

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 291 of 2017

BETWEEN : **TOMU MAIRI** **PLAINTIFF**

AND : **B.D. LAKSHMAN & SONS (PROPERTIES) LIMITED** **FIRST DEFENDANT**

AND : **REGISTRAR OF TITLES** **SECOND DEFENDANT**

AND : **ATTORNEY GENERAL** **THIRD DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr K Chambers [Naco Chambers]

FIRST DEFENDANT : Ms N Choo [R Patel Lawyers]

SECOND & THIRD DEFENDANT : Ms P Singh [Office of the Attorney-General]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 7th February 2019

INTERLOCUTORY JUDGMENT

[Striking Out – Order 18(1)(a)]

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1. This is the First Defendant's application a summons to strike out the Plaintiff's Statement of Claim against the First Defendant or to remove the First Defendant from the proceedings.

Said application is made pursuant to Order 18 rule 18(1)(a) of the High Court Rules.

2. According to the First Defendant, the Plaintiff's claim discloses no reasonable cause of action against the First Defendant.

3. In his statement of claim the Plaintiff pleads following:
- i. He is in adverse possession with approximately 90 members of his extended family as his invitees of a freehold land known as Part Laqeri contained in CT 25/2494 and Vaivakaroko contained in CT 25/2495 situated at Navua.
 - ii. He has been in adverse possession for not less than 20 years prior to 15 February 2017;
 - iii. On or before 15 February 2017 the Plaintiff became entitled to a vesting order for all free simple entitlements to the land by operation of the provision in Part XIII of the Land Transfer Act, to registration of his fee simple estate, and to the issue of new certificate of title by the 2nd Defendant [Registrar of Titles] in the Plaintiff's name;
 - iv. On 06 July 2017 Plaintiff made an application to the 2nd Defendant for a fee simple vesting order for the land;
 - v. On 16 February 2017 the First Defendant filed three (3) originating application in the High Court at Suva to recover possession of Vaivakaroko without colour of right and without serving or giving any notice to the Plaintiff of the application.
 - vi. On or about the First Defendant obtained three (3) consent orders for vacant possession of Vaivakaroko without color of right and without notice to the Plaintiff;
 - vii. On or about the 14 and 15 August 2017 the First Defendant by its servant or agent Mr Jeet, its Manager and Mr Viliame Nanantonio from Wood & Jepson and others breached a Court of Appeal injunction dated 1 August 2017 by entering Laqeri without color of rights and without consent from the Plaintiff.
 - viii. As a result Plaintiff suffered loss and damages. Hence under the First Cause of Action for Abuse of Court Process the Plaintiff seeks orders for permanent injunction against the First Defendant not to enter or either wise interfere with the possession of the land. He also seek special damages \$1,000 for 10 destroyed guava trees at \$100 per tree; general damages in the sum of \$10,000 and exemplary damages.
 - ix. Under the 2nd Cause of Action for trespass the Plaintiff alleges that from 27 July 2017 until 1 August 2017 the First Defendant wrongfully and without color or right entered onto the land and

trespassed on the land and boarded up the Plaintiff's house and threatened to demolish it.

The Plaintiff further alleges the First Defendant by its servant or agents Mr. Jeet and Mr Nanantonio entered the land and cut down fruit trees.

Since 2 September 2017 First Defendant or its servants or agents have entered the land without consent order from the Plaintiff and removed sand and gravel on the land.

Plaintiff is claiming Permanent injunction general damages and exemplary damages.

- x. The 3rd Cause of Action is for conversion. It is alleged First Defendant or its servants or agents since 7 September 2017 entered the land and removed sand and gravel.
- xi. Fourth (4th) Cause of Action is for breach of constructive trust and/or fiduciary obligation.

4. The First Defendant via their Statement of Defence state as follows:

- i. Permission to occupy and reside on the land does not equate to an automatic right to adverse possession.
- ii. The Plaintiff is not in occupation of the land but resides in a village located on CT 25/2495;
- iii. The First Defendant is the registered proprietor of land and the Plaintiffs claim of adverse possession is in effectual against the First Defendant until perfected by the issue of a vesting order and no such order has been granted by the 2nd Defendant.
- iv. The First Defendant owns three (3) undivided four shares in CT 2495 and 17 of undivided 20 shares on CT 2494. The First Defendant purchased the shares in 1974 to 1976.
- v. Notice was not served on Plaintiff as he resided in Cagilaba Village;
- vi. The Defendant as registered proprietor of land permitted Wood & Jepson to enter the property and conduct the survey for the purpose of submitting of the same before the Court of Appeal in ABU 88 of 2017 to show the Court illegal possession of CT 2495 by Morels and Jim Noel.

- vii. The sand and gravel forms part of the said land owned by the First Defendant.
 - viii. The First Defendant owed no fiduciary obligation to the Plaintiff who has been illegally squatting on the First Defendant's land;
5. As per the Statement of Defence of the 2nd and 3rd Defendant
- i. The First Defendant is the registered proprietor of 17/12 share of CT 25/2494;
 - ii. The settlers of Cagilaba including the Plaintiff have resided on the Defendant's land for 40 years and it was agreed by the First Defendant that the Villagers will not be displaced and in good faith allowed to reside on the land;
 - iii. The Plaintiff with the villagers were squatting on First Defendant's land and now attempting to fraudulent obtain vesting orders against the land;
 - iv. The Plaintiff is an illegal squatter with no vesting orders;
 - v. Application for adverse possession only made after First Defendant applied for eviction against Abraham Morel, Jim Morel and Jim Noel;
 - vi. The First Defendant obtained consent order for vacant possession in HBC 43, 44 and 45 of 2017 against the three;
 - vii. The Plaintiff has no claim for vesting orders as the registered proprietors have been dealing with the property within last 20 years;
 - viii. An application for vesting orders was lodged on 6 July 2017 and returned as 2nd Defendant was of the view that the Plaintiff had not satisfied sections 78 and 79 of the Land Transfer Act.
6. The First Defendant's submitted that the Statement of Claim discloses no reasonable cause of action.

It is the proprietor of land on Vaivakaroko and Laqeri on CT 2494 and CT 2495 and notice to Plaintiff was not required to remove illegal dwellers being Abraham Morel, Jim Morel and Jim Noel.

When the Writ was filed, the Plaintiff was aware that the Court of Appeal injunction was discharged on Civil Appeal ABU 0088 of 2017 and reason for discharge was that the Plaintiff was not in occupation of the property.

The Plaintiff is misleading the Court that there is an injunction order when the order was discharged prior to filing of the Writ of Summons. Hence the cause of action is an abuse of process and of no merits.

The First Defendant did not require Plaintiff's permission to enter its properties. There are no Court orders, injunction prohibiting the First Defendant from entering the property.

The 2nd Defendant in their Statement of Defence stated the application for vesting order was returned as Plaintiff failed to satisfy Section 78 and 79 of the Land Transfer Act.

The First Defendant held no constructive trust or fiduciary obligation with the Plaintiff. The properties are owned by the Plaintiff with no previously arrangement with Plaintiff to give rise to constructive trust.

7. As per the Court of Appeal's order dated 1 September 2017 the Notice of Appeal in ABU 88 of 2017 was deemed abandoned and the Interim Injunction granted on 1 August 2017 was discharged.
8. The Writ of Summon was filed on 11 October 2017.
9. The First Cause of Action is for abuse of court process on paragraph 9, allegation are for breach of the Court of Appeal injunction dated 1 August 2017.

With Interim Injunction been discharged the Plaintiff cannot plead against the First Defendant for injunction based on the Court of Appeal's interim order.

10. Further the Plaintiff admit the First Defendant on 19 July 2017 obtained Consent Order for possession of land "Vaivakaroko".

With there being an order for possession in favour of the First Defendant, I do not find a cause of action for trespass and conversion [second and third cause of action] can lay against the First Defendant.

11. For the 4th Cause of Action, findings are the First Defendant had every right to commence proceeding for possession. These were not against the Plaintiff but the Morels and Jim Noel. The Plaintiff has stated the reason why the Plaintiff was not a party to the proceedings as he did not reside on the given property.

There is no evidence of pre-existing arrangement with the Plaintiff giving rise to a constructive trust to freehold interest in the properties.

12. As such I uphold the First Defendant's application and make orders that the statement of claim against the First Defendant is to be dismissed and it be removed from the proceeding.

13. The Plaintiff is further ordered to pay costs summarily assessed at \$1,000. Said cost is to be paid within 14 days.





Vandhana Lal [Ms]
Acting Master
At Suva.