

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CIVIL CASE NO. HBC 92 OF 2012

BETWEEN : **G. P. REDDY COMPANY LIMITED**
Plaintiff

AND : **PAC INVESTMENT & DEVELOPMENT LIMITED**
Defendant

Counsel : Mr. R. R. Gordon with Mr. Wasu Pillay, o/i of M/s. Gordon & Co.
– Barristers & Solicitors for the Plaintiff.
: Mr. Victor Sharma with Mr. Mucunabitu o/i of M/s. Vijay Naidu
& Associates – Barristers & Solicitors for the Defendant.

Dates of Trial : 22nd, 23rd, 24th, 25th and 28th August 2017

Written Submissions: Not filed by either party

Date of Judgment : 6th July, 2018

Judgment by : Hon. Mr. Justice Mohamed Mackie

J U D G M E N T

A. Introduction:

1. This is an action commenced by the Plaintiff Company by its writ of summons & the Statement of Claim dated and filed on 26th April 2012. At the outset, I would like to tender my apology to the parties for the delay, in the delivery of this judgment, which was caused partly due to my pausing for a while, to allow the parties to file written submissions, which were ultimately not filed, despite having enough time and several dates being granted. Similarly, the perusal of bulky records, lengthy pleadings, transcripts of the 5 day-trial, heaps of documents and certain parts of 2 other connected case records too, caused me to devote considerable time, contributing to the delay.
2. The connected cases were, firstly, the Action bearing **No: HBC 418 of 1996-L**, in which the Plaintiff hereof was the Plaintiff and 3 others, namely, (1) Mr. **Brian**

Murphy, the appointed Receiver of **Lautoka Land Development Company Ltd (LLD)**, **2. Fiji Development Bank** and **3. The Hon. Attorney General**, representing the Director of lands, were the Defendants, and, secondly, the Action bearing **No. HBC 192 of 2009**, where the Plaintiff hereof was the Defendant and the Defendant hereof was the Plaintiff, involving, more or less, the same land in dispute in this action as the subject matter, which I will, precisely, pinpoint in my discussion later in this judgment.

3. Finally, this third action bearing No. HBC 92 of 2012 being filed on 26th April 2012, ended up before me for trial in the middle part of the year 2017. Though, the action was vigorously contested, no enthusiasm was shown by the parties in filing written submissions, which would have made my task somewhat easy and helped to cut short the delay.
4. The Plaintiff Company in this action, by filing its Amended Statement of Claim (A.S.C) dated 21st May 2012, moved for the following reliefs against the Defendant Company;
 1. *Judgment for the Plaintiff in the sum of 5,000.00 stated in paragraph 32(c).*
 2. *The Defendant do all things to ensure that the Plaintiff obtains a lease of the area of 3257 square meters and that the same does not go to Punja & Sons or William and Gosling or others;*
 3. *The Defendant ensure that the area of 3257 square meters do be made to subject of a separate crown lease subject to the State Department's requirement in the name of the Plaintiff;*
 4. *Alternatively, the Defendant ensure that the area of 3257 square meters be amalgamated to the plaintiff's existing lease No. 13851 over 2574 square meters;*
 5. *The Defendant and/or its servants and/or its agents be restrained from interfering of the Plaintiff's possession of the said area of 3257 square meters and the buildings/sheds and structures situated thereon as specified in the annexure "C" of the affidavit of the Plaintiff's Managing Director Mr. Ganapati Reddy filed on 14th May ,2012;*
 6. *An injunction against the first Defendant and/ or its servants and/or its agents from any way proceeding with any act or process whereby it gives the Plaintiff's area of occupation to any third party;*
 7. *An order that the first Defendant do perform all acts at its expense or as the Court directs to grant a lease of the subject area to the Defendant;*
 8. *The Defendants do pay the damages;*

9. *The **Defendants** do pay the costs;*

10. *Any further or other reliefs which this Honorable Court may seem just.*

Note: There is only one defendant in this case. The reference as “first defendant” in paragraphs 6 & 7 above and as “defendants” in paragraphs 8 & 9 above should be read as “defendant”. Further, the term ‘Defendant’ at the end of paragraph 7 should be read as ‘plaintiff’. (All emphasis by me)

5. The Defendant by its statement of defence filed on 27th June 2012, while denying the most of the averments therein, made a counter claim and moved for the following reliefs:

- a. *Plaintiff’s claim be dismissed with costs.*
- b. *Judgment be entered against the Plaintiff in the sum of \$1,042,668.11 as prayed in the counter claim.*
- c. *General damages to be assessed.*
- d. *Interest on the judgment sum under law Reform (miscellaneous provisions) (Death and Interest) Act, Cap 27.*
- e. *Exemplary and punitive damages.*
- f. *Cost of this action.*
- g. *Such further or other orders this Honorable Court considers just and equitable in the circumstances.*

B. BACKGROUND

6. The background history to this case, as I understand, can be ascertained through the following summary. The A.S.C, among other things, states **that**:

- a. The Plaintiff Company, on 11th of September 2003, entered into a Memorandum of Agreement (MOA) with a Company called “**Lautoka Land Development Fiji Limited**” (LLD), for the Plaintiff to purchase a Lease of a parcel of Land for 99 years and the LLD to develop and recommend the Plaintiff’s name to the Director of Lands (DOL) as the would-be buyer of the lease of an area in the extent of 5831 square meters of Land (**this extent in square meters is as claimed by the Plaintiff**) depicted as Lot 5 in Plan SO- 2502, out of the State Land in Stage ii and iii situated at Navutu Lautoka, known as Navutu Industrial Sub-Division, subject to the conditions in the Development Lease, bearing No. L.D. Ref 4/7/3305, that the Director of Lands had, admittedly, given unto the LLD for a total extent of 32.365 hectares for the said Development Lease **Vide – TAB “A”** in the Plaintiff’s supplementary list.
- b. The said MOA was, belatedly, consented by the Director of Lands and the LLD was to carry out development work of approximately 32.365 hectares of Land contained in the said Approval Notice of Lease L D Ref 4/7/3305, which included the said 5831 square meters, for which the Plaintiff says, it paid

consideration to LLD in reliance of the Director of Land's choice of the developer (LLD) in the expectation of getting State Lease for 99 years.

- c. The Director of Land made express and/or implied commitment to grant the Plaintiff 99 years lease for an extent of 5831 square meters of out of the said Land from the time of completion of development, which was to be carried out by the LLD and completed by 31st of December 1993, unless time was extended.
- d. It had entered into the said agreement with LLD to obtain lease for 5831 square meters of State Land, relying on the representation made by the Director of Lands and/or its servants and/or its agents upon the capability of the LLD to complete the development, and the possession of 5831 square meters was given to it in 1994, with only the basic development works being done by the LLD.
- e. The LLD was wound up by the High Court while it had not completed the development works. The Plaintiff, having complained to the Director of Lands (DOL), did the rest of the development on its own.
- f. The LLD, having surrendered the Development Lease partially, obtained the Crown Lease No: 13851 for 2574 square meters and transferred same unto the Plaintiff by Transfer of Lease bearing Registration No: 707145, dated 24th June 2008 on certain payment being made to the appointed Receiver of the LLD and the Plaintiff was prepared to pay for the balance 3257 square meters to obtain another Lease.
- g. The Defendant, who obtained a Development Lease over the Crown Land in the same area for 50.1260 hectares informed the Plaintiff that it has got a Lease over the area in which the Plaintiff claims 3257 square meters. (This development Lease dated 1st January 2006 bearing No. L.D. Ref - 4/7/3305-2 is found under No.7 in the ABD and marked as P-7)
- h. The Plaintiff's occupation of entire 5831 square meters is with the knowledge and /or consent of the DOL, who had by letter dated 23.09.1993 agreed to lease 5831 square meters.
- i. The Defendant's development lease is subsequent and in any event clause 5 of it excludes lands on which there is pre-existing lease rights for the Plaintiff and the Defendant is estopped from evicting the Plaintiff from its present occupation of 3257 square meters for several reasons.
- j. The Plaintiff's existing occupation cannot be interfered with as the State is under obligation to grant 99 years lease for 5831 square meters, including the said 3257 square meters and the DOL has asked the Defendant to regularize the Plaintiff's position, which the Defendant has refused.

- k. The Defendant is bound by the obligation and that of the DOL to the Plaintiff.
 - l. The Plaintiff, in the disputed area of 3257 square meters, has erected buildings, done developments and the DOL is aware of Plaintiff's occupation in 3257 square meter area and the Defendant has entered into agreements to sell that 3257 sq. m. area to outsiders.
 - m. The disputed area of 3257 square meters, which is in the possession of the Plaintiff, is a part of existing leasehold and therefore, the Defendant's Development Lease would not have any effect on it.
 - n. The Defendant has done development activities carelessly and caused damages to the Plaintiff in respect of the whole area of its occupation including its Crown Lease No.13851 for 2574 square meters.
7. **The Defendant in its statement of defence, among other things, has taken up the following stern position:**
- a. That, as per the requirements of Section 13 of the Crown Land Act Cap 134 written consent of the DOL was not obtained prior to the execution of the MOA dated 11th September 1992 and it renders it null and void.
 - b. The Defendant was never a party to any transaction between the plaintiff and the LLD.
 - c. That, the original SO 2502 plan at all material times had and still does have an area of only 2574 square meters of which, currently, the Plaintiff is the registered Lessee and the extra area of 3257 square meters claimed by the Plaintiff does not fall under the Plan SO 2502, which is duly approved by the Director of Land and the said disputed area falls under SO 6312, which was not covered by the MOA between the Plaintiff and LLD.
 - d. That, the Plaintiff's claim, if any, was against LLD and/or the Director of Lands, which the Plaintiff duly abandoned as per paragraphs 12, 13, 14, 15 and 16 in the Deed of Settlement dated 11th April, 2007 entered in the action no. HBC 418 of 1996-L.
 - e. The development work, if any, carried out by the Plaintiff in the disputed area of 3257 square meters was without the consent of the DOL and no authority was given to the Plaintiff to carry out any development works therein.
 - f. That, by the deed of settlement entered on 11th April 2007 in action No.HBC-418 of 1996-L , the Plaintiff accepted that the A.G. was not liable to the Plaintiff on behalf of the DOL with regards to its dealings with LLD and thus abandoned its any further claim against the A.G., and LLD.

- g. That, by way of said deed of settlement, the Plaintiff paid FJD \$ 82,000.00, only for 2574 square meters, which is depicted as Lot 5 in Plan No. SO 2502 and not for the disputed area of 3257 square meters. The LLD was duly issued with the lease No. CL 13851 for the agreed extent of 2574 square meters, which now stands transferred to the Plaintiff and the settlement, was not for 5831 square meters now claimed by the Plaintiff.
- h. That, the Plaintiff, in addition to his area of lease for 2574 square meters, is occupying an extra area of 3257 square meters, without a lease and consent being granted for same by the DOL.
- i. That, on 14th of April 2005, the receivers of LLD accepted the offer by the Defendant to develop the Navutu Industrial Property contained in SO 2187 and there was no provisions imposed by the DOL or the receivers of LLD attached to the development lease, subsequently issued to the Defendant for the Defendant to issue a separate lease to the Plaintiff for this disputed area of 3257 square meters.
- j. That, the Plaintiff is well aware of its encroachment and is in illegal occupation of 3257 square meters and the remedy, if any, the Plaintiff has, is against the DOL and not against the Defendant.
- k. That, the Lot 5 in Plan SO-2502 had only an area of 2574 square meters and not 5831 square meters as claimed by the Plaintiff by adding a further 3257 square meters.
- l. That, the Director of lands has duly issued two separate Leases, including the area of 3257 square meters, illegally occupied by the Plaintiff, by two Crown Leases No. 18764 and No. 18760 both dated 23rd December 2011, which stand duly stamped and registered on 12th January 2012 in favor of the Defendant, not as a developer but as the registered Lease proprietor of same.
- m. That, the Plaintiff at no stage had or has existing leasehold over the area of 3257 square meters, in which the Plaintiff is in illegal occupation.
- n. That, the Plaintiff neither owns nor has a lease for the total extent of 5831 square meters and has a lease only for 2574 square meters, which is lot 5 in SO 2502 and it does not include the illegally occupied area of 3257 square meters.
- o. That, due to the Plaintiff's refusal to give the vacant possession of the disputed area of 3257 square meters, the Defendant hereof filed the action no. HBC- 192 of 2009 moving for injunction and same was struck out as the disputed area had not been identified by way of a separate Plan and however, the Court reserved the right for the Plaintiff therein (the Defendant hereof) to file a fresh action.

- p. That, the Defendant is now the registered proprietor of two separate Leases as follows.
 - a. Crown Lease number 18764, Lot 5 on Plan No. SO 6312 for 8402 Sq. Meters.
 - b. Crown Lease number 18760, Lot 1 on Plan number SO 6312 for 9407 Sq. Meters.
- q. That the total loss and damages is in a sum of \$ 1,042,668.11.

C. AGREED FACTS:

8. The following facts were agreed at the Pre-trial conference;

1. *The Plaintiff signed an agreement to buy a Crown Lease for 99 years with Lautoka Land Development Fiji Limited (a developer, hereinafter called "LLD") dated 15th day of July 1993.*
2. *The agreement was to purchase a Lease for 99 years of an area of 5831 square meters of State land which was then undeveloped. This was described as part of Lot 5 on S. 2502 Stages 2 and 3 of Land situated at Navutu, Lautoka, Fiji known as Navutu Industrial Sub-Division.*
3. *The agreement was stamped. It was consented to by the Director of Lands on the 17th day of September 1993.*
4. *LLD was to carry out development of approximately 34 hectares. This area included the Plaintiff's 5831 square meters of State land.*
5. *LLD carried out certain basic work.*
6. *LLD was wound up by the High Court of Fiji without completing development of the area which included Plaintiff's 5831 square meters.*
7. *The Defendant had and/or has a development lease over certain Crown/State land over 50.1260 hectares. This expired and was renewed for a period of three years from the 1st of January 2006. Upon expiry it was renewed for three years and the Defendant has indicated that it has a lease over the Plaintiff's area.*
8. *The development lease given to the Defendant (as far as the Plaintiff is aware) was to facilitate development of the State land and included areas where LLD had not failed to complete development. It includes 3257 square meters of land in the existing occupation of the Plaintiff.*

9. *The Defendant's rights derive from the Director of Lands giving it possession of its land and its development of the same.*
10. *The Defendant has made contracts in respect to the said area of 3257 square meters with Punja & Sons Limited and/or Williams and Gosling.*
11. *The Plaintiff signed a Deed of Settlement with the Receivers of LLD in Civil Action No. 418 of 1996L on the 11th of April 2007.*
12. *LLD was to carry out development in compliance of development conditions.*

D. AGREED ISSUES

9. Following are the agreed issues to be determined both as evidential and legal;
 1. *Whether the development of Plaintiff's Sale and Purchase area of 5831 square meters was within LLD's development lease given by the Director of Lands.*
 2. *Whether LLD was obliged to provide facilities for water, reticulation and sewer connection, drainage, access, roading and other like facilities so a 99 year industrial lease could be processed and given to the Plaintiff over the said area.*
 3. *Whether the Plaintiff paid monies under the sale and purchase agreement in expectation of getting a State lease of 99 years over the area of 5831 square meters.*
 4. *What amounts were paid by the Plaintiff under the agreement with LLD?*
 5. *Whether the Director of Lands made an express and/or implied commitment to grant the Plaintiff a 99-year Lease over 5831 square meters.*
 6. *Whether the possession of the area of 5831 meters square was given to the Plaintiff in 1994 after execution of the agreement with LLD.*
 7. *Whether the Plaintiff entered into possession with consent of the Director of Lands.*
 8. *Whether the Plaintiff entered into the agreement for 5831 square meters of State land relying upon the representations made by the Director of Lands about the capability of LLD to complete development and whether it took possession on that basis and whether it developed its area and the extent to which it developed its area of possession*

9. *Whether there has been part performance in that the Plaintiff has received a Crown Lease No. 13851 over 2574 square meters out of the total of 5831 square meters.*
10. *Whether the Deed of Settlement in Civil Action No. HBC 418 of 1996L signed by the Plaintiff prevents it from bringing this action or estops the Plaintiff from bringing this claim and whether the Defendant is entitled to claim estoppel.*
11. *Whether the Plaintiff, if LLD failed to complete works by 31st December 1993 was entitled to damages of \$150.00 per day.*
12. *Whether the Plaintiff abandoned its claim against LLD after it went into liquidation and/or receivership or for other reasons*
13. *Whether the Plaintiff's occupation of all the 5831 square meters is with knowledge and/or the consent of the Director of Lands and/or its servant and agents.*
14. *Whether the Crown/State had agreed to give the Plaintiff a lease over the full area of 5,831 square meters by its letter dated 23rd September 1993.*
15. *Whether this was in respect of Lot 5 on SO 2502 consisted of 5831 square meters.*
16. *Whether the Defendant's approval of Notice from the Director of Lands allowing it development rights was a protected Crown Lease.*
17. *Whether the Defendants development rights from the Director of Lands overrides the Plaintiffs rights (if any) over 3257 square meters of land in its occupation.*
18. *Whether the Defendant is estopped from trying to evict the Plaintiff from its present occupation of 3257 square meters.*
19. *Whether the Plaintiff's (should be read as Defendant's) development lease is subject to an implied term that the Plaintiffs existing occupation is not to be interfered with and that the Director of Lands commitment and/or obligation to the Plaintiff for a ninety-nine year lease over the subject area will be honored and complied with by the Defendant. (The above correction & emphasis mine)*
20. *Whether the Director of Lands is still investigating the position between the Plaintiff and the Defendant.*

21. *Whether the Director of Lands has asked the Defendant to regularize the Plaintiff's an occupant and lessee and whether the Defendant has refused to do this.*
22. *Whether the Defendant is bound by the obligations of the Director of Lands to the Plaintiff. Whether the Plaintiff has in respect of the subject area of 3257 square meters land claimed by the Defendant built substantial buildings and put in drains which include piping and cables and posts.*
23. *Whether there was a specific condition (Clause 5) that if a survey shows that the land approved for the Defendant's development lease forms part of any land which was part of an existing leasehold the development lease would not apply.*
24. *Whether that condition applies to the 3257 square meters in possession of the Plaintiff and whether it was part of an existing leasehold commitment.*
25. *Whether the Defendant has attempted to charge rental for the area of 3257 square meters.*
26. *Whether the same is unconscionable conduct and whether it constitutes unfair trading under the Fair Trading Decree.*
27. *Whether the Plaintiff had made certain arrangements so it could maximize the potential of the area in its possession and whether the same has been put on hold due to the Defendant's conduct and has caused the Plaintiff considerable loss and damages and amounts to trespass both for rental and/or sale of the area.*
28. *Whether the Defendant's development activities have been carelessly or negligently done and whether it has caused damage to the Plaintiff in respect of its whole area of occupation including its Crown Lease No. 13851 over 2574 square meters.*
29. *Whether the Defendant has put in landfill in lands in areas adjoining or neighboring the Plaintiff's 5831 square meters without providing proper drainage and whether the Plaintiff's area of 5831 square meters is affected and damaged.*
30. *Whether the actions of the Defendant constitute a nuisance and trespass and whether it has reduced the value of the Plaintiff's property.*
31. *Whether the Plaintiff is entitled to interest upon any award made.*

E. THE TRIAL & WITNESSES

10. At the trial that lasted for 5 days, Mr. GANPATI REDDY, Director of the Plaintiff Company (**PW-1**), Ms. TORIKA SOLICAKE GONEKA, Deputy Registrar of Titles (**PW-2**), Mr. ANAND SACHIN KUMAR, Land Surveyor (**PW-3**) and Mr. TONGA KARYTAKE, Assistant Director of Land (**PW-4**), gave evidence on behalf of the Plaintiff, while only Mr. VIJAY RAJNESH PRASAD , CEO – Managing Director of the Defendant Company (**DW-1**) gave evidence on behalf of the Defendant.
11. Though, the learned Counsel for the Defendant had indicated that further witnesses would be called, after discussion with the learned Counsel for the plaintiff, at the end of the trial, informed that instead of calling further witnesses, a set of further documents would be tendered of consent, and same were tendered marked as D-43 to D-55 in support of the Defendant’s case, as shown below.

F. DOCUMENTS

12. The Plaintiff relied on, its Agreed Bundle of Documents (ABD) filed on 17th March 2014, which contained documents **1 to 31**, on the Supplementary List of Documents containing documents from **A to UV** and few further documents as W, X, Y & Z, marked with the Letter “**P**” in front of the particular number or alphabet that denoted those documents.
13. The Defendant relied on the Bundle of Documents dated 28th August 2017, which contained documents from No. 1 to 42 and documents 43 to 55 tendered of consent at the end of the trial and these documents were marked with the alphabet “**D**” in front of the number given thereto.

PLAINTIFF’S BUNDLE OF DOCUMENTS

PB	Letter from Lautoka Land Development (Fiji) Limited to GP Reddy & Company Limited dated 14 th August 1992
PC	Letter from Lautoka Land Development (Fiji) Limited to GP Reddy & Company Ltd dated 21 st August 1992
PD	Letter from Fiji Electricity Authority to GP Reddy dated 25 th May 1993
PE	Letter from GP Reddy & Company Limited to Divisional Surveyor Western dated 22 nd July 1993
PF	The Fiji Times Newspaper Advertisement for Lautoka Land Development (Fiji) Limited appointing Receive and Manager dated 9 th May 1995
PG	Letter from GP Reddy & Company Limited to Public Works Department dated 30 th May 1995
PHI	Crown Lease No. 13851
PJK	Letter from KPMG to Vijay Rajnesh Prasad of Pac Investments (Fiji) dated 14 th April 2005
PL	Letter from GP Reddy & Co. Ltd to Divisional Surveyor Western dated 18 th September

	2008
PM	Letter from GP Reddy & Company Limited to Pac Investments & Development Ltd dated 16 th October 2008
PN	Letter from Pac Investments & Development Ltd to Divisional Surveyor Western dated 20 th November 2008
PO	Letter from GP Reddy & Company Limited to Pac Investments & Development Ltd. Dated 27 th November 2008
PPQ	Letter from Vijay Naidu & Associates to GP Reddy & Company Ltd dated 5 th February 2009
PR	Letter from Koyas to Vijay Naidu & Associates dated 24 th February 2009
PS	Letter from Koyas to Ministry of Lands & Mineral Resources dated 28 th May 2009
PT	Letter from Ministry of Lands and Mineral Resources to Koyas dated 24 th July 2009
PUV	Letter from Mishra Prakash & Associates to the Director of Lands dated 19 th February 2010
PW	Affidavit in Support of Injunction
PX	SO 2502
PY	SO 6312
PZ	Letter dated 29 th July 1993

Defendant's Bundle of Documents & extra Documents

NO.	PARTICULARS	PAGES
D 1.	Letter from Ministry of Land and Mineral Resources to Messrs.' Vijay Naidu and Associates dated 27 th March, 2012	1
D 2.	Copy of Letter from Messrs.' Koyas to Defendant's Solicitors dated 24 th February, 2009	2
D 3.	Copy of Registered Crown Lease No. 18760 Lot 1 Plan No. SO 6312	3-4
D 4.	Copy of Registered Crown Lease No. 18764 Lot 5 on Plan No. SO6312	5-6
D 5.	Copy of Letter dated 16 th October 2008 from GP Reddy & Co. Ltd to Pac Investments & Developments Ltd	7
D 6.	Copy of Letter dated the 22 nd of September 2008 from the Ministry of Lands and Mineral Resources to Pac Investments and Developments Ltd	8
D 7.	Copy of Letter dated the 29 th of July 2008 from Pac Investments and Developments Ltd to the Divisional Surveyor Western	9
D 8.	Copy of Deed between GP Reddy & Co. Ltd and Brian Murphy, Fiji Development Bank and the Attorney General of Fiji dated the 11 th of April 2007	10-17
D 9.	Copy of Letter dated the 13 th of August 2012 from Wood & Jepsen Consultants to Pac Investments and Developments Ltd	18-19
D 10.	Copy of Letter dated 9 th August 2012 between Wood & Jepsen Consultants to Pac Investments and Developments Ltd	20-21
D11.	Copy of Sale and Purchase Agreement between Pac Investments and Developments Limited and William and Goslings Limited	22-30
D12.	Copy of Sale and Purchase Agreement between Pac Investments and	

	Developments Limited and Punja and Sons Limited dated the 13 th of September 2007	
D13.	Copy of Flood Rehabilitation Facility Applicant Form by Pac Investments & Developments Limited	41
D14.	Copy of Letter dated the 24 th of February 2012 from Pac Investments & Developments Ltd	42-44
D15.	Copy of Letter dated 22 nd of June 2010 from Wood and Jepsen Consultants to Pac Investments & Developments Ltd	45-46
D16.	Copy of Letter dated the 5 th of February 2009 from the Defendants Solicitors to GP Reddy and Co. Ltd	47-48
D17.	Copy of Letter dated the 7 th of February 2011 from Colonial National Bank aka BSP Bank to the Defendant	49-56
D18.	Copy of Letter dated the 12 th of May 2011 from Wood & Jepsen Consultants to the Defendants	57-58
D19.	Copy of Demand Notice dated the 22 nd of February 2013 from the Fiji Development Bank to the Defendants	59
D20.	Copy of Letter dated 6 th of March 2013 from the Defendants Solicitors to the High Court	60
D21.	Copy of Crown Lease without the title being Lot 1 on Plan SO 2187 known as Navutu Industrial Estate	61-64
D22.	Copy of Agreement between Pac Investments and Lautoka Land Developments	65-70
D23.	Copy of letter from the Ministry of Lands and Minerals Resources dated the 11 th of September 2008 to Pac Investments & Developments Limited	71
D24.	Copy of Letter from the Ministry of Lands and Mineral Resources dated 21 st February 2011 to Pac Investments & Developments Ltd	72
D25.	Offer letter of Fiji Development Bank dated the 25 th of August 2011	73-80
D26.	Copy of Statement from Fiji Development Bank	81-84
D27.	Copy of letter dated 16 th February 2006 from Defendant to Plaintiff	85
D28.	Copy of letter dated 20 th November 2008 from Defendant to Plaintiff	86
D29.	Copy of letter dated 1 st October 2008 from Defendant to Plaintiff	87
D30.	Copy of BSP Bank Demand Notice to Pac Investments	88-89
D31.	Copy of BSP Letter dated 21 st September from BSP to Defendant	90
D32.	Copy of BSP Bank Statement of the Defendant of 2011 (up to November)	91
D33.	Copy of BSP Bank Statement 2010	
D34.	Copy of BSP Bank Statement of 2009	
D35.	Copy of BSP Bank Statement of 2008	128
D36.	Copy of BSP Offer Letter dated 7 th February 2011	129-142
D37.	Copy of BSP Offer Letter dated 24 th January 2010	143-156
D38.	Copy of BSP Letter dated 19 th April 2010	157-158
D39.	Copy of Letter from BSP to Defendant 14 th September 2009	159-160
D40.	Copy of Letter dated 26 th June 2003 from BSP Bank to Defendant	161-168
D41.	Transfer Lease 707145	
D42.	Order Case 418 of 1996	
D43.	Memo of Agreement dated 21 st October 1992	

D44.	Letter dated 16 th September 1992	
D45.	Lautoka City Council building permit dated 16 th September 1992	
D46.	Site Plan dated 17 th September 1992	
D47.	Town Planning Scheme dated 30 th September 1992	
D48.	Building Permit A (Clause 2) dated 30 th September 1992	
D49.	Building Permit dated 12 th November 1992	
D50.	Site and Drainage Plan dated 4 th November 1992	
D51.	Site and Drainage Plan	
D52.	Letter dated 5 th July 1993	
D53.	Letter dated 11 th September 1992	
D54.	Lautoka City Council Building Permit dated 9 th January 2002	
D55.	Site Plan dated 5 th December 2001	

AGREED BUNDLE OF DOCUMENTS

1. Copies of Pleadings filed in Lautoka High Court Civil Action No. 192 of 2009.
2. Copy of memorandum of Agreement between Lautoka Land Development (Fiji) Limited and GP Reddy & Company Limited dated 11th day of September, 1992 and duly stamped and consented by the Director of Lands on the 17th September 1992.
3. Copy of State/Crown Lease No. 13851.
4. Copy of survey diagram of State/Crown Lease No. 13851.
5. Copy of letter dated 23rd day of September 1993 from Director of Lands & Surveyor General to Messrs. Indra Chandra & Akhil.
6. Copy of development lease.
7. Copy of Approval Notice of Lease with Development Lease Conditions and Approval Notice Diagram.
8. Copy of Sale and Purchase Agreement dated 13th day of September 2007 between the Defendant and Punja & Sons Limited.
9. Copy of Market Valuation of Crown Lease No. 13851 dated February 2007 conducted by Pacific Valuations.
10. Copy of letter dated 1st day of October 2008 from the Defendant Company to the Managing Director of the Plaintiff Company.
11. Copy of letter dated 15th October 2008 from Ministry of Lands & Mineral Resources to the Plaintiff Company.
12. Copy of letter dated the 5th of May 2010 from the Plaintiff's Solicitors to the Director of Lands.
13. Copy of letter dated 24th day of October, 2008 from Ministry of Lands & Mineral Resources to the Managing Director of the Plaintiff Company.
14. Copy of Order dated 3rd June 2010 in Civil Action No. 192 of 2009.
15. Copy of Order dated 6th day of December 2011 in Civil Action No. 192 of 2009.

G. EVIDENCE

14. Altogether, five (5) witnesses were called, 4 on behalf of the Plaintiff and 1 on behalf of the Defendant.

- a. Without prejudice to both the parties, on perusal of the transcript, I observe that the oral evidences led for and on behalf of the parties, have only a very little role to play in the resolution of the core issue in this matter. The pivotal issue that begs adjudication here is the identification of the actual extent of land given to and taken by the plaintiff in terms of the MOA dated 11th September 1992 and the Deed of Settlement entered into by and between the Plaintiff and the receiver of LLD on 7th April 2007 the action No. HBC-418 of 1996.
- b. Instead, I have found that the evidences adduced by way of Documents at the trial are more articulate and convincing than the major parts of the oral evidence led before me. The contents of following documents, namely, the MOA, the Deed of Settlement in HBC-418 of 1996, the Plan SO 2502, the Crown Lease No. 13851 given to the Plaintiff for 2754 square meters, the Crown Leases No. 18760 & 18764 in favor of the Defendant and various letters sent and received by and on behalf of the parties, are not disputed and tacitly admitted.
- c. I shall briefly discuss only the crucial parts of the evidence of the witnesses below reserving the rest to be analyzed at the time of answering the issues, if necessity arises.
- d. **PW-1 Mr. Ganpati Reddy**, Managing Director of the Plaintiff Company, in his examination-in-chief acknowledges that he has been given a Crown Lease for the actual extent of 2754 square meters (Page 17 of the transcript). He settled for 2754 square meters (Page 27), he was able to see that Lot 5 consisted of 2754 square meters (page-28), the disputed lot has now been sold to Punjas and William & Goslings (page-38), he paid \$82,000.00 only for 2754 square meters and the Deed of Settlement was entered on 11th April 2007 (page-43), Receivers did nothing in 3257 square meters (page-44) and he did the fencing covering of this disputed area of 3257 square meters (page 45).
 - i. PW-1, having given lengthy evidence, marking series of documents on his purported right for further 3257 square meters of land, and relying on the extent described in square meters in the MOA, under his cross-examination, admits the followings:
 - ii. That he is not suing any other parties and this action is for the transfer of 3257 square meters in his favor, the Defendant has a Lease over this area, and that he (Plaintiff) does not have consent of the DOL to initiate these proceedings (page-47), and that in the letter **P-E** written by him to the divisional Surveyor, he specifically referred to Lot 5 in Plan SO-2502, which is a part of the land covered by the Lease No. LD 4/7/3305 as shown in P-4 sketch and this So-2502 is an approved Plan (Page 49),

it is consisted of 12 Lots and the Lot 5 has only 2574 square meters, the balance area of 3257 square meters is located behind the lot 5 and in all his letters he referred only to lot 5, which has only 2574 square meters (page -50 & 51).

- iii. He admits further, that the actual lease including the disputed 3257 square meters was given to the Defendant in the year 2012 and because of his occupation therein, the Defendant or any other 3rd party could not do any activity in that portion (page 52 & 53). He admits that the area of his lease was reduced to 2754 square meters and the Defendant PAC Investment was given Approval Notice to develop the balance area in the year 2006. It is also an admission in his evidence, that he entered into the Deed of settlement on 11th April 2007 and this settlement was after the approval of Notice was given to the Defendant in 2006 (Page-57), his MOA with LLD was for lot 5 in Plan SO 2502 and his said settlement with the receivers too was for Lot-5 in Plan SO 2502, which appears in Crown Lease No. 13851 comprising 2574 square meters (page -59).
 - iv. He specifically admits that he discontinued the action against the Defendants in HBC 418 of 1996 and the Deed of Settlement he entered into will stand as a bar to any claim or action taken by the plaintiff in future and he finally settled the matter for lot 5 comprising of 2754 square meters (page-59). He also admits that he does not have any agreement with the Land Department for additional 3257 square meters except for correspondences; Lot 5 consists of only 2574 square meters and the P-13 letter from the Ministry of Land addressed to the Defendant regarding the encroachment, was only a request and not a directive (page-62).
 - v. PW-1 - admits that he receives monthly unfurnished rental of \$3000.00 from lot 5 and from the balance 3257 square meter land \$2000.00 totaling to \$5,000.00 since the year 2006, while being aware that the Defendant owns the balance Land (including the disputed 3257 square meters) from 1st January 2006 (page-63). The PW-1 also admits that the Defendant pays rental of \$5,700 for the total area of 9,407 square meters while he is in occupation of disputed 3257 square meters, that is covered by both leases of the defendant, for which the Defendant paid Money and bought from the LLD (Page-64 , 65 , 71 & 72.) The above stance of the PW-1 has not changed, though he was subjected to re-examination by his Learned Counsel.
- e. **PW-2, Ms. Torika Solicake Goneca**, the Deputy Registrar of Title has testified on D-3 and D-4 Crown Leases of the Defendant and stated that they are state Leases, registered on 12th January, 2012 and the land therein forms part of Lot 1 in SO

6312. Under cross examination she has confirmed that this Lease is protected Crown Lease.

- f. **PW-3, Mr. Anand Sachin Kumar**, the Surveyor employed by the PW-1, G.P. Reddy, in the year 2012 to carry out a survey. He testified on his Affidavit dated 8th August 2012 filed for the Plaintiff to obtain an injunction in this action against the Defendant and on the drawings annexed thereto, which was marked as P-X at the trial.
- i. It is noteworthy, that in order to demarcate the boundaries of the disputed area of 3257 square meters, he has not relied on any approved survey Plan. Instead he mainly relied on the Memorandum of Agreement (MOA), to carve out and amalgamate the disputed area of 3257 square meters with the Lot 5 in Plan No.SO-2502, which is in 2754 square meters covered by Plaintiff's existing Lease. *"I used the agreement copy to showing the area of 5831 meters squared"* (Pages – 85 & 86.)
 - ii. Under cross examination, he admitted that he did the survey on the instructions of the Plaintiff only and not from the Defendant, neither the Defendant nor an Officer from the Land department was present at the Survey, the Lot 5 in the extent of 2574 square meters had already been identified, prior to his survey and his Plans are not registered (pages- 90-92).
 - iii. Also, it was observed that, this witness gave evasive answers, when a suggestion was made by the learned Defence Counsel regarding an Iron pole, which he claimed to have used to identify the boundary and when questioned whether the Plaintiff had informed that his occupancy was illegal, by saying "No comments" (Pages-92 & 93).
 - iv. All what this witness, as a Surveyor on 30th May 2012, has done is carving out 3257 square meters out of the Land shown in Plan No.SO 2187 situated on the western boundary of the Plaintiff's Lot 5 in Plan No. SO – 2502, in order to fulfill the Plaintiff's requirement of having 5831 square meters as per the MOA, which portion the Plaintiff had already encroached and was occupying without a Lease, claiming that it had got 5831 square meters, when in fact he was entitled only for the defined Lot 5 in Plan No.SO 2502 consisting of 2754 square meters and nothing more.
 - v. He is not an independent witness and his Report and the purported survey Sheets No. 2,3,4,5 & 6 marked as P-X are concocted for the purpose of this case and self-serving, which should be rejected totally along with his evidence.
- g. **PW-4, Mr. Tonga Karutake**, the Assistant Director of Lands, was the last witness for the prosecution, on whom the Plaintiff largely relied on for its case. He had come as a substitute to the Director of land and though, he was not thoroughly

acquainted with all the facts in the bulky file, with only 6 months in office as the Assistant Director, managed to elucidate certain important facts and figures, which in any event were not supporting or substantiating Plaintiff's purported right and claim for a larger extent of land exceeding 2754 square meters, which is correctly shown in Lot 5 depicted in Plan No.SO 2502.

- i. He, through his examination-in-chief and under cross-examination, confirmed that the original Approval Notice of Lease (P-A) was granted to LLD in the year 1984 for an extent of 32.365 hectares of Crown Land without being surveyed and the consent of DOL was duly granted for same. This was not a matter in dispute, among other things, to be confirmed by this witness, in respect of which not even a single issue was raised at the PTC to be answered after the trial.
- ii. Then, the witness was made to speak on the MOA between the LLD and the Plaintiff (P-2) entered in 1992 and the consent being granted for it, which too is not a disputed matter. However, there was nothing in the Department file brought by the witness to prove that the extent given to the Plaintiff was in fact 5831 square meters and the Plaintiff's learned Counsel was totally relying on the Agreement, which states the extent as 5831 square meters. It was on this that the witness too relied on for his answer, when the actual extent was asked from him.
- iii. When the witness was specifically asked whether there was a document that formed as a part of the Agreement to specify the Land given to the plaintiff, the witness referred to a diagram that is now found annexed to the P-2 Agreement, which is in fact a copy of the drawing prepared by plaintiff's Surveyor, the PW-3, exaggerating the extent of Lot 5 in Plan No. SO-2502 as 5831 square meters, when in fact the Lot 5 contained and still contains only 2754 square meters.
- iv. Then, the witness confirmed the Plan No. SO-2502, dated 31st January 1990, on which the said Agreement was entered into and same was approved by the DOL.
- v. Witness also confirmed the granting of Approval Notice of Lease to the Defendant PAC Investment in the year 2006 for the extent of 50.1260 hectares and thereafter granting of lease Nos 18760 and 18764 to the Defendant in the year 2012 and the consent for both was granted. It was also brought out through this witness that the Defendant, with the consent of the DOL, has now entered into Sale and Purchase agreements with Punjas and William & Gosling, which also is a tacitly admitted fact by the Plaintiff .
- vi. Further, there was confusion as to who had committed the encroachment. A letter dated 24th October 2008 sent by the DOL addressed to the Defendant Company portrays a picture as if the Defendant had in fact encroached into

the Plaintiff's Land. It is to be noted that this letter, while being addressed to the Defendant Company, the Copy also has been addressed to the Defendant Company (See the Ex No. 13 in ABD). However, this is only a request by the DOL and finally the truth has surfaced through the letter dated 29.1.2010 addressed to M/s. Vijay Naidu Associates, whereby the DOL gave the Consent for the Defendant to initiate the proceedings against the Plaintiff, stating that it is the Plaintiff who had committed the encroachment into the Defendant's Land.

- vii. I observe that through the answers given by this witness under cross-examination, the position of the Defendant has been further fortified and this has not been debilitated by the Plaintiff through re-examination or any other evidence in preponderance.
- viii. The plaintiff, through this witness, has not been able to adduce any tangible evidence for a favorable consideration of the reliefs it has prayed for in the prayer to the Statement of Claim. The Plaintiff has been granted Lease for 2754 square meters in Lot 5 of SO Plan No 2502 as per the terms of Settlement entered in the HBC-418 of 1996 and it cannot ask anything more, which it has expressly relinquished.

Evidence For The Defendant

- h. DW-1 Mr. Vijay Rajnesh Prasad, the Managing Director of the Defendant Company, gave evidence in support of Defendant's case. Though, at times, he was raising his voice during the evidence (presumably, due to the nature of questions fired at him and the suggestions made to him during the cross-examination), I found him to be speaking the truth substantiating the Defendant's Pleadings and the contents of the documents. In addition to his evidence, the evidence of the Assistant Director of lands (PW-4) also has contributed to strengthen the Defendant's case, particularly in terms of proving the Documents through the Land Department files.

H. SITE INSPECTION

- 15. At the closure of the Plaintiff's case, the learned Counsel for the plaintiff moved to have a site inspection, and with the consent of the learned Counsel for the Defendant, it was carried out on 23rd August 2017 afternoon, before the defence evidence was cross-examined.

Following are the noteworthy points, I observed during the Site Inspection:

- 1. The disputed area is located behind the Plaintiff's Lot No.5 in Plan No.SO-2502 (2754 Sq. m.) towards the western boundary of it.
- 2. The entire area including the disputed area of 3257 sq. meters is fenced by barbed-wire on the 1-1/2 inch G.I pipes planted at 10 to 12 feet intervals and

the entry to disputed area of 3257 square meters is through the plaintiff's Lot 5 in So-2502.

3. Structures in the disputed area shown in the drawing sheet 3 and 4 of the PW-3 Surveyor, are shown by me marked as "C" & "D" in the area marked as "Y" in my sketch and those structures are mainly made of wood, fairly old and temporary in nature.
4. One shed therein (area marked "Y") houses a wood-cutting machine and the other shed in lot marked as "Y", though claimed to be a Wood-Treatment Plant, there is no equipment or facilities for Wood treatment and it is an empty building with a wooden door to enter, which I opened and inspected with the assistance of my Clerk. This is not a wood-treatment plant as claimed by the Plaintiff.
5. Varieties of sawn timber were placed in the open area of the disputed lot "Y" and no major activities were seen in that part.
6. Behind the disputed area (towards west) is an open area, which the Defendant claims by his Leases along with the disputed area.
7. Most notable thing, I observed was the two G.I pipe Poles planted leaving about 6 to 9 inches gap on the middle of the fence, stretching along the Southern Boundary of both the lots "X" and "Y" marked by me. These poles are marked as "A" and "B" in my sketch. The Pole marked "A" seems to be representing Western Boundary of the Plaintiff's Lot 5 (Lot "X") and the Pole "B" seems to be representing the Eastern Boundary of the disputed 3257 square meters portion (Lot "Y"). None of the drawings made by the Plaintiff's surveyor PW-3 shows these closely planted poles. This appears to be a clear evidence to show that these two lots are to be treated as separate Lots.

I. DISCUSSION

16. What were the previous litigations for? Who were the parties therein? And what were the outcomes thereof?

HBC-418 of 1996 G. P. Reddy & Company Ltd v Brian Murphy, Fiji Development Bank & the Attorney General of Fiji.

- a. The above action No HBC- 418 of 1996, by the Plaintiff thereof(Plaintiff in this case as well) was against 3 Defendants aforesaid to compel the 1st Defendant **Lautoka Land Development Ltd (LLD)** to complete the agreed development, subdivision and to have a declaration that the plaintiff was a lessee and entitled to a lease over 5831 square meters of the Land in terms of the Memorandum of Agreement (MOA) that the Plaintiff G.P. Reddy & Co. Ltd and the LLD had entered into on 11th September 1992, for which the Defendant in this case; PAC Investment, was not a party. In the present case this MOA is marked as P-2 by the Plaintiff and D-43 by the Defendant.
- b. Though, the intention of the Plaintiff, G. P Reddy & Co, in the above case No. HBC-418 of 1996 was to have a declaration of Lease ownership for a total extent of

5831 square meters, in terms of the said agreement; it finally settled the case accepting only 2754 square meters, which is clearly depicted as Lot 5 in Plan No. SO-2502 and abandoned the, purported, right and claim for the balance area of 3257 square meters. The Defendant in this case 'PAC Investments' has, subsequently, become the Registered Lessee of the said 3257 sq. meters, along with further extent of Land as per the Registered Crown Lease Nos. 18760 and 18764 both dated 12th January 2012, which are found under items No. 3 and 4 of the Defendant's Bundle of documents. This area of 3257 square meters is, presently, in the possession of the Plaintiff, G.P. Reddy & Co, along with the undisputed area of 2754 square Meters, making total area in occupation as 5831 square meters.

- c. The Plaintiff does not have a Lease of any kind for the 3257 square meters and alleged to be in illegal occupation thereof after encroaching into it exceeding its own area of 2754 square meters, for which only it has a valid Lease. The Defendant does not dispute for these 2754 square meters. This action No. HBC-418 of 1996 stands terminated by signing the Deed of Settlement dated 11th April 2007, through which the Plaintiff accepted 2754 square meters, abandoning any further claims in the site and agreed to release the Hon. Attorney General as a party representing the Director of Lands.

HBC 192 of 2009 Pac Investments and Developments Ltd v G. P. Reddy & Company Ltd.

- a. The above styled action bearing No. 192 of 2009, by M/s. PAC Investments & Development Ltd (the defendant in this action) was filed to restrain the Defendant therein M/s. G.P. Reddy Company Ltd, (the plaintiff in this action) from encroaching and occupying an area of 3257 square meters of land, which is formed by part of Lot -1 in Plan SO 2187 as shown in Sheet 2 and more precisely depicted in Sheets 3 and 4 of the Survey Diagram of Crown Lease No. 13851 found in document No.4 of the Plaintiff's ABD. This disputed lot is also shown in Sheet 6 as a part of Lot 5 in Plan No. SO- 6312.
- b. However, the injunctive relief prayed for in this action No: HBC-192 of 2009, was refused on the ground that the Plaintiff therein, namely, PAC Investment & Development Ltd, had not, by way of a survey Plan, specifically identified the disputed Lot said to be in the extent of 3257 square meters, allegedly, encroached and illegally occupied by the Defendant, G.P. Reddy & Co, and subsequently the action was struck out reserving the right to file fresh action. The relevant orders are marked as **P-14** and **P-15** respectively from the Plaintiff's ABD.
- c. The present tussle before the Court between the parties in this action no. **HBC- 92 of 2012** is for the Plaintiff G.P. Reddy & Co to obtain a separate lease over the aforesaid disputed area of 3257 square meters, into which the Plaintiff, allegedly, encroached and is in illegal occupation; in addition to the Land bearing Lot 5 depicted Plan No. SO-2502, in the extent of 2754 square meters, which is Plaintiff's own Land on a lease, or

Alternatively, to have the said area of 3257 Square meters amalgamated to its existing Lot 5 in Plan No. SO- 2502, which is covered by the Crown Lease No. 13851 firstly issued to LLD and for which the Plaintiff G.P. Reddy & Co, subsequently, became the lessee as per the aforesaid Deed of Settlement entered into on 11th April 2007 in the said action no. HBC 418 of 1996. (The Deed of Settlement is marked as P-2 & D-43). (The said Crown Lease No. 13851 is listed as Doc. No.3 in ABD and as **HI** in Sup. List of the Plaintiff and marked as **P-HI**)

- d. The Plaintiff, G.P. Reddy & Co, now holds the proper and undisputed Transfer Lease bearing No. 707145 dated 24th June 2008 for the said 2754 square meters, which is Lot 5 in Plan SO – 2502. The core dispute between the parties, to be narrated in short, is that the Plaintiff wants 3257 square meters more, for which the Defendant is claiming to be the proper Lessee, along with other areas of the Land, for which it initially obtained the Approval Notice of Lease LD Ref 4/7/3305-2 on 1st January 2006. (**Vide- P-7 in ABD**)
 - e. The Defendant, PAC Investments, has now been issued with Crown Lease Nos. 18760 and 18764 both dated 12th June 2012, for a large extent of Land, including the disputed area of 3257 square meters, being the part of Lot 1 and Lot 5 in SO Plan No. 6312 respectively as shown below. It is to be noted that there are 3 different SO Plans involved in this whole issue being SO-2502, SO-2187 and SO – 6312.
 1. Crown Lease No. 18760 for a portion out of Lot 1 in SO- 6312 for 9407 Sq. m
 2. Crown Lease No. 18764 for a portion out of Lot 5 in SO- 6312 for 8401 Sq. m
 - f. It is for this 3257 square meters, immersed in the Defendant’s above stated Crown Leases, the Plaintiff is behind the Defendant through this action, having expressly abandoned its claim, if it had any, against the Lautoka Land Development Ltd (through the appointed Receivers) and against the Director of Lands, by signing the Deed of settlement on 11th April 2007 in the aforesaid Action No. HBC 418 of 1996. **Vide- Doc No-8** in Defendant’s Bundle of Documents.
17. Careful and objective perusal of the undisputed background history and the evidence unfolded together with the undisputed contents of the documents tendered, throws ample light over the dispute in hand and brings out a clear picture as to where the Plaintiff stands as far as its purported rights and claims are concerned, even before the Court proceeds to answer the issues raised for the trial.
 18. Above all, I observe that the documents tendered at the trial with no objection by both the parties and the undisputed contents therein seem to be of great assistance in arriving at the suitable answers to the issues raised, leading to the most justifiable final decision, even in the absence of the oral evidence, majority of which, with much appreciation to the dedications of the learned counsel for both the parties, now I must say were irrelevant and not to the point in issue.

19. Before I proceed to answer the issues, let me decide as to how the Memorandum of Agreement (MOA) entered into between the Plaintiff and the **Lautoka Land Development Ltd (LLD)** should be looked at for the purpose of this judgment. The MOA is listed as number **2** in the ABD and marked as **D-43**.
- a. I, observe that the said ill-fated MOA between the Plaintiff and LLD, has been portrayed and referred to as an Agreement to Sell and Buy during the evidence of Mr. G. P. Reddy (PW-1) and in most of the letters written by and on behalf of the Plaintiff Company, while it had in fact served only as an Agreement for the Plaintiff to buy and for the LLD to develop the plot of Land, the Plaintiff intended to buy. Paragraphs 5 in page 1 and paragraph 2 in page 2 of the said MOA clearly demonstrate this.
 - b. The MOA was not a formal Agreement to sell and buy in its strict meaning. According to the terms of it, what the Plaintiff in this case had agreed was to buy certain Lot of Land, on its name being recommended to the Director of Lands as a purchaser, on completion of the development works by the LLD.
 - c. It is not in dispute that the LLD failed in its duty by the Plaintiff in terms of the MOA, and went into bankruptcy, which caused the birth of the action no. HBC- 418 of 1996, filed by the Plaintiff against the LLD and wherein the Plaintiff entered into a Deed of Settlement with the appointed Receiver/Manager of the LLD and other parties therein, accepting Lot No 5 in Plan SO -2502 as a full and final settlement abandoning any further claim for Land in the site and against the AG, DOL and LLD.
 - d. The fact that the Defendant hereof, namely, PAC Investments Development Ltd, was not a party, either to the said MOA or to the said action bearing No. HBC-418 of 1996 should be borne in mind in the adjudication of the dispute before this Court now. The Defendant is in the fray now, as a result of its becoming the Lease-holder of the disputed area of 3257 square meters by virtue of Crown Leases No. 18760 and 18764 in January 2012, which is an event long after the date of MOA in 1992, the institution of said action no. HBC-418 of 1996 by the Plaintiff and the Deed of settlement, the Plaintiff, admittedly, entered into with the defendants therein in the year 2007.
 - e. Hence, the Defendant herein cannot be called upon, on any basis, to bear the brunt of any action or omission on the part of the LLD, with whom the Plaintiff had the MOA signed. The Plaintiff has, explicitly, abandoned all its claim against the LLD(through the appointed Manager/Receiver), and the Hon. Attorney General (who represented the DOL) accepting the Lot 5 in SO- 2502 in the extent of 2754 square meters as full and final settlement.
 - f. More importantly, the paragraphs 5 and 7 in the said MOA (marked as P-2 and D-43 by the Plaintiff and the Defendant respectively) draw my attention and I reproduce those paragraphs below for the sake of easy perusal and better

understanding, as to where the Plaintiff stand as far as its purported right for further extent of 3257 square meters is concerned.

- “5. THE Lessee acknowledges that it has caused the said Lot to be inspected and the same is being purchased solely in reliance of its own judgment and not due to any representation or warranty made by the Developer and/or its servants and agents”**
- “7. THE said Land is believed to be correctly described as it appears on the Document at the date of this agreement and that no error or misdescription herein or in the Development Lease shall annul the sale or entitle either party to compensation in any manner whatsoever” (emphasis mine)**
- g. There could not have been any ambiguity, as to the identity of the subject matter when the aforesaid MOA was entered into. Documentary evidence clearly shows that the parties relied on Plan No. SO 2502 for the Plaintiff to purchase and the LLD to develop and recommend the name of the Plaintiff to DOL only the Lot 5 therein, which is consisted of 2754 square meters, to obtain a Lease for 99 years on payment of the prescribed amount. Once the plan and the Lot numbers are specifically mentioned in the agreement, the area or the extent covered by it stands determined once and for all. In this instance it was Lot No. 5 in Plan No.SO 2502, which consisted only 2754 square meters.
- h. It appears that the root cause for this prolonged dispute, running for nearly for 26 years, is due to nothing but the wrong description of the extent of the Land as 5831 square meters in the MOA, instead of mentioning 2754 square meters. Even in the absence of the actual extent in square meters, there need not have been any ambiguity in it as the particular Plan and the Lot numbers were correctly described as Plan No. SO 2502 and Lot 5 in the MOA. There was in fact no ambiguity in it for any of the parties to be misled and make any claim subsequently. Such a claim has been clearly ruled out by paragraphs 7 of the MOA as highlighted above. The Plaintiff is bound by the above clause and precluded from making any claim arising out of such misdescription.
- i. In his attempts to justify the Plaintiff’s claim, the PW-1 has got certain drawings done as shown in sheets 3, 4, 5 & 6 and annexed as document number 4 to the ABD to depict the extent of Lot 5 as 5831 square meters. Those drawings and evidence on them are self-serving.
- j. Further, the above highlighted paragraph 5 of the said agreement is very clear, where it says that the Plaintiff as the lessee purchases the subject matter land solely on reliance of its own judgment and not due to any representation or warranty made by the developer and/or its servants and agents. This clause, undoubtedly, operates as a hurdle and curtails the Plaintiff from seeking any remedy against anyone under any circumstances.

20. In the light of the above, I find that most of the agreed issues raised before this Court are redundant, irrelevant and should be subjected to adjudication only in the presence of LLD or the DOL as parties to the action. However, even if those issues are answered in either way in the absence of those parties, it need not, necessarily, have any tangible effect in the final outcome of this case.
21. However, with the above observation in mind and in fairness to both the parties, I shall endeavor to attract the most suitable answers to the issues raised, in order to arrive at the most justifiable final decision, by deeply delving into the oral and documentary evidence unfolded before me during the trial.

J. DETERMINATION OR ANSWERS TO THE AGREED ISSUES- EVIDENTIAL & LEGAL

22. Answers to Issues

1. **Issue-1:** The issue here is whether the 5831 square meters of Land, which according to the Plaintiff was the subject matter of the Agreement it had entered into with LLD, was covered by the Development Lease given to the LLD. An affirmative answer to this issue is already found in the 4th agreed facts stated above. It is an admitted fact.
2. **Issue-2:** The agreement says so. But, this is an issue to be adjudicated between the Plaintiff and the LLD and not with the Defendant in this case. Hence, there is no need to answer.
3. **Issue-3:** No. The Plaintiff paid Money only for 2754 square meters of Land shown as Lot 5 depicted in Plan No.SO-2502 as per the Deed of Settlement entered into with the Receivers of the LLD on 11th April 2007 in Action No. HBC 418 of 1996 and not for 5831 square meters. Vide paragraph 17 in the Deed of Settlement- Doc No-8 in DBO.
4. **Issue-4:** Any amount paid directly to the LLD, prior to its winding up, under the Agreement with it is not proved. But \$82,000.00 has been paid to the Receiver of the LLD only for 2752 Square meters as per the Deed of Settlement.
5. **Issue-5:** Not proved.
6. **Issue-6:** Handing over the possession of 5831 square meters to the Plaintiff not proved. The Plaintiff when entered into the possession of his Lot 5 in SO-2502 in the extent of 2754 square meters, encroached into the adjacently located disputed area of 3257 square meters.
7. **Issue-7:** This issue is vague as it does not specify the extent. Not answered.
8. **Issue-8:** The Plaintiff's Agreement with the LLD was not for 5831 square meters. It was only for 2754 square meters in Lot 5 in Plan No.SO 2502. The Plaintiff is precluded from relying on any representations, allegedly, made by the DOL in terms of paragraph 5 of the MOA marked P-2.

9. **Issue-9**: No. The Crown Lease No. 13851 (marked H I) received by the Plaintiff for 2574 square meters was as full and final settlement and not a part performance.
10. **Issue-10**: Yes. The Deed of settlement in Civil Action No.HBC-418 precludes the Plaintiff from bringing this action and the Defendant can claim estoppel.
11. **Issue-11**: This issue need not be tried in this action as it does not involve the Defendant.
12. **Issue-12**: Yes. The Plaintiff has abandoned any further claims against the LLD through the Receiver by way of the Deed of Settlement in HBE-418 of 1996.
13. **Issue-13**: The Plaintiff's occupation of all the 5831 square meters is within the knowledge of the DOL, But it has the consent of the DOL only for Lot 5 consisting of 2754 square meters.
14. **Issue-14**: No. The letter dated 23rd September 1993 marked P-5 speaks only about Lot 5 on SO 2502, which is 2754 square meters in extent. This letter does not state about 5831 square meters.
15. **Issue-15**: No. Lot 5 in SO 2502 does not contain 5831 square meters.
16. **Issue-16**: Yes. It is proved by evidence of PW-2 and PW-4.
17. **Issue-17**: Yes. The Plaintiff has no right over the disputed 3257 square meters. The Defendant's development rights over this area of Land supersedes Plaintiff's purported claim.
18. **Issue-18**: No. The Defendant is not estopped from trying to evict the Plaintiff from the disputed area of 3257 square meters.
19. **Issue-19**: No. The Defendant's development right over the disputed area is not subject to any implied terms as the Plaintiff has no any right or interest over the disputed area of Land. There is no obligation to be honored by the Defendant on behalf of the DOL.
20. **Issue-20**: The DOL has already given the consent to the Defendant by letters dated 27.03.2012 and 22.09.2008 (Documents No. 1 & 6 in D.B.D respectively) to institute proceedings against the Plaintiff as the DOL has found that the Plaintiff has encroached into Defendant's Land. Hence, there cannot be any further investigation by the DOL. Any facts about a pending investigation have not been brought out at the trial through the witness from Department of Land.
21. **Issue-21**: No. It is a miscommunication (Vide P-13 letter dated 24th October 2008 addressed and copied to same person- it must be a letter addressed to the Plaintiff and copied to the Defendant). After the DOL giving consent to the Defendant by his letter dated 22nd September 2008 to institute proceedings on the basis the Plaintiff has encroached, he could not have sent the P-13 Letter to the Defendant to regularize any encroachment, except to the Plaintiff.
22. **Issue-22**: No. there is no obligation on the part of the DOL towards the Plaintiff for the Defendant to be bound by it. The structures found in the disputed lot are very old and not permanent. Any developments done by the Plaintiff therein are on its own risk and without the consent of the DOL. However, the structures found in the disputed area are deviating from the Plans marked D-50 and D-51 (Structures shown in Sheet 3,4 in of the

document No.4 in the ABD may be compared with those in Plan D-50 and 51). This invalidates the approval, if any, given by the Local authority, unless the Plan was duly amended, and the mere approval will not place the Plaintiff at any better position in this regard.

23. **Issue-23**: No. There was no existing Lease in favor of the Plaintiff over the disputed area for the operation of clause 5 in the Approval Notice of Lease marked P-7 granted to the Defendant in the year 2006.
24. **Issue-24**: No. The condition in clause 5 will not apply in respect of 3257 square meters. Further, it is not a party of any existing leasehold commitment.
25. **Issue-25**: Not proved.
26. **Issue-26**: No need to answer.
27. **Issue-27**: Not proved.
28. **Issue-28**: Not proved. Any action, if taken, by the Defendant is in exercise of its due rights.
29. **Issue-29**: Not proved.
30. **Issue-30**: Not proved.
31. **Issue-31**: Does not arise as no damages proved.

K. COUNTER CLAIM

23. On the Defendant's claim for loss and damages in paragraph 71 of the Statement of defence, I decide as follows.
 - a. The Defendant has, from paragraphs 47 to 71 of its statement of defence, pleaded loss and damages by way of counter-claim, which it estimates in a total sum of \$1,042,668.11 and, accordingly, prayed for same in paragraph (b) of the prayer to the statement of defence.
 - b. When the learned counsel for the Defendant attempted to lead evidence of the DW-1 on the above, it was vehemently objected by the learned counsel for the Plaintiff on the ground that there are no agreed issues raised at the PTC on this. However, after hearing both the counsel, court overruled the objection and permitted the evidence to be led.
 - c. The absence of agreed issues at PTC need not necessarily prohibit or curtail the evidence being led on it, provided sufficient averments and prayers are there in the pleadings. Framing of issues based on the pleadings, is a duty on the trial judge and it is performed by the Solicitors/Counsel at the PTC in order to curtail the time that might be consumed in the well of the Court for that process. Even if the pleadings on a particular matter appear to be insufficient, the right of a party to lead evidence on such matter need not necessarily be curbed, if no prejudice would be caused to the opposing party, since it is through the evidence at the trial the addition of flesh and blood to the Skeleton of Pleadings takes place.

- d. However, the Defendant has not provided sufficient evidence and/or substantiated its counter claim for loss and damages as particularized under paragraph 71(a), (b), (c), (d) & (e) of the statement of defence, by calling the relevant witnesses, particularly, from the relevant Banks. Hence, the relief in terms of counter-claim as per paragraph 71 cannot be considered in favor of the Defendant.

24. **Claim for General Damages**

Considering the nature of the case, and the damages that could, possibly, have been caused to the Defendant by other means, and being satisfied that the damages have been caused to the Defendant, I am of the view that the damages under this head should be assessed at a separate hearing.

25. **Exemplary & Punitive Damages**

- a. The Defendant in its prayer (e) moves for exemplary and punitive damages. The Defendant originally became the Development Lease Holder as per P-7 on 1st January 2006. Subsequently, it became the registered owner of two separate Leases 18760 and 18764 in January 2012, in which the disputed area of 3257 square meters of land is included.
- b. The action bearing number HBC 192 of 2009 filed by the Defendant in 2009 for injunctive relief was struck out due to non-identification of the disputed lot by a Survey plan; however, reserving Defendant's right to file fresh action. Before the Defendant files a fresh action, the Plaintiff hereof, being a trespasser, chose to file this action against the Defendant in 2012, even without the consent of the DOL.
- c. The DOL had declined the consent to the Plaintiff to file action and gave same to the Defendant as the Plaintiff, reportedly, was encroaching into the Defendant's Land (disputed area) about which the Plaintiff was put on notice and well aware of. The Plaintiff has deliberately made the Defendant to suffer over a period of nearly 13 years in terms of the benefits, the Defendant Company legitimately expected out of this project.
- d. The Plaintiff, not as an owner and being a trespasser, even without the consent of the DOL to institute this action and having foregone his claim for extra land, proceeded to do so, which is frivolous, vexatious and abuse of process of Court. In my view, the Plaintiff should be dealt with by imposing a substantial amount as exemplary and punitive damages.

26. **Costs**

- a. The Defendant in defending it in this action must have incurred a substantial amount by way of cost. The Defendant soon after becoming the holder of the Development Lease on 1st January 2006, by its letter dated 16th February

2006(Doc. No.27 in page 85 of DBOD) put the Plaintiff on notice about its encroachment.

- b. The Defendant was made to go through a laborious, protracted and costly litigation to safeguard and vindicate its rights, due to the above stated conduct and actions of the Plaintiff. However, I bear in mind that the cost should be limited to this action. Accordingly, I decide a substantial amount should be awarded to the Defendant by way of cost in this action.

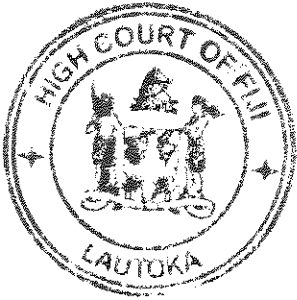
L. CONCLUSION

- a. I arrive at the final conclusion that, according to the terms of the MOA entered into between the Plaintiff and the LLD on 11th September 1992, the Land agreed to be leased to the plaintiff was Lot 5 in Plan No SO 2502, which was and is comprised of 2754 square meters only.
- b. The claim of the Plaintiff for further extent of 3257 square meters is unfounded, and the Plaintiff cannot capitalize on the error/misdescription occurred in the MOA, by describing the extent of the Land as 5831 square meters, when the Land intended to be given and taken was predetermined by reference to the particular Lot-5 depicted in Plan No.SO 2502, which was is in the extent of 2754 square meters. The paragraphs 5 and 7 of the MOA operate as a bar for any claim by the Plaintiff in this respect.
- c. The Plaintiff having ,explicitly, abandoned its claim against the LLD and the Director of Lands for further extents of Land in the site, by entering into a Deed of Settlement on 7th April 2007 in the action No. HBC- 418 of 1996 and being aware of the facts that the Defendant was initially a Development Lease Holder from 1st January 2006 and subsequently became the legal Lease Holder of the disputed area of Land, encroached into it and continues to remain therein causing damages to the Defendant.
- d. Plaintiff is not entitled for any relief prayed for by it and its action should be dismissed with an order in favor of the Defendant for substantial cost, punitive damages decided by this court and for general damages to be duly assessed.
- e. The Defendant's counterclaim for loss and damages in terms of paragraph 71 of the Statement of defence should be declined for want of proof.

M. FINAL ORDERS

1. Plaintiff's action is hereby dismissed.
2. The Defendant's counterclaim for loss and damages in terms of paragraph 71 of the statement of defence is declined.

3. General damages in favor of the Defendant are to be assessed before the learned Master.
4. The Plaintiff shall pay unto the Defendant a sum of \$30,000.00 as punitive & exemplary damages and interest of 6% on it from the date of this judgment.
5. The plaintiff shall pay unto the Defendant a sum of \$ 15,000.00 as summarily assessed costs.



A. M. Mohammed Mackie
Judge

At Lautoka
6th July, 2018