were under the name of Bal Govind's Estate. When the 1st Defendant's witness was asked whether Bal Govind ever made a formal application for renewal he said "not to his knowledge". In my view if the leases in favour of the Bal Govind's Estate have expired and Bal Govind's have not made a formal application for the renewal the Plaintiff is entitled to make applications for the leases whether she is related to Bal Govind or not. The 1st Defendant does not come out with any legal provision which states upon expiration of a lease it has to be offered to the same Lessee or his or her relatives. The 1st Defendant's witness admitted that he did not deal with the Plaintiffs lease applications and he did not interview her in regard to the said applications. As such it is clear from his

evidence that he had no knowledge of the alleged acts of misrepresentation of facts by the Plaintiff.

- 6.11 Furthermore it is established in evidence that the Plaintiff had submitted her marriage certificate to the iTLTB before the offers were made. If prior competing claims were made over the same Lots the iTLTB had nearly two years to investigate and make a decision before offering the lands to the Plaintiff. Plaintiff said she had to wait nearly two years to get the offer letters from the 1st Defendant. No evidence is before me to establish that the Plaintiff had misrepresented facts to the 1st Defendant's Officers by stating that she was still living with her former husband. In analysing the evidence as above I find that the iTLTB had done investigations and offered the leases to the Plaintiff, but later revoked the offers due to the directions given by higher authorities to review its decision.

7.0 Conclusion

- 7.1 In the outcome I find that the 1st Defendant has failed to prove on a balance of probabilities that the lease documents for the Residential Lease and the contract for Agricultural Lease were induced by the Plaintiff through acts of misrepresentation of facts. As such I hold that the 1st Defendant has wrongfully refused, failed and/or neglected to perform its part of both contracts and therefore the Plaintiff is entitled to get the contracts specifically performed as prayed for in her statement of claim.

Damages

- 7.2 The Plaintiff in her Statement of Claim, claims from the 1st Defendant Exemplary and Punitive damages, if any, payable to the Plaintiff in addition to specific performance, general damages and interest.

She has particularised her losses under (i) Residential Lease and under the Agricultural Lease. She stated in evidence that she was relegated to renting alternative premises at a rental of \$250.00 per month due to the 1st Defendant's failure, negligence or refusal to issue Residential Lease to her. She submitted in evidence (PE19) Receipts to prove that she had paid \$250.00 for a month to the Landlord's bank account. She said she was renting the premises from 2012. This evidence was never challenged in cross-examination by the 1st Defendant's Counsel. She claims the \$250.00 per month from March 2012 until the Residential Lease is issued to her. As such I find that she had to rent alternative premises at a rental of \$250.00 per month due to the 1st Defendant's failure, negligence or refusal to issue Residential Lease; and therefore the 1st Defendant should pay the Plaintiff \$250.00 per

month from 16th March, 2012 until the Residential Lease is issued to her by the Defendant.

7.3 Furthermore I find that the 1st Defendant's wrongful conduct in refusing to perform its part of both contracts attracts an award of exemplary and punitive damages against it in favour of the Plaintiff. As such I hold that the 1st Defendant should pay the Plaintiff a sum of \$8000.00 as exemplary and punitive damages.

7.4 Though the Plaintiff has claimed General Damages against the 1st Defendant no evidence was led at the trial to substantiate the said claim. Therefore I am unable to award General Damages in favour of the Plaintiff in this matter.

7.5 I hold further that the Plaintiff is entitled to interest of 4% per annum on the sum of \$8000.00 from the date of the Judgment till the date of payment.

8.0 Final Orders

- (a) The 1st Defendant is ordered to specifically perform the contract for Residential Lease.
- (b) The 1st Defendant is ordered to specifically perform the contract for Agricultural Lease.
- (c) The 1st Defendant to pay \$8000.00 as exemplary and punitive damages to the Plaintiff.
- (d) Claim for General Damages declined.
- (e) The 1st Defendant is ordered to pay interest at the rate of 4% per annum on the sum of \$8000.00 from the date of this Judgment till the date of payment.
- (f) The 1st Defendant to pay the Plaintiff \$2000.00 costs summarily assessed.



At Lautoka
16th June, 2016


Lal S. Abeygunaratne
[Judge]