IN THE HIGH COURT OF FIJI

AT LABASA

CIVIL JURISDICTION

CASE NUMBER: **HBC 32 of 2011 and HBC 22 of 2012** *(Consolidated Proceedings)*

BETWEEN: **THE TRUSTEES OF VANUALEVU MUSLIM LEAGUE**

1st Plaintiff

AND: **BASHIR KHAN**

2nd Plaintiff

AND: **VCORP LIMITED** *formerly known as* **CENTREPOINT HOTEL MANAGEMENT LIMITED.**

1st Defendant

AND: **LABASA TOWN COUNCIL**

2nd Defendant

AND: **THE I-TAUKEI LAND TRUST BOARD**

3rd Defendant

AND: **THE MINISTRY OF LANDS AND MINERAL RESOURCES**

4th Defendant

AND: **THE MINISTRY OF LOCAL GOVERNMENT, URBAN DEVELOPMENT, HOUSING AND ENVIRONMENT**

5th Defendant

AND: **THE ATTORNEY- GENERAL OF FIJI**

6th Defendant

Representations: *Mr. F. Haniff for the Plaintiffs.*

Mr. A. Sen for the 1st Defendant.

Mr. S. Sharma for the 2nd Defendant.

Mr. S. Vukica for the 3rd Defendant.

Mr. J. Mainavolau for the 4th, 5th, and 6th Defendants.

Date/Place of Judgment: *Thursday 11 May 2017 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

JUDGMENT

Catchwords:

Property Dispute- Easement on Property- Records of Easement: how kept? – Amendment of Claim - Right of Local Government to dispose land not needed – Exemplary Damages: Reasons for Grant – Trespass to Land: Actionable Per Se: Assessing Damages – Loss of Profit from Business: Proving special damages – claim for intimidation, unlawful arrest and malicious prosecution: Person claiming must sue in his or her name.

Cases:

Bonham – Carter v. Hyde Park Hotel Limited (1948) 64 T.L.R 177.

Legislation:

Land Transfer Act Cap. 131 ("LTA"): ss. 39; and 49.

Local Government Act Cap 125 ("LGA"): s. 91(2) (b).

State Lands Act Cap. 132 ("SLA"): ss. 12; and 21.

The Cause

1. The plaintiffs are seeking declaratory and injunctive orders from this Court by way of final relief. The injunction sought is against the 1st defendant, VCORP Limited ***("VCORP")*** and the declarations sought are against the 2nd and 3 defendants. No orders are sought against the 4th, 5th, and 6th defendants.

2. The plaintiffs seek that VCORP be restrained from demolishing the easement and drain at the back of VML's property described as Crown Lease ***("CL")*** 17786, being Lots 13 and 13A on Plan M 1644, hereinafter referred to as VML's property.

3. It is also sought by the plaintiffs that the Court declares:

   (i) the approval for the surrender and release of CL 6068 being Lots 1 and 2 on Plan M 2605 by the 2nd defendant, Labasa Town Council ***("LTC")*** to the 3rd defendant, the I-Taukei Land Trust Board **("ITLTB")** unlawful and ultra vires their powers without approval and/or consent of the 4th defendant, the Ministry of Lands and Mineral Resources ***("MOLMR")***.

   (ii) ITLTB's acceptance and release of CL 6068 from LTC unlawful and ultra vires without the consent of MOLMR.

4. The background leading to the claim is basically a tussle between two renowned businessmen from the North Part of the country. The dispute particularly affects Mr. Bashir Khan ***("BK")*** as the principal person of VML and Mr. Vinesh Dayal ***("VD")*** from VCORP. Mr. VD is the Managing Director of VCORP. The altercation is over property rights of the VML and VCORP.

5. VML is a registered religious organization having its headquarters at 15 Jaduram Street, Labasa. It owns a property on the land described as *Crown Lease No. 17786 being Lots 13 and 13A on DP No. M 1644* containing an area of 1102 square meters. Constructed on the land is a massive 3 storey building.

6. The dispute is over the piece of land contained in ITL No. 30080. This land is on the bank of Labasa River. VCORP was granted a lease of the property on the bank of the river.

7. Previously this property had Jaycees Park and a kindergarten on it. Before the lease was granted to VCORP, LTC had been allocated the use and management of Lot 1 on Plan M 2605.

8. At the time LTC had the use and occupation of the property, the same was zoned as civic open space meaning that the property was for public use.

9. There is reliable evidence, which I accept, that the property was not maintained properly by LTC and was an eye sore for Labasa Town. The public had been misusing the property to an extent that they will drink alcohol near the river and throw rubbish and pollute the place. The place was also used as lover's point.

10. There was little interest shown by any big business tycoons to develop the land and uplift the standard of the same. Mr. VD decided that he would put the property to good use. He decided to purchase the same and use that to build a hotel for tourist and to include a shopping centre and conference room in it as well.

11. After his careful negotiations with the relevant stakeholders being the defendant's in this case, VCOPR was granted a lease over the property. VCOPR therefore is the registered lessee on ITL No. 30080, Lots 1 and 2 on Plan M 2605 containing an area of 1 acre 0 roods and 36 perches. The lease was registered on 9 October 2012 and was granted with effect from 1 July 2011 for a term of 99 years.

12. Although the lease was registered on 9 October 2012, VCORP was advised by a letter dated 4 May 2011 about the grant of the lease subject to certain conditions. The letter was issued by ITLTB. An agreement to lease was issued on 20 July 2011.

13. Lot 1 on Plan M 2605 was initially a state foreshore land. Evidence from MOLMR and reveals that since this Lot 1 was not a sizeable portion to be leased out to any person, it was

legally and properly transferred to ITLTB to combine with Lot 2 and lease it out to VCORP. When Lot 1 was transferred to ITLTB, ITLTB then leased out Lots 1 and 2 to VCORP pursuant to ITL No. 30080. This transfer was an internal arrangement between ITLTB and the MOLMR.

14. Lot 1 on Plan M 2605 was therefore rezoned from civil open space to special use (tourism). There is uncontradicted evidence that proper procedures were followed before the rezoning was approved. During the public consultation in regards the rezoning, Mr. BK and other big businessmen from Labasa raised their objections and after hearing the public, re-zoning was approved.

15. Immediately after being granted the agreement to lease, and on 29 August 2011, Mr. VD approached Mr. BK and informed him that it will start development works on the property adjacent to it to build a hotel.

16. Mr. BK did not appreciate the idea of development as it claimed and maintained at all times that the property which was leased to VCORP contained a drain which was an easement for VML and that the drain was used to discharge rain water from VML's building and surrounding into Labasa River.

17. VML contended at all times that the development works on the land would block the drain which would cause irreparable damage to its building.

18. Mr. BK says that on 27 February 2012, MOLMR had issued to it an easement over the drainage over Lot 1 on DP No. M 2605 but later withdrew the same.

19. The plaintiff says that the drain needs to be retained because the water chambers of VML's building rests on the easement portion and it acts as a barrier to flood that naturally occurs when Labasa River gets flooded. It is contended that if the flood water gets inside the building and mosque, it will damage the improvements.

20. Against that backdrop, the plaintiffs say that it is necessary to permanently restrain VCORP from demolishing the drain. It is also contended that the LTC should not have surrendered its lease to ITLTB for it to lease it to VCOPR without the consent of the MOLMR. The plaintiff's also assert that ITLTB's acceptance of the surrender of the lease is therefore wrong.

VCORP's Defence and Counter-Claim

21. On the issue of whether LTC's surrendering of the lease to ITLTB for it to be leased out to VCORP was lawful, VCORP says that LTC did not have an existing and valid lease over the proposed development site. Its lease had expired and there was nothing to be surrendered by it.

22. It is the position of VCORP that VML does not have any easement on the development site and as such it does not have any locus to bring the proceedings. Any claim for easement by the plaintiff's is manifested out of greed and out of manipulation by forging the Plan M 1644 to show that there is an easement.

23. VCORP further says that CL 6068 does not contain the Jaycees Park and Kindergarten area. CL 6068 is some other property previously owned by LTC and has no bearing on the dispute. VCORP is not carrying out any development on CL 6068. CL 6068 is a public open space and should not be a property that be made reference to in the dispute.

24. VCORP says that all development on ITL No. 30080 have been done so with the approval from the relevant statutory authorities.

25. In its counter-claim VCORP pleads three causes of action. The first is that of fraud and misrepresentation. It claims that on 9 September 2011, VML obtained an ex-parte injunction

pursuant to an affidavit sworn by Mr. BK thereby halting a major hotel and resort development on VCORP's lease.

26. It is contended that Mr. Bashir Khan had made fraudulent representations to the court by falsely stating that VML had an easement over VCORP's land, falsely stating that VML had an authority to institute proceedings having an easement over VCORP's land, falsifying survey plans showing VML having an easement over VCORP's land, advising the court that VCORP's development of the land was illegal, advising the court that VCORP did not have any right to the development when knowing it was false, and providing false information and/or particulars to the court.

27. VCORP says that at the time of acquiring the injunction, the plaintiff's knew that the action was fraudulent and was designed to damage its development of a project for hotel, conference and a shopping centre.

28. VCORP claims special damages in the sum of $1,051,408.00 for loss of profit which it would have derived if it was able to complete the project.

29. VCORP also claims exemplary damages on the basis that VML and Bashir Khan did not have any locus to institute the proceedings and this was known to both despite which a fraudulent claim for injunction was made and obtained. It is contended that the plaintiff's very well knew about its illegal encroachment and did not disclose material information to the court when making an application for injunction. The plaintiff's knew that their conduct would cause loss and damage to VCORP.

30. It is contended by VCORP that multiple actions were instituted in High Court Labasa and Suva which has been done so in abuse of the process of the Court to intimidate, harass and block VCORP's hotel.

31. The second cause of action against the plaintiff's is trespass. It is averred that VML had encroached upon VCORP's lease and thereon constructed an illegal structure and was unlawfully discharging storm water and waste water.

32. VCORP says that the plaintiffs have been advised to remove their illegal development but have failed to do so. It therefore seeks an order for the plaintiff's to remove its illegal structures and development on the land, an order restraining the plaintiffs either through their servants or agents or howsoever from trespassing into VCORP's ITL No. 30080 and from discharging any waste or storm water thereon, and an injunction restraining the plaintiff's either through their servants or agents or howsoever from interfering with VCORP's development of its lease.

33. The third cause of action is for intimidation, unlawful arrest and malicious prosecution. VCORP is seeking damages on behalf of Mr. VD as he was allegedly being intimidated by Mr. BK and the Police, unlawfully arrested on instructions of Mr. BK by the Police, and taken to the Police Station and charged. VCORP is also seeking damages for malicious prosecution against the plaintiff's as the charges were subsequently withdrawn. I will comment later on whether the correct parties are before the court for these causes of action to be sustained.

34. It is alleged that upon obtaining the injunction, the plaintiff's used the services of a Police Officer namely one Antonio Lavekau who with his connection in the Police Force threatened and intimidated VCORP's workers and director Mr. VD causing fear and humiliation.

35. Mr. VD was arrested and detained at Labasa Police Station for several hours and was threatened and abused by the said Antonio Lavekau under the directions of Mr. BK. It is also alleged that the workers of VCORP were threatened and chased out by Mr. BK from

VCORP"s lease through violence and threats of violence. Damages are therefore sought for intimidation, unlawful arrest and malicious prosecution.

LTC's Defence

36. It is accepted by LTC that it had the use and custody of the land being Lot 1 on Plan M 2605 but that it was not properly maintaining the land. It was becoming an expensive exercise for it to do the same.

37. It is averred that the public was misusing the property and it became more or less a rubbish dump, a lover's point and a drinking spot for the public. The place was in a depleted condition and it was the decision of the LTC to agree to put the property to good use and generate revenue for LTC.

38. LTC says that Lot 1 on M 2605 was properly re-zoned to special use and that all the procedures were followed. The MOLMR has granted permission for the re-zoning and there is nothing unlawful about the same.

39. It is also contended by LTC that VML does not have a drainage easement at the back of the property. It is supposed to discharge its storm water to a common drain which runs beside Savila House. Instead of using the common drain, VML chose to discharge through the land to the Labasa River. The land through which the water passes to the Labasa River does not belong to the plaintiff's and as such the plaintiff's action amounts to trespass.

40. LTC says that is did not even install any chambers, make any drain, or place any culverts in the river for VML to discharge water through the land to the sea. VML has illegally constructed the chambers, a shed and the drain on the property behind it which is now owned by VCORP pursuant to ITL No. 30080.

41. The illegal construction is in breach of the ITLTB Act and the Town and Country Planning Scheme. The installation of the said chambers amounts to trespass as well.

ITLTB's Defence

42. ITLTB has from the outset maintained that VML does not have any locus to bring the proceedings as it does not have a drainage easement either on Lot 1 on Plan M 2605 or ITL No. 30080.

43. CL 6068 is a different property that was leased and it contains Lots 1 and 2 on plan M 2458. The lease CL 6068 is expired and not given to VCORP. What has been leased out to VCOPR is Lot 1 on M 2605 which was previously given to LTC for public use.

44. The proposed venture by VCOPR was to improve the state of the subject land and to attract investment for economic viability.

45. ITLTB says that VML has illegally extended its property on Lot 1 on Plan M 2605 and refers it as its easement. None of the plans show any easement for VML. The claim for easement is frivolous and vexatious.

4th to 6th Defendant's Defence

46. These defendants hold the position that VML does not have an easement on Lot 1 or Lot 2 on M 2605. The property has now been properly leased to VCORP with the consent of the MOLMR.

47. The position of the 4th, 5th, and 6th defendants have been that the proposed re-zoning of Lot 1 on M 2605 was approved by the MOLMR after proper consultation and public hearing. Lot 1 on M 2605 was transferred to the ITLTB after proper procedures were followed for the

same to be combined with Lot 2 to become a feasible portion of the land to be leased out to ITLTB.

Evidence/Issues/Law and Determination

48. There are certain issues which must be answered collectively upon which the plaintiff's entire claim and part of VCORP's counter-claim would be effectively addressed. These issues are:

1. ***Should the plaintiffs be allowed to amend the claim to assert whether the plaintiffs have a drainage easement or reserve on ITL No. 30080 instead of CL 6068?***

2. ***Does VML have a drainage easement over the property ITL No. 30080 which has been leased out to VCORP for development of a hotel?***

3. ***Do the plaintiff's therefore have any locus standi to require any orders from the Court?***

4. ***Are the plaintiffs in any way the affected party's when ITL No. 30080 was granted to VCORP?***

5. ***Did VML ever have a drainage easement based on which it could obtain from the Court an injunction restraining VCORP from carrying out the development works on its property?***

6. ***Does the grant of lease of Lot 1 on Plan M 2605 an unlawful act on the part of the LTC and the ITLTB?***

7. ***Did the plaintiff's know that they did not have an easement as claimed and that the obtaining of the injunction was fraudulent and upon misrepresentation to the Court?***

8. ***Does the construction by the plaintiff of the chambers, a shed and a drain on ITL 30080 a trespass to the property of VCORP?***

9. ***If the answer to (8) above is yes, is VCORP entitled to any, and if so, what damages for trespass to land?***

10. ***Is VCORP entitled to an order for injunction restraining the plaintiff's from continuing to discharge its storm water and kitchen waste in the drain and from continuing to use the illegal shed on the property?***

11. ***Should VCORP be allowed to continue with the development subject to approval from all relevant approving agencies and is so will the development hinder the plaintiff's in any way?***

12. ***Is VCORP entitled to exemplary damages from the plaintiffs?***

A. Amendment of Claim

49. In its pleadings and during the trial, the plaintiff's always maintained that VML had an easement on CL 6068 on Lot 1 on Plan M 2605. The defendant's had pleaded time and again in the pleadings as well as the affidavits filed in court that CL 6068 being Lot 1 is not on Plan M 2605 but on Plan M 2458. It was also brought to the attention of the plaintiff's that the property in dispute is the one behind VML on which Jaycees Park and a kindergarten existed and that property is not CL 6068. CL 6068 is a very large public open space. Despite several hints and reminders, the plaintiff's maintained that they had an easement on CL 6068.

50. There is enough evidence which is not contradicted that establishes that the property behind VML over which it is claiming an easement is Lot 1 on Plan 2605. There was no lease number of this property so far as the evidence suggests. None of the witnesses have

produced evidence to show that Lot 1 on M 2605 ever had a lease but it is not contradicted and I accept that this portion of the land was given to LTC for use for civic open space on which Jaycees Park and a kindergarten existed.

51. CL 6068 has nothing to do with the proceedings. The plaintiff's now seek to amend their claim on the basis that the easement exists on the property behind the VML property and that the property is now leased to VCORP vide ITL No. 30080. The question then arises is whether this Court should allow the plaintiff's leave to amend the claim.

52. It is not disputed that the property that the plaintiffs have referred to as being in dispute is the one at the back of the mosque immediately before the Labasa River. There is no error in physical identification of the property. The only error relates to the description of the same. I find that since the parties know what property in real is being referred to, an amendment will not prejudice any party's right.

53. I find that the real issue in controversy is whether the plaintiff VML has an easement over the property that VCORP is proposing to develop and not on what property is the easement alleged to be. To find the real issue in controversy an amendment is necessary and I allow the same.

B. (i) Drainage Easement on ITL No. 30080 or Lot 1 on M2605?

(ii) Trespass to Land and Damages– ITL No. 30080: An aspect of the counter-claim.

54. The issue that flows from the amendment therefore is whether VML has a drainage easement on ITL No. 30080. It is very clear from the evidence from the parties that none of the defendants, specifically the LTC, the ITLTB or the MOLMR had ever given VML a properly registered drainage easement for VML to discharge the storm water from the building and kitchen waste through someone else's land to the Labasa River.

55. VML was to discharge its rain and storm water to a common drainage beside Savila House. If it had initially started discharging storm water to the common drainage like the other

lessees, there would not be this greed to capture the land and claim it as its own in the manner it has been done.

56. Exhibit 16 is Certificate of Title for ITL No. 30080 which was tendered in Court. The lessee of this property, if I may re-iterate, for the sake of clarity, is VCORP. At the back of the lease is a plan showing the plaintiff's property and the property of VCORP. The plan does not show any easement in favour of VML.

57. Further, the evidence from the office of the Registrar of Titles, a witness produced by LTC, was that CL 17786 does not have any registered easement. It was testified that CL 17786 was registered on 14 July 2009 and since then there is no registered easement.

58. Pursuant to s. 49 of the LTA, if there was any easement, the Registrar of Titles would have had the same recorded on the certificate of title but there is no such evidence of any easement.

59. S. 49 of the Land Transfer Act Cap. 131 reads:

" Whenever any easement…is created over any land, the grantor may execute a grant of easement in the prescribed form…as may be approved by the Registrar and the Registrar shall enter a memorial of the instrument creating such easement …upon the folium of the register constituted by the existing grant, certificate of title or lease of the grantor, and except where an easement …is in gross, the Registrar shall also enter a memorial upon the folium of the register constituted by the existing grant, certificate of title or lease of land to which the easement is annexed or with which it is used or enjoyed?.

60. When Mr. BK was not able to show either through any one of the registered plans or certificate of title that he had a drainage easement at the back of his property which is now

leased to VCORP he then alleged that LTC had made the chambers for his property through which the water collected and went into the drain to Labasa River.

61. It was also alleged by Mr. BK that the drain was provided by LTC and that it had also placed the two culverts at the mouth of the river for the water to pass through the drain to the culverts into the river.

62. LTC's witness, Mr. Faiz Ali gave evidence that LTC did not make any chambers or drains for VML behind the back of its property. It also did not fix any culverts as there is nothing on records to suggest that LTC gave permission for VML to discharge its storm and waste water on someone else's land.

63. Mr. Ali testified that the land on which VML is discharging the storm and waste water from his property is now owned by VCORP which was previously given to LTC for public use.

64. Mr. Ali further testified that VML had been given and should use the common drain provided by LTC for discharge of its water. The common drain goes past Savila House. VML should have created a pathway and laid pipes for the water from VML's building to be connected to the common drain but it did not do that. That is one of the reasons why VML did not get a completion certificate from LTC. VML's property is only 30 meters away from the common drain.

65. Mr. Ali said that VML was told of non-compliance in 2014 and 30 days was given for it to comply with all the conditions. On 21 January 2016, a conditional consent was granted. VML is expected to meet the conditions.

66. Mr. Ali also stated that none of the plans show that VML has a drainage reserve or a drainage easement on the property and that the discharge of water on someone else's land constitutes trespass. Mr. Ali also testified that VML has constructed a shed over the

chambers and that the shed is not on his property but on the property now owned by VCORP.

67. I have also visited the property and on my visit it was evident that the plaintiff had dug the drain overnight when I had indicated to the parties that I would visit the property and see the drain. The soil that was dug was fresh and there was no indication that there was a drain before. The storm water from VML's building was being discharged on the land to the Labasa River and not only that the kitchen rubbish from VML's property was also being discharged on the land to Labasa River.

68. Before the drain was dug, I find that there was a natural water way that was created on the land and that was due to the buildings storm water and kitchen rubbish flowing through the path to the sea.

69. When Mr. VD gave evidence he tendered 5 photographs of the drain. The photographs were tendered as ***Exhibits 14 A – E***. The photographs were taken on 15 March 2016, being the time when the trial was in progress. It is clear from the photographs that there was no such drain behind the property. VML was using the land inappropriately and selfishly to discharge not only the storm water from the property but also kitchen waste to Labasa River. Exhibit 14 A clearly shows the soap scum behind the back of the property and the illegally constructed shed on the same.

70. It is clear that the plaintiff's should not have at any time discharged the kitchen rubbish into Labasa River. That causes immense population and is a hazard to sea creatures and the human beings as well.

71. I have found that the drain contained soap scum and food particles which indicate why the plaintiff does not wish to use the common drain to discharge therain water. If the common drain was used and food particles and soap scum was found in it, the residents would have

complained and LTC would have taken action against the plaintiff's. To avoid that, VML and Mr. BK found an easy way to discharge rubbish through the back of the land. The kitchen rubbish should properly be directed to the sewer lines.

72. At the closing submissions stage only, the plaintiff's counsel agreed that the plaintiff's do not have a drainage easement. This is only after the plaintiffs could not establish that there was an easement as falsely claimed all along.

73. I find from the evidence alone that the plaintiff did not have any drainage easement through which it could discharge water over Lot 1 on M 2605 to Labasa River, a property which now belongs to VCORP.

74. I also find that the plaintiff did not ever get permission from LTC to discharge the water on the land which it previously owned for public use. I appreciate that the LTC did not take any action for so long about the discharge of the storm and kitchen rubbish on its land to Labasa River. However, that does not give the plaintiff's any right to use the land in the manner it so wishes especially to the detriment of the new owner and the public.

75. I find that the construction of the chambers, the shed in which VML does the cooking and the drain amounts to an illegal dealing in the land and on the property of VCORP. VCORP is entitled to an order it seeks that the plaintiff's remove the illegal structures on its property, be retrained from using VCORP's land for discharge of storm and kitchen waste and not to interfere with its development.

76. VCORP is entitled to damages for trespass to its property since July 2011 till date as the trespass continues. Although VCORP has not specifically asked for damages under this head, it has made a claim for general and exemplary damages. At the time of asking for special damages for a halted project, Mr. VD gave evidence of how he has to end up making

statutory payments for the land and for maintaining the land without having to use the same.

77. Mr. VD gave evidence that if he had fully developed the land, he would be paying these expenses from the profit but now he has to pay the same from his pocket without having to use it.

78. I find that VCORP is entitled to damages for trespass to its land. However, I will assess the same under the head of exemplary damages.

C. (i). Plaintiff's Change of Case Theory: s. 21 of SLA.

(ii). Locus Standi and Sufficient Interest to make a claim in ITL NO. 30080.

79. Having admitted that there is no drainage easement, the plaintiffs have now changed its case theory which is not part of the pleadings or the pre-trial conference minutes. It is now being asserted by the plaintiff's that Lot 1 on Plan M 2605 is a State Foreshore Land. The plaintiff's say that the land is now leased to VCORP contrary to s. 21 of the SLA. Since proper procedures were not followed before a lease was granted to VCORP, the land should revert to the State which will then entitle the plaintiff's to ask the MOLMR to process its claim for drainage easement and lease in its favour. By asking for this remedy, the plaintiff's fail to appreciate the law on indefeasibility of title pursuant to s. 39 of the LTA. There is no claim for fraud against any defendants to require the proprietorship of VCORP to be impeached.

80. I must at the outset say that, the issue of compliance with s. 21 of the SLA was never part of the claim, the pleadings or the Pre- Trial Conference Minutes. This Court is not bound to look at any new issues not raised in the pleadings. This is the first basis on which I must reject the s. 21 claim.

81. I shall however deal with the issue, should I be wrong in making a finding that since the pleadings do not canvass s. 21, it should not be an issue that needs to be tried. S. 21 of the SLA reads:

(1) No lease of any Crown foreshore land or of any soil under the waters of Fiji shall be made without the express approval of the Minister and such approval shall not be granted unless the Minister declares that such lease does not create a substantial infringement of public rights.

(2) Before such approval is given or declaration made, the substance of the lease together with a sufficient description of the property intended to be comprised therein, shall be inserted by the applicant, with the prior approval of the Director of Lands-

(a) in two consecutive issues of the ordinary Gazette; and

(b) twice, within seven days of such first issue, in a newspaper circulating in Fiji, together with a notice calling upon persons having objections to the making of such lease to send them in writing to the Director of Lands not later than thirty days after the date of such second insertion in the Gazette.

(c) All such objections made in accordance with the provisions of subsection (2) shall be considered by the Minister"

82. There is unchallenged evidence from MOLMR that since Lot 1 on Plan M 2605 being the property at the back of VML's building was not a feasible size to be leased; it was internally transferred to ITLB to combine with Lot 2 and to lease it out to VCORP.

83. Once the land is transferred to ITLTB, it is no longer owned by the State for the State Lands Act to apply. The land is now under the custody and control of ITLTB and the provisions of the ITLTB Act will apply.

84. S. 21 of the SLA does not apply to internal transfer of lands from State to ITLTB. It only applies if the State directly leases the land to some other person or institution.

85. Secondly, even if s. 21 of the SLA applied, the plaintiff's do not have any locus or interest in the land to make a claim against the defendant's either for having obtained a lease or for giving a lease or for rezoning the land from public use to special use.

86. Moreover, if s. 21 of the SLA was applicable then there is enough evidence that at the time the re-zoning occurred, there was compliance of s. 21. After a public hearing only, it was decided that the land be re-zoned and that is the process after which the land was transferred to ITLTB for leasing to VCORP.

D. Lot 1 on Plan M 2605: Surrender by LTC and Lease by ITLTB: Was it proper and lawful?

87. I now turn to the cause of action against the LTC and ITLTB. It is alleged that LTC's surrender of the CL 6068 being Lots 1 and 2 on plan M 2605 was unlawful and that the ITLTB's acceptance of the surrender was unlawful without the consent of the MOLMR.

88. I must first of all reiterate that CL 6068 is not a property that has any bearing in this dispute. CL 6068 beings Lots 1 and 2 appear on Plan M 2458 and not M 2605. CL 6068 was leased to LTC with effect from 1 January1969 for a period of 25 years. This lease has expired and there is no evidence of any renewal. There is therefore no question of this lease being surrendered by LTC.

89. The land is dispute is Lot 1 and 2 on M 2605. This was under the control of LTC. There is no evidence of any lease being given to LTC over this land. However since LTC was owned

this property, it agreed for a rezoning for commercial use by VCORP. It wrote to the 5th defendant asking for approval and permission for re-zoning. The permission was granted on 18 September 2012.

90. The re-zoning was agreed to by LTC because the land that it owned and was used for public purpose was misused by the public. It was better and more economically viable that it be rezoned for special use by VCORP. In its wisdom, LTC made a proper and sound decision as it did not have the capability or the resource to maintain the land any longer and it became the most dreaded and scary place of the town where drinking and other improper activities took place.

91. LTC did not surrender the lease. There is no evidence of any lease but evidence was adduced that LTC agreed for a rezoning. It did agree to surrender the use from public to special use and it has the right under s. 91 (2) (b) of the LGA to do so, which provision reads as follows:

" (1)…

(2) Subject to the provisions of any written law relating to town planning and the subdivision of lands and to the consent of the Minister, a council may-

(a) …

(b) sell, let or otherwise dispose of any plots or subdivisions of land and any buildings thereon".

92. The 5th defendant had granted a provisional approval for re-zoning on 6 July 2012 and Exhibit 27 is clear evidence of that. Through the letter for provisional approval, the 5th defendant had also advised VCORP that a public hearing would be conducted on 12 July 2012. After the public hearing the decision was made to grant a final approval by the 5th defendant for re-zoning. The final approval was granted on 16 August 2012 and the letter was tendered as Exhibit 28 in the proceedings.

93. VML and Mr. BK say that there was no permission by the MOLMR to surrender the land. In fact Exhibit 30 is a letter from the MOLMR which approved the re-zoning and transferring of the property to ITLTB to be leased to VCORP. The letter dated 7 June 2012 in its material part reads:

"Director of Town and Country Planning
FEA Building
Suva

7/6/12

Re: ***Re-zoning of Jaycees Park to hotel Development***
Lot 1 M 2605/Labasa Town
Matasawa Investment/Centrepoint Hotel Management Limited

Approval is hereby granted for the re-zoning of the above mentioned property legally described as Lot 1 on M 2605 subject to consensus from all relevant approving agencies.

The said area is reclaimed 'tiri' land forming part of the total area now leased to Matasawa investment through ITLTB…".

94. Exhibit 30 clearly shows that the MOLMR had approved the re-zoning and approved the transfer of the property to ITLTB for leasing. Exhibit 30 also shows that the MOLMR's consent for re-zoning was granted before the 5th defendant conducted a public hearing and gave a final approval for the re-zoning.

95. The plaintiff's contention therefore that LTC had unlawfully agreed to surrender the land in its custody to ITLTB and ITLTB's act of accepting the surrender was unlawful is without any merits.

96. There is in fact no claim against either LTC or ITLTB based on which any orders against it is justified. These two defendants together with the 4th, 5th, and 6th defendants have been

wrongly sued in the proceedings. In fact, there is no cause of action pleaded against the 4th to 6th defendants.

E. Will the development by VCORP be Prejudicial to the Plaintiff's? [Granting the Plaintiffs an Equitable Relief]

97. It is clear from the 5th defendant's final approval for rezoning that the re-zoning is subject to certain conditions to be fulfilled by VCORP. There are 11 conditions to be fulfilled and condition 8 relates drainage easement which will solve the plaintiff's concerns as well. Condition 8 of the approval reads:

"That a two meter (2m) Drainage Easement shall be formed along the SW, N, and NE boundary of the subject site. The drainage retention, detention and conveyance systems shall be designed to eliminate and reduce the Storm water runoff impact of adjacent properties including outfalls into the Labasa River".

98. With Condition 8, the plaintiff's will not be prejudiced to any extent because it will be provided with a proper drainage easement. So far, the plaintiffs did not have a drainage easement, but now, one will be provided by VCORP.

99. I see no reason why the plaintiff's should maintain any further application for a personal drainage easement at a place on VCORP's property which will hinder the development. The easement that is prescribed in condition 8 will alleviate any concerns that the plaintiff's might have regarding damage to its property from flood water.

100. VCORP is undertaking a project worth millions of dollars. It is inconceivable that it will allow the project to collapse because of drainage issues not properly created and maintained. Further, there are relevant stakeholders to inspect compliance of the conditions at every stage of the construction. The matter should be left to them for monitoring and compliance.

101. Should the plaintiffs be concerned that VCORP's development will cause irreparable damage to VML's building, I find that an order in equity in terms of condition 8 in paragraph 97 above is justified.

F. Exemplary Damages

[Including damages for Trespass to Land]

102. This is the proper time for me to deal with the issue of exemplary damages. In order to obtain an ex-parte injunction against VCORP from demolishing the drain and the kindergarten, Mr. BK had sworn an affidavit and deposed that he had a drainage easement over the land which was owned by VCORP. To his affidavit Mr. BK had attached a plan M 1644 on which it was marked that he had an easement. That marking had been forged and was not a proper and valid document from the State Land, ITLTB or the Registrar of Titles.

103. Exhibit 2 dated 27 February 2012 clearly shows that VML only applied for a drainage easement on 18 October 2011. The letter was written by MOLMR to Mr. BK as President of VML. The contents of the letter is as follows:

" Reference is made to your application dated 18 Oct. 2011 regarding the above subject.

I am pleased to advise that the approval is now granted for the Drainage Reserve to be put in place in order to discharge the storm water from your property to the Labasa River. We will immediately proceed with the application to the Director of Town & Country Planning for approval".

104. The approval for drainage reserve was immediately withdrawn on 15 March 2012 pending the decision of this Court.

105. What is very clear from Exhibit 2 is the plaintiff's knowledge that VML did not have any drainage easement at the back of its property and on ITL No. 30080. Despite that, an injunction was obtained on the basis that it had an injunction and the plaintiffs have continued to maintain that claim at the trial.

106. What is also very clear is that Mr. BK only thought about the easement at the back of his property in order to preclude Mr. Dayal from developing the land. His greed kicked in because he does not want Mr. Dayal to acquire the property at the back of his property because he is using that for illegal use of discharging the waste and storm water through the property into the river.

107. Exhibit 8 clearly shows that VML and Mr. BK, when it came to their knowledge that Lot 1 at the back of the property is leased to VCOPR wrote to MOLMR and made an application for Lease of Lot 1 and it justified the request again on the basis that VML has an easement on the property. The application is dated 7 September 2011 and was tendered as Exhibit 8. This shows the continuous misrepresentation by Mr. Khan to all the relevant stakeholders about VML having an easement on the property and the greed it developed to acquire the property to defeat the interest of Mr. VD.

108. Although Mr. VD continued to develop the land before and after grant of the injunction, as the evidence unfolded, Mr. Dayal could not get his building plans approved as LTC, the 5th defendant, and the MOLMR did not want to process any further approval pending this case. It is obvious that all the defendants, out of caution, wanted the status quo to be maintained. However, VML and Mr. BK knew that there was no valid claim for an easement and that any such claim was fraudulent and documents forged to support the same.

109. If the plaintiffs were not certain whether an easement existed or not, a simple search at the Registrar of Titles office would have provided the confirmed answer. There was no need to make false assertions throughout the proceedings.

110. If the injunction was not obtained or the matter discontinued after the injunction was dissolved, Mr. Dayal would by now have completed his project. He has already invested close to half a million dollars in developing the land and he did not do it to later abandon it. The project was abandoned because of the pending dispute.

111. Mr. BK knowingly had managed to mislead the Court and defeat the system. He at all times knew that his discharge of storm water on the land and kitchen rubbish was trespassing on the land but out of greed and ulterior motive he continued to assert his right.

112. His conduct is outrageous, inept and incorrect and deserves punishment. His actions have caused Mr. VD loss in that 6 years after having obtained the lease he is not able to develop his land fully. He needs to be compensated.

113. The purpose of exemplary damages is punitive in nature. It is to punish a party for its misconduct. I find that the type of misconduct that the plaintiffs' have demonstrated deserves punishment. The conduct was full of malice so that Mr. Dayal, a young business man does not come into competition with the tycoons like Mr. Bashir Khan. Mr. Bashir Khan therefore lied, forged and mistreated Mr. Dayal being fully aware that he had no locus standi to bring the proceedings in the first place.

114. If the justice system does not punish for conduct of this nature, it will condone forging of documents, misleading of Court, and bringing frivolous actions and continuing the same on a fraudulent footing. The perpetrators of the law will not learn that such conduct can be subject to civil penalty too. Mr. BK has not so far been charged for perjury. This is a matter that I will not delve into save to say that his conduct should not be promoted for him to believe that there is no deterrence in a civil cause for that. For such reprehensible conduct a meager sum of damages would not be adequate. It will neither be an adequate punishment nor a deterrent in future as Mr. BK is a financially powerful party to the case.

115. For conduct of such a nature I find that damages in the sum of $50,000 is the appropriate sum.

116. For trespass to land, I allocate a sum of $50,000 in damages to VCORP. This is the loss that VCORP has suffered as a result of the continuous trespass on the property. VCORP has been paying land rent to ITLTB, town rates to LTC and maintaining the property by cutting grass. Having paid all the expenditure, it has not been able to use the property and make any returns.

117. VML and Mr. BK have had use of the property when VCORP had been paying the expenses. Although VML is only using a portion of the property, because of that trespass, VCORP is not able to use the other parts of the property. There is reliable evidence from Mr. VD that although some works could be done like land filling, the river bank could not be completed and the land is vulnerable. The construction team was reluctant to continue the work because of the intimidation by Mr. BK. I find that VCORP could not use the land fully either to develop or to maintain the same. It however paid the expenses. At least what should be paid back to VCORP are the standard expenses. Had it not been for the trespass, VCORP would have started generating income from the property and used that income to pay the expenses. Now it has to use money from some other sources for the upkeep of this land.

118. Since July 2011 to July 2017, the land rentals to ITLTB amount to $15,000. The town rates at the amount of $2,000 per year, as per the evidence of Mr. VD, calculate to $12,000 for 6 years. There was also evidence that LTC is paid $330 per month to maintain the property by cutting grass as the workers of VCORP are scared to do that because of continuous harassment by Mr. BK. At the rate of $330 per month for the past 6 years, the amount comes to $23,760. Even if LTC did not cut the grass, for such a big land, it would cost VCORP the

same amount in labour and fuel to cut grass in a month. The amount is reasonable and justified. The total expenditure on the property is $50,760.

119. The issue now is who should pay the exemplary damages and to whom should it be payable? In my finding both VML and Mr. BK asserted that there existed an easement. It was always in the knowledge of Mr. BK as the trustee of the VML that the claim was false. In that regard both VML and BK should be jointly and severally liable for exemplary damages.

120. The most affected defendant in this proceeding is VCORP. Other defendants can be adequately compensated by an order for costs but VCORP has been made to run around to at an extensive rate to defend this action. The most difficult part was to have halted the development after having spent so much money. VCORP could not, as per the evidence, which I accept, continue the development works to erect the building as there was always dispute when anyone entered the land. In that regard the exemplary damages should be paid to VCORP and not to other defendants.

121. With my above findings, the plaintiff's entire claim has no basis. I have also dealt with part of the counter-claim leaving me to deal with the two remaining aspects of the counter-claim. The first one is that of special damages. I cast my mind to the following issues:

(i) Whether the hotel project of VCORP was halted as a result of the ex-parte injunction and the substantive proceedings?

(ii) If the answer to the above is in the affirmative, then has VCORP adequately proven its loss, and if yes, then what is the amount of damages payable to VCORP by the plaintiff's.

G. Counterclaim: (i) Halted Development: Special Damages

122. VCORP's allegation is that the obtaining of an ex-parte injunction on 9 September 2011 ***"halted a major hotel and resort development on its lease"***.

123. The plaintiff's position is that the injunction should not have and did not stop VCORP's development. The plaintiff's rely on certain matters to support its contention. The first is that the injunction obtained by the plaintiff was on a narrow basis. The injunction was to restrain VCORP from demolishing the drain and the kindergarten. The plaintiff's say that it did not go any further than this to halt VCORP's development. In any event, the plaintiff says that the evidence shows that the kindergarten was demolished by VCORP on 17 May 2012 well before the injunction was discharged on 2 April 2013.

124. The injunction that was granted was indeed one to restrain VCORP from demolishing the drain and the kindergarten. The injunction was discharged on 2 April 2013 which means that it was intact for 1 year 6 months.

125. There is clear evidence that the kindergarten was demolished on 17 May 2012. It is also accepted by Mr. VD that before the injunction was obtained, and even after it was obtained, VCORP continued the development work on the land.

126. However, even after the discharge of the injunction, Mr. VD could not get the approval of the buildings plans and the permission to erect the building because LTC, the 5th defendant and the MOLMR wanted to wait for the final outcome of the case.

127. Mr. VD clearly gave evidence that these relevant statutory authorities had made it plain clear that they would rather wait for the outcome of the court proceedings to get a final

answer than to act on their own. When Mr. Dayal was told of this, he realized that there was no point in creating any commotion with the statutory authorities. The stance of defendant's is justified. What is not justified is that the plaintiff's continued to maintain their position knowing that it is concocted and designed to halt the project.

128. There is reliable and credible evidence from Mr. VD that he could not even enter the land during the period of the injunction and aftermath as Mr. Bashir Khan would chase the workers of VCORP away from the property. Mr. Bashir Khan would also call the police on the premises and the effect of this was to stop all works at the site.

129. Further, the drain sat in a place where it was impossible to construct the hotel leaving the area alone to be developed later. The development required that the area be used and developed together with the other remaining parts of the land. To then say that development works could continue irrespective of the injunction and aftermath is not sustainable.

130. Mr. BK has told the Court in no uncertain terms that he is not removing the illegal chambers, the drain and the shed on VCORP's property unless it is ordered by the Court. If that is the stance of Mr. BK, for Mr. Haniff to assert that the plaintiff's did not halt the development and VCORP was free to develop the land is contradictory and hilarious.

131. The second contention of the plaintiff's is that the development works continued after the injunction. It is contended that majority of the development took place after the grant of the injunction. There is, it is said, little evidence of any work/development being recorded prior to the obtaining of the injunction except for a few entries.

132. I have already answered the plaintiff's contention in the above paragraphs. I need not repeat the same.

133. The plaintiff's further contend that VCORP could not have begun works on the property at least until 18 September 2012 because it did not have the required approvals to do so. It is said that it was not until 18 September 2012 that the 5th defendant approved the rezoning from civic (open space) to special use (tourism).

134. I do not accept that VCORP could not do any development work until 18 September 2012. The rezoning letter indeed is dated 18 September 2012 but VCORP had an agreement to lease the property on 20 July 2011. Clause l of the Agreement to lease permitted the development. What VCORP could not do before 09 October 2012 was to erect a building on the property as the letter of approval for re-zoning dated 18 September 2012 had a condition that no development work shall commence on the site unless there was issued a registered lease (condition 4). The reference to development in the letter of 8 September 2012 is a reference to the construction of the land.

135. Certainly after 09 October 2012, VCORP could have started the construction work but that could not see the light of the day because the plans were not approved pending the final decision of the Court in this proceeding.

136. The last contention on which the plaintiff's rely is that LTC had issued a stop work notice to VCORP on 23 May 2012 which was uplifted on 29 November 2012. The LTC conditionally lifted the notice after the Department of Town and Country Planning approved the zoning of the lots to special use and upon issuance of proper lease.

137. The evidence from LTC is that the stop work notice was issued because of the injunction so the contention that the injunction did not affect the development is not sustainable.

138. I find that the development of the land was halted as a result of the injunction obtained by forging and deliberately misleading the Court that the plaintiff's had a drainage easement on the property that was leased to VCORP. The construction of the building

which was to be a hotel, a conference and a shopping Centre could not proceed because this case was pending in court for final injunction.

139. I find that it is the continuity of this proceeding and the plaintiff's frivolous application for a permanent injunction against VCORP that halted the construction of a hotel. Its 3 years since the discharge of the injunction until the date of trial. In these 3 years surely VCORP would have completed its project. All that was halted due to the plaintiff's actions.

140. Since I have found the answer in the affirmative, I need to now ascertain whether VCORP has proved what damages it has suffered as a result of the project being halted.

141. VCORP claims $1,051,408.00 as special damages as a result of not being able to develop the hotel. It says that it has lost millions. To support this claim VCORP submitted to the Court a ***"Cash Flow Forecast – Jaycees Park Project 2013".*** This was marked as Exhibit 24.

142. The only evidence to support the claim for special damages was by Mr. VD. He said that the cash flow was designed to show the income generated once the project was complete. He anticipated the project to have been completed by year 2012.

143. He said that the project would have cost VCORP about $3m but now it will cost him $5m. He said if he had built the hotel, he would have 5% return which would give him $150,000 return per year. He has lost 4 years of return and also the $494,000 that he spent on the project so far. All add up to his loss in million dollars.

144. Mr. VD has added to his special damages a sum of $494,000. This is the money that he said he has spent in developing the land so far. There is no tangible evidence from him that the development he made has been wasted. I appreciate that he has not been able to build the hotel but whenever he decides to do so after the pronouncement of this judgment or at a later date, the development can always be of assistance to his project. There is no

explanation of how the $494,000 development has been wasted. On that basis, the claim of $494,000 is not justified.

145. The next aspect is the 5% return totaling to $150,000 a year. There is no evidence of how the $150,000 per year has been worked out by Mr. Dayal. Except for Mr. Dayal's assertion that that is the return he would have made, the Court is bereft of any tangible evidence on how the sum is arrived at.

146. VCORP ought to have called evidence of the relevant builder to say how long and how much it would have cost him to build the hotel. It is impossible that the hotel would have been completed and up and running in 2013. The building works could only start after VCORP was issued with a registered lease in October 2012. There would be some time taken to gets the plans approved and the loan approved for the construction of the building. If the project was to start in 2013, it would not be completed that year and even if it was there is no evidence of a reputable builder in this regard.

147. The Cash Flow Forecast shows how much VCORP would have earned in 2013 after the expenses. The Cash Flow Chart is unreliable as there is no evidence that the project would start earning money in 2013. The document also does not take into account what VCORP would have spent on construction and loan repayments. It does not take into account what would have been spent on bringing the project to a stage where it could be used for example the furniture and fittings of the hotel, the conference rooms and the shopping centre. It also does not take into account the annual benefits it had to pay for securing the lease. These are all expenses and should have been shown in the Cash Flow. I find the cash flow unreliable and not authenticated by tangible evidence.

148. There ought to have also been evidence from a financial institution as to how long it would take to pay the debt. Then there ought to have been evidence of the cost of running the business and how much likely profit would be made. There was no evidence on any one

of these aspects. How can the Court just grant the plaintiff what its claims would be his loss without proving.

149. There was no evidence of the accounting principles relied on to make the forecast. The forecast shows that VCORP would have received $11,200 per month from 14 rental shops. There was no analysis of commercial rents in Labasa and/or rates per square metre used by VCORP to arrive at that. This could have been easily proved as VCORP is already a landlord having rented a retail space to a bank.

150. The Cash Flow Forecast also showed income derived from the coffee shop, fried chicken, night club, restaurant, swimming pool and additional 40 hotel rooms in Labasa. There was no evidence on the market research on the viability of these projects and the possible income that could be derived. Some evidence could have been produced as to the nature of the income that these projects might bring as VCORP already operates a coffee shop, a fried chicken outlet, a conference center, a sports bar, a restaurant and a hotel with 25 beds.

151. If evidence of income from these were provided, it would have given the Court some tangible evidence to say that the new project on an equal or larger scale would earn something close to the income or more than what has already been made.

152. Except for assertions by Mr. Dayal on what would be his profit in a year, the Cash Flow Forecast is not substantiated and lacks authenticity to place any weight on the same.

153. I cannot accept that VCORP has adequately proven its loss. What VCORP could adequately prove however is the loss it sustained by making payments for the land like rentals payments, town rates, and grass cutting without having to use the land. For that I have awarded VCORP damages for trespass to land.

154. I cannot refrain from citing the principle of law to prove damages. Mr. Haniff brought to my attention the case of ***Bonham – Carter v. Hyde Park Hotel Limited (1948) 64 T.L.R 177*** per ***Goddard C.J:***

"Plaintiff's must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying, "This is what I have lost, I ask you to give me these damages'. They have to prove it".

155. VCORP also claims bank charges and interest. This was not pleaded in the counter-claim. There was also no evidence led on any other special damages claim. It is trite law that special damages must be pleaded and there was failure to plead or claim for bank interest and charges. VCORP therefore cannot maintain a claim for bank charges and interests. In any event, there is insufficient evidence to link that the bank charges are in respect of the loan used for development of the land in dispute.

(ii). Unlawful Arrest, Intimidation and Malicious Prosecution

156. The next aspect of the counter-claim is damages for intimidation, unlawful arrest and malicious prosecution. The person who is claiming damages is Mr. VD of VCORP. Mr. VD is not a party to the proceedings but he is claiming damages from Mr. BK.

157. A claim for intimidation, unlawful arrest and malicious prosecution is a personal claim by Mr. VD and in order for him to make a claim; he must sue in his name. Unfortunately, Mr. VD is not a party to the cause but a witness in this case. As a witness in this case, he cannot ask for damages for the causes of action pleaded above. VCORP cannot maintain a claim on behalf of Mr. VD.

158. Further, Mr. VD says that he was intimidated, unlawfully arrested, and maliciously prosecuted by the Fiji Police Force. If that is the case, Fiji Police Force should also be made a party to the cause for it to answer the allegations.

159. I find that since the proper parties are not before the Court, there are no merits in the claim.

H. Costs

160. Having dealt with both the aspects of the counter-claim, I come to the issue of costs. It is very clear that the plaintiff's claim was based on a fraudulent assertion that VML has a drainage easement. In order to maintain a claim, the plaintiff's had gone to the extent of forging the plan to show that there was an easement. If the plaintiff's accepted the fact that there was no cause, at least, when the injunction was discharged, the proceedings would not have come this far.

161. I have assessed the plaintiff's misconduct in making a claim and that is why I have ordered exemplary damages. Having done that, any order for indemnity costs for such misconduct will only be a duplicated award in favour of VCORP.

162. However, I must say that each and every defendant is entitled to costs for continuingly filing papers in this case, appearing in Court and defending the matter. The task for VCORP was more onerous than the others as it was the primary defendant in this case. VCORP had to continuously assert its right to have the injunction uplifted and also to defend the substantive cause. The trial took place for 6 days and Mr. VD, the managing director of VCORP had to be in Court all the time. An award for $6,500 in favour of VCORP is justified in the circumstances.

163. The other defendants also had to file papers and produce witnesses in Court except for ITLTB which did not produce any witness. A lot of time and money has been spent by these defendants in trying to defend the matter. Each is entitled to costs of $2,500 except for

ITLTB. Although ITLTB did not produce any witness in Court, it had to participate in the trial, examine the witnesses, file relevant papers and submissions and be present in Court during the trial. A sum of $1,500 is justified for ITLTB.

I. Final Orders

164. In the final analysis therefore, I make the following orders:-

(a). ***The plaintiff's claim for declaratory and injunctive orders are dismissed in its entirety.***

(b). ***The plaintiffs are jointly and severally liable to pay to VCORP exemplary damages in the sum of $50,000.***

(c). ***The plaintiffs are jointly and severally liable to pay VCORP damages for trespass to land in the sum of $50,000.***

(d). ***The plaintiffs must within 14 days remove any structure that is erected on VCORP's ITL No. 30080, failing which, VCORP is entitled to remove the said structure from its property to develop its land.***

(e). ***The plaintiffs are immediately and permanently restrained from trespassing onto VCORP's ITL NO. 30080 and also from discharging waste or storm water onto the same.***

(f). ***VCORP is at liberty to develop its land. The plaintiffs are restrained from interfering with VCORP's development of the land. VCORP must comply with condition 8 in paragraph 97 of the judgment. Until VCORP is able to comply with condition 8, the plaintiffs are to discharge its storm water only in the common drain provided by LTC.***

(g). ***VCORP's counterclaim for special damages and claim for unlawful arrest, malicious prosecution and intimidation are dismissed.***

(h). ***The plaintiffs are to pay costs to the defendants in the following manner:***

(i) ***$6,500 to the 1st defendant.***

(ii) ***$2,500 each to 2nd and 4th, 5th, and 6th defendants. The costs to the 4th, 5th, and 6th defendants to be paid collectively which means that only $2,500 shall be paid to 4th, 5th and 6th defendants.***

(iii) ***$1,500 to 3rd defendant.***

Costs to each defendant must be paid within 14 days.

Anjala Wati
Judge
11.05.2017

HIGH COURT OF FIJI SUVA

To:

1. *Haniff Tuitoga Lawyers, Suva, for Plaintiffs.*
2. *Maqbool & Company, Labasa, for 1st Defendant.*
3. *Samusamuvodre Sharma Law, Labasa, for 2nd Defendant.*
4. *Legal Services Department, ITLTB, Labasa, for 3rd Defendant.*
5. *Attorney- General's Chambers, Labasa, for 4th, 5th, and 6th Defendant.*
6. *HBC 32 of 2011 (consolidated with HBC 22 of 2012)*