

THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 268 of 2012

BETWEEN : **FRANK RAM** of Naicele Farm, Kasavu in the District of Naitasiri, Retiree.
PLAINTIFF

AND : **RAJA RAM** of Auckland Street, Verata Wailevu in the province of Tailevu.
1ST DEFENDANT

AND : **RAJA'S FARM** Certificate of Registration No. RCBS 2010/1657, an entity engaged in the business of Poultry Farming, of Kasavu in the Central Division.
2ND DEFENDANT

AND : **DONALD RAM, RONALD RAM and SONALD RAM** all of Auckland Street, Verata Wailevu in the province of Tailevu.
3RD DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD** The Trustee Corporation created by iTaukei Land Trust Act, Cap 134 and having its registered office at 431 Victoria Parade, Suva.
4TH DEFENDANT
(NORMINAL DEFENDANT)

BEFORE: Master Vishwa Datt Sharma

COUNSELS: No appearance by the Plaintiff
Mr. Pranish Kumar for the Defendants

Date of Ruling: 19th July, 2018 @ 9am

JUDGMENT

[Defendant's Summons seeking striking out of the Plaintiff's Claim and seek an order for vacant possession on the Defendant's Counter-Claim against the Plaintiff]

INTRODUCTION

1. This is the 1st, 2nd and 3rd Defendants' Counter-Claim application against the Plaintiff seeking the following orders-
 - (a) *That the Plaintiff's Statement of Claim dated 26th September 2012 be dismissed with costs;*
 - (b) *That Judgment be entered in favour of the 1st, 2nd and 3rd Defendant as per the Counter Claim filed on 19th November 2013;*
 - (c) *For such further or other orders as the Court may deem fit to make in the circumstances.*
2. This application is made pursuant to *Order 18 Rule 18 and Order 34 Rule 2 of the High Court Rules, 1988* and the Inherent Jurisdiction of this Honourable court.
3. The **Statement of Defence** and the **Counter-Claim** was filed on 19th November, 2013 and a **Reply to Defence and Counter-Claim** was filed on 03rd March, 2014.
4. This matter was adjourned from time to time as the Plaintiff's Counsel had lack of instructions from the Plaintiff until such time on 25th January, 2016 it prompted the Plaintiff Counsel representing to file a Summons seeking an order to withdraw as Plaintiff's Solicitors.

THE LAW

5. The law dealing with counter-claim against a Plaintiff is provided for in *Order 15 of the High Court Rules, 1988* as follows-

Counterclaim against plaintiff (O.15, r.2)

2 (1) Subject to rule 5 (2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

6. Order 18 Rule 18 deals with Striking out pleadings and endorsements (O.18, r.18)....
7. Order 34 (2) deals with Pre-trial conference (O.34, r.2).

ANALYSIS and DETERMINATION

8. The Plaintiff's Statement of Claim was filed on 26th September, 2012 claiming **Breach of Agreement and Breach of Trust** together alleging **Unjust Enrichment** on the part of the Defendants.
9. The Defendants filed a **Statement of Defence and Counter-Claim** and subsequently a **Reply to the Defence and Counter-Claim** was filed accordingly. The Pleadings was hence closed.
10. The parties moved on with the next cause and obtained orders on the Summons for Directions and simultaneously filed their respective Affidavit verifying List of Documents.
11. Hereafter, this matter was adjourned from time to time as the **Plaintiff's Counsel** was in difficulty faced with lack of instructions in the matter and was unable to move any further for lack of instructions.
12. This prompted the **Plaintiff's Counsel** to file an application and seek an order to **withdraw** as Counsel representing the Plaintiff further in this action.
13. The **Plaintiff's application** via Inter-Parte Summons sought for the following orders-
 - *Leave be granted to withdraw as Solicitor for the Plaintiff;*
 - *Leave be granted to serve this Summons to withdraw and accompanying affidavit with any other relevant document or the abovementioned Plaintiff and the within 2nd 3rd and 4th Defendants by way of substitute service (If any required) by advertising the same in one of the local daily circulated within country.*
14. The **Inter-Parte Summons** was filed by the Plaintiff together with an affidavit in support deposed by Solicitor's law clerk, Jiutasa Cakautini who at paragraphs 4, 5 and 9 deposed as follows-
 - *P4- That proceedings and support by client had proceeded well until the client had gone overseas ..."*
 - *P5- That since client went overseas, he left no forwarding address despite there being this case pending in the High Court"*
 - *P9- That we have located a relative who is aware of the Plaintiff's whereabouts and she is willing to serve papers on him.*
15. The Plaintiff was granted **leave to withdraw as Counsel** representing the Plaintiff after this court was satisfied that the Plaintiff's Counsel had advertised the application in the local daily. The reason for advertisement service by court was granted on the strength that the Plaintiff's address shown on every document filed in court was a local address of- "***Naicele farm, Kasavu in the District of Naitasiri, Retiree.***
16. Simultaneously, the **Defendants** realising the **delay** in the matter, thought fit and proper to proceed with a **Summons** and seek the following orders-
 - *That the Plaintiff's Statement of Claim dated 26th September 2012 be dismissed with costs;*

- *That Judgment be entered in favour of the 1st, 2nd and 3rd Defendant as per the Counter Claim filed on 19th November 2013; and*
 - *For such further or other orders as the Court may deem fit to make in the circumstances.*
17. The perusal of the **Defendant's Counter-Claim** sought for the following orders-
- (a) *An order against the Plaintiff for immediate vacant possession of the property described as Lease No. 14673;*
 - (b) *Costs of this action; and*
 - (c) *Any further or other relief as this Honourable court may deem just.*
18. Since the Counsel for the **Plaintiff** was given the leave to withdraw as Counsel, this court saw fit and appropriate to direct the Defendants to serve their Summons onto the Plaintiff seeking orders for striking out of the Plaintiff's claim and that judgment be entered against the Plaintiff on the counter-claim accordingly.
19. The **Defendants** filed an **Ex-Parte Summons** and obtained the order for **substitute service by advertisement** and accordingly advertised the Summons in the local daily and complied with the service as required of them. Again, the reason for advertisement service by court was granted on the strength that the Plaintiff's address shown on every document filed in court was a local address of- "**Naicele farm, Kasavu in the District of Naitasiri, Retiree.**"
20. The **affidavit of service** by advertisement was filed into court and proved that the service has been appropriately effected on the Plaintiff. This court therefore noted that there was no appearance by the Plaintiff either in person or by Counsel Representation. This was a clear indication to this court that the Plaintiff did not have any interest in this case hereafter or so.
21. This Court then proceeded to hear the Defence counsel and the Counsel representing the 4th Defendant, iTaukei Land Trust Board on their respective oral and Affidavit evidence.
22. The Counsel representing the 4th Defendant, iTaukei Land Trust Board confirmed that it is a Trustee Corporation created by the iTaukei Land Trust Act, cap 134 that is charged with the responsibility of managing iTaukei lands for the benefit of iTaukei owners. Further they were the custodian of all iTaukei Land and Leases including the subject lease of this matter. She confirmed that the orders sought by the **Defendants** are with regards to the **vacant possession of the Native Lease No. 14673 and Instrument of Tenancy Reference No. 10448.** The lease on this Instrument of Tenancy is given to the 1st Defendant, Raja Ram and the lease period is for a period of and expires in 2036. Therefore, she submitted that the 1st Defendant has the locus standi to bring in this counter-claim proceedings and seek an order for vacant possession against the Plaintiff of the respective Native lease No. 14673 and the Instrument of Tenancy No. 10448.
23. The Counsel representing the Defendants sought for the orders for the vacant possession against the Plaintiff and Costs of \$4,000. He confirmed to court that service of the documents as ordered by this court has been complied with and supported the same with an affidavit of service accordingly.
24. After a careful consideration of the submissions by the Defence Counsel and the Counsel representing the 4th Defendant iTaukei Land Trust Board, this court is satisfied with the affidavit

evidence and the submissions of the Counsels sufficient to accede to the orders sought on the counter-claim for vacant possession and costs.

25. Accordingly, I grant the Order for **Vacant Possession** against the **Plaintiff** as sought by the **Defendants** on their **Counter-Claim**. The Plaintiff to give the **1st 2nd and 3rd Defendants** the **Vacant Possession** of the **Native Lease No. 14673** and **Instrument of Tenancy Reference No. 10448**, within one (1) calendar months' time, on or before **19th August, 2018 @ 4pm**.
26. *Further*, I grant the Order that the Plaintiff's Writ of Summons together with the Statement of Claim dated **26th September 2012** be struck out and accordingly dismissed for non-appearance.
27. However, this court is of the view that the costs of \$4,000 sought for in the circumstances by the Defence Counsel representing the **1st 2nd and 3rd Defendants** is **exorbitant**. There is no evidence before this court as to how the cost of \$4,000 is arrived at by the Defence Counsel. There will be no order for any costs to the **4th Defendant** at the discretion of this court.
28. Therefore it is only appropriate, just and fair that I grant **summarily assessed costs** at my discretion of **\$1,000** taking into consideration the **age** of this case and the **manner** in which it was handled and **conducted** by the parties and counsels representing the parties to this proceeding.
29. For the aforesaid rational, I proceed to make the following Final Orders the **1st 2nd and 3rd Defendants Counter-Claim**.


FINAL ORDERS

- a. The Plaintiff's Writ of Summons together with the Statement of Claim dated **26th September 2012** be struck out and accordingly dismissed for non-appearance.
- b. The Plaintiff to give Vacant Possession of Native Lease No. 14673 and Instrument of Tenancy Reference No. 10448 to the **1st, 2nd and 3rd Defendants** within **One (1) Calendar months' time** on or Before **19th August, 2018 @ 4pm**.
- c. The Plaintiff is ordered to pay the **1st, 2nd and 3rd Defendants** summarily assessed costs of **\$1,000** within 14 days hereof.
- d. There will be no order as to costs to the **4th Defendant** at the discretion of this Court.
- e. Orders accordingly.

DATED AT SUVA 19TH DAY OF July, 2018



cc.: Frank Ram of Nandasiri, (In Person)
Nands Law, Suva


Master
VISHWA DATT SHARMA