

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

CIVIL ACTION NO. HBC 29 OF 2015

BETWEEN : **AMAL ABHINESH KUMAR** of Koronubu, Ba, Fiji, Welder, as the
Executor and Trustee of the **ESTATE OF BABU RAM** aka **BABU**
LAL in his personal capacity.

FIRST PLAINTIFF

AND : **MOHINI MALA** of Koronubu, Ba, Fiji, Domestic Duties as the
Executrix and Trustee of the **ESTATE OF BABU RAM** aka **BABU**
LAL in her personal capacity.

SECOND PLAINTIFF

AND : **I-TAUKEI LAND TRUST BOARD** statutory body duly incorporated
under section 3 of the Native Land Trust Act Cap 134 Laws of Fiji.

DEFENDANT

Appearances : Mr N. Padarath for the plaintiffs
: Ms E. Raitamata with Mr W. Macinabitu for the defendant
Date of Trial : 2 & 3 March 2020
Date of Submissions: 05 May 2020 (defendant) and 13 May 2020 (plaintiff)
Date of Judgment : 27 May 2020

J U D G M E N T

Introduction

[01] The plaintiffs bring this action against the defendant claiming relief:

- a. *A declaration that the defendant was required to give notice to the plaintiffs that their application for the renewal of the lease had been refused.*
- b. *An order requiring the defendant to provide written reasons for refusing to renew the lease in the name of the plaintiff and for issuing a lease of the land to Josateki Vale.*
- c. *An order that the defendant provide a copy of the lease issued to Josateki Vale together with its terms and conditions to the plaintiff.*
- d. *A declaration that the defendant is required to compensate plaintiff the full market value of the house on the land as at the date on which the lease was issued to Josateki Vale.*
- e. *Judgment for first plaintiff in the sum of \$100,000.00 (One Hundred Thousand Dollars).*
- f. *Aggravated and punitive damages.*
- g. *Costs.*

[02] The claim arises of a Crown Lease No. 4536.

The parties

[03] The parties to this action include:

- 3.1 Amal Abhinesh Kumar, the first plaintiff is beneficiary under the Estate of Babu Ram.
- 3.2 Mohini Mala, the second plaintiff is the executrix and trustee of the Estate of Babu Ram also known as Babu Lal, who was the registered lessee of Crown Lease Number 4636 and suing through its administratrix.
- 3.3 i-Taukei Land Trust Board (TLTB), the defendant is a statutory body duly incorporated under section 3 of the Native Land Trust Act Cap 134 Laws of Fiji.

The facts

- [04] The Director of Lands granted a Crown Lease No. 4636 (the '*lease*') to Babu Ram aka Babu Lal over the land known as Lot 7 Tauvegavega subdivision on BA 2178 in the Tikina of Ba, in the Province of Ba, containing an area of 16.7 perches (the '*land*').
- [05] On or about 30 November 2000, the lease was converted to a Native Lease by virtue of the *Native Land Trust (Amendment) Act 2002*. As a result, TLTB became the lessor of converted lease.
- [06] The lease was granted to Babu Ram for a period of 25 years commencing on 1 October 1969.
- [07] The statement of claim pleads that: upon grant of the lease, Babu constructed a dwelling house on the land ('*dwelling house*') and upon or prior to the expiration of the lease, Babu Ram applied for a renewal of the lease. On or about 24 September 2002, TLTB wrote to the plaintiffs confirming that it had now become the lessor of Crown Lease Number 4636 and required the plaintiffs to clear all the arrears in rental. On 14 November 2002, TLTB accepted payment of rent from the plaintiffs. TLTB continued to accept further rental from the plaintiffs for the lease. TLTB did not take steps to remove the plaintiffs from the land or from seeking removal of the dwelling house built by the plaintiffs on the land.
- [08] The plaintiffs allege that: upon conversion of the land to Native Lease, a person by the name of Josateki Vale represented to the first plaintiff that he was the traditional landowner and was entitled to the proceeds from the land that was occupied by the plaintiffs. TLTB represented to the first plaintiff that if he would make an application with the consent of the traditional landowners, he would be granted a lease in his name, as he was the sole beneficiary under the Estate of the second plaintiff. Upon reliance on this representation, the first plaintiff paid considerable sums of money to Josateki Vale and on or about 14 November 2002, lodged an application for renewal of lease in his personal name.
- [09] It is also alleged in the statement of claim that in breach of the representations made and the terms and conditions of Crown Lease Number 4636, TLTB,

sometime in the year 2011, issued a lease in the name of Josateki Vale. The particulars of breach include:

9.1 Despite the representation, the defendant did not issue a renewed lease to the first plaintiff.

9.2 In breach of the terms of Crown Lease No. 4636 and the representations, the defendant did not inform either of the plaintiffs on whether the lease had been extended or not.

9.3 In breach of the provisions of Crown Lease No. 4636 and the representations made, the defendant did not give either of the plaintiffs an opportunity to remove the dwelling house.

9.4 In breach of the provisions of Crown Lease Number 4636 the defendant did not offer compensation to the plaintiffs for the dwelling house.

[10] The plaintiffs claim against TLTB a sum of \$100,000.00 being the value of the dwelling house, for the first plaintiff was unable to remove or to maintain the dwelling house.

The defence

[11] TLTB in its statement of defence states among other things:

11.1 The former lessee Babu Lal did not construct a house on the land in question until after 1977 and was renting the said premises from sometime in 1982.

11.2 The former lessee made an application for renewal of lease by letter dated 25 August 1995 which was received by the Lands Department on 12 February 1996, approximately 1 year and 5 months after the expiry of the above-mentioned Crown Lease on 30 September 1994.

11.3 An offer of lease renewal dated 18 November 1999 was made by Lands Department to the former lessee Babu Lal who failed to take advantage of the same. TLTB was not obliged to issue a new lease over the said land to the said Babu Lal because the Land Department's initial offer of lease

renewal was not appreciated by the said Babu Lal ever since his previous lease expired on 30 September 1994.

11.4 In consideration of the wishes of the members of the landowning unit of Mataqali Namono Tokatoka Natauvia, TLTB was not legally bound to issue a new lease over the land in question to the said Babu Lal.

11.5 Babu Lal's lease was not renewed by the Lands Department because he did not pay the amount of \$127.00 as required by the offer of lease renewal dated 18 November 1999.

11.6 An application for renewal of lease may be considered by TLTB, if it is consented to by the members of the landowning unit of Mataqali Namono Tokatoka Natauvia.

11.7 TLTB issued a new lease over the land in question to Josateki Vale effective 1 January 2005.

11.8 The plaintiff (Babu Lal) lost his right of renewal due to his own disregard of the requirements to be complied with to secure a renewal and as such his permanent improvements on the land in question have become part of the said land.

11.9 The dwelling house in question was legally owned as home by Babu Lal for a period of not more than 17 years only as he began building the same on or about 1977 and began to rent the same out to sub-tenants before the expiration of the lease in question in 1994.

Agreed facts

[12] At the Pre-Trial Conference (PTC) the parties agreed that:

12.1 A Crown Lease No. 4636 was granted by the Director of Lands to the second plaintiff over land known as Lot 7 Tauvegavega Subdivision on BA 2178 in the Tikina of Ba, in the Province of Ba, containing an area of 16.7 perches (*"the land"*).

12.2 The land has been converted to Native Lease.

- 12.3 As a result, the defendant became lessor of all the land covered under Crown Lease No. 4636.
- 12.4 The land was granted to the second plaintiff for a period of 25 years commencing on 1 October 1969.
- 12.5 The second plaintiff constructed a dwelling house on the land (*"the dwelling house"*).
- 12.6 The second plaintiff sought a renewal of the terms of the lease.
- 12.7 The defendant would consider a renewal of lease if the applicant applies for renewal with the consent of the traditional landowners.
- 12.8 The defendant issued a lease in the name of Josateki Vale.

The evidence

- [13] At the trial, Mohini Mala, the second plaintiff ('PW1') and Amal Abhinesh Kumar, the first plaintiff ('PW2') gave evidence and marked 5 documents ('PEx1-PEx5') in support of their claim.
- [14] On behalf of TLTB, Sailasa Saratibau, Estate Officer ('DW1') gave evidence, and he marked two documents ('DEx1-DEx2').

Plaintiff's evidence

- [15] PW1 in her evidence states:
- a) She is the daughter of the late Babu Ram. He passed away on 15 July 1997.
 - b) Her father made a will on 28 July 1987 appointing his wife Kushma Wati Andrew executrix of his estate.
 - c) Her mother obtained Probate No. 34652 on 23 October 1997. Her mother passed away on 23 February 2000, without administering the estate.
 - d) She was then appointed executrix as per Letters of Administration De-Bonis Non-No. 37942 on 7 June 2000. She said she had lost the original of the Letters of Administration in hurricane Kina.
 - e) She said the original of the Probate was lost in a recent flooding and not Hurricane Kina.

- f) She said her father had built the house on the land in dispute but could not recall when, but the house was nearly 35 years old.
- g) She knew that the lease expired in 1994 but she actually came to know about it in 2000 right after the passing away of her mother. Prior to that she did not have any conversation with her mother concerning the expiration of the lease.
- h) Under cross examination when it was put to her that both her parents neglected and/or refused to do anything to renew the lease, she denied.
- i) She was unaware if her mother kept paying the land rent.
- j) Without producing any receipts, she said she kept on paying the rent to the Board.
- k) She was told that the landowners will solve the problem after expiration of the lease.
- l) A meeting was held with the landowners at the TLTB's office situated at Lautoka on or about the year 2000. She was present at the meeting with her husband and nephew. It was agreed that they give additional \$10,000.00. When she was attempting to pay the \$10,000.00, the landowners wanted an additional \$10,000.00, so she did not pay as they did not have the money. She stated that the value of the house in dispute was \$100,000.00; however she did not produce a valuation report.

[16] PW 2's evidence was that:

- a) He became aware that the Crown Lease had expired after her grandmother passed away in 2000.
- b) There were various meetings with the landowners and 2 employees of the Board from 2000 to 2004.
- c) He agreed to pay \$10,000.00. He borrowed the money from his uncle and when he attempted to pay, the landowners wanted an additional \$10,000.00.
- d) Without giving any details he said he was told to pay \$10,000.00.
- e) He said the house was built by a carpenter right after the lease was issued.
- f) He did not know the value of the house nor did he produce any documentary evidence to prove the same.

Defendant's evidence

[17] The defendant called a witness, Sailasa Saratibau, Estate Officer ('DW1'). He gave evidence based on the documents contained in the file and from his own knowledge about the case. He presented whatever documents that was in the file when it was transmitted by the Lands Department. He confirmed that there were no documents in the file to show that:

- a) The plaintiffs, prior to 1994 or after 1994, enquired about the renewal of the lease.
- b) The plaintiffs had responded to neither the letters dated 17 and 18 November 2000 nor the letter dated 24 September 2000.
- c) There was no approved building plan for the house dwelling in dispute in the file.

The law

[18] iTaukei Land Trust Act ("*iTLT Act*"), section 19B deals with transfer of leases, which provides:

"[iTLT 19B] Transfer of leases

19B (1) Where a lease of any land was granted to any person by the Director of Lands under section 19(1) before 30 November 2000-

- (a) the Director of Lands is replaced by the Board as lessor for all purposes; and*
- (b) the income from the lease must be dealt with in accordance with section 19A(2),*

but otherwise the terms and conditions of the lease remain as before.

(2) All leases, deeds and instruments issued by the Director of Lands in respect of any land allotted or otherwise dealt with under section 19 (1) before 30 November 2000 and current at that date shall, until their expiry or earlier termination in accordance, with their terms and

conditions, be deemed to have been issued by the Board and governed by this act."

[19] iTaukei Land Trust (Leases and Licences) Regulations 1984 ('Regs 1984'), 19 (1) states:

"[iTLT 10,095] Compensation payable by the Board on refusing to renew a lease

19 (1) Where a notice to renew has been served on the Board by any person in accordance with regulation 18 (2) in relation to any iTaukei land and-

- (a) the Board has refused to grant a lease of that land for a further term or is deemed under subregulation (2) to have refused to grant such a lease; and*
- (b) at the expiration of the term in relation to, and during the currency of which, the notice to renew was served, the applicant shall have-*
 - (i) paid the rent payable by him or her under the related lease or by virtue of the related agreement for a lease, as the case may be;*
 - (ii) reasonably performed and observed the terms, covenants and conditions contained in the said lease or agreement and on his or her part to be performed and observed; and*
 - (iii) yielded up possession of that land;*

the Board shall pay to the applicant by way of compensation such sum as shall have been agreed by the Board and the applicant or as shall have been determined by arbitration on a reference made under and in accordance with subregulation (3).

(2) Subject to subregulation (4), for the purpose of subregulation (1), where such notice to renew has been served on the Board in relation to any iTaukei land, the Board shall be deemed to have refused to a grant lease of that land for a further term if the Board does not serve on the applicant-

- (a) a notice under and in accordance with regulation 18 (5); or
(b) at least 6 months before the expiry of the term in relation to, and during the currency of which, such notice to renew was served, a notice in writing intimating the decision of the Board to refuse to grant such lease."

Discussion

- [20] The plaintiffs' claim arises out of a Crown Lease No. 4636 issued to the late Babu Ram aka Babu Lal ('PEx3') over the land known as Lot 7 Tauvegavega Sub division on BA 2178 in the Tikina of Ba, in the Province of Ba containing an area of 16.7 perches ('the land'). The land was granted to Babu Ram for a period of 25 years commencing 1 October 1969.
- [21] The Crown Lease issued to Babu Ram expired on 30 September 1994.
- [22] Babu Ram passed away on 15 July 1997, leaving behind him a last will whereby he bequeathed his residence situate on Crown Lease unto his wife, Kushma Wati Andrew for her life and upon her demise unto his grandson, Amal Avinesh Kumar, (the first plaintiff). He appointed his wife to be the sole Executrix and Trustee of his will. His wife passed away on 23 February 2000, without administering the house on the Crown Lease. Thereafter, on 7 June 2000, Mohini Mala the daughter of late Bubu Lal obtained Letters of Administration De-Bonis-Non with the will of the estate of Bubu Lal.
- [23] Although Babu Lal's wife obtained a probate on 23 October 1997, she was unable to administer the property/the house in accordance with the Will of her husband until she passed away on 23 February 2000.
- [24] Babu Ram made his will on 28 July 1987. He died on 15 July 1997, some 10 years after making the will. The plaintiffs did not prove that late Bubu Lal had disposable right over the property covered by the Crown Lease. It appears that Babu Lal was not in possession of the property in dispute at the time of his death. That might be the reason why his wife was unable to administer the property in accordance with the will of her husband. There was no evidence that Babu Lal's wife was living on the property at the time of his death.

- [25] Initially, the land in dispute was a Crown Lease. It was subsequently converted to a Native Lease by an amendment to iTLT Act. Section 19B (1) of that Act says that: *“Where a lease of any land was granted to any person by the Director of Lands under section 19(1) before 30 November 2000-(a) the Director of Lands is replaced by the Board as lessor for all purposes;... but otherwise the terms and conditions of the lease remain as before”*.
- [26] Even though the lease was transferred to the Board, the terms and conditions of the lease remained the same.
- [27] The lease issued to Babu Lal was subject to the following conditions among other things:

“2. The lessee shall, within six months from the date of commencement of this lease, erect, on the demised land, to the satisfaction of the lessor, a building for residential purposes, the plans for which shall have received the prior approval of the lessor and shall be in accordance with the provisions of the Public Health Regulations or any By-laws made under the provisions of the Local Government (Towns) Ordinance; the value of such building and any accessory building shall not exceed \$1,400, without the written consent of the lessor; and such building shall be designed and used as a single dwelling unit unless the lessor’s consent is obtained and then only upon such conditions as the lessor shall stipulate.”

- [28] The iTLT Act, section 19 B (2), states that: *“All leases, deeds and instruments issued by the Director of Lands in respect of any land allotted or otherwise dealt with under section 19 (1) before 30 November 2000 and current at that date shall, until their expiry or earlier termination in accordance, with their terms and conditions, be deemed to have been issued by the Board and governed by this act.”*
- [29] The Crown Lease issued to Babu Lal was not dealt with under section 19 (1) before 30 November 2000, it will be then deemed to have been issued by the Board and governed by this Act (see: section 19B (2)).

- [30] The condition of lease was that the value of the building or any accessory building shall not exceed \$1,400.00, without the written consent of the lessor. There is no evidence in court that the building was built within the prescribed value of the building.
- [31] Condition No 2 of the lease says that the lessee shall, within 6 months from the date of the commencement of the lease, erect on the demised land, to the satisfaction of the lessor, a building for residential purposes, the plans for which shall have received the prior approval of the lessor.
- [32] The Divisional Surveyor Western by his letter dated 27 January 1976 had informed Babu Lal that: "... with reference to my notice dated 7th May 1975, it is intended to cancel your lease by re-entry on 31 March, 1976 for non-compliance of building condition of your lease. Please show cause, why I should not re-enter and cancel your lease without any further notice..." ("PE5").
- [33] The above letter clearly proves that there had been breach of building condition by the lessee, Babu Lal.
- [34] More importantly, the house in respect of which the compensation is sought had been built without plans approved by the lessor. DW1 said in evidence that there were no approved plans for the building in the relevant file.
- [35] The plaintiff had failed to establish that the building was erected on the demised land with the plans for which they received prior approval of the lessor. In other words, there is no evidence that the building was erected with the plans approved by the lessor.
- [36] PW1's evidence was that she knew that the lease expired in 1994, but she actually came to know about it in 2000, right after the passing away of her mother. I am unable to believe this evidence because the plaintiff ought to have known that the lease had expired in 1994.
- [37] There is no evidence that Babu Lal applied for renewal of the lease before the expiration of the lease. DW1 confirmed that in the file there was no renewal application by Babu Lal.

- [38] However, the defendant presented in court two letters dated 17 November 1999 and 18 November 1999 sent to Babu Lal by Divisional Survey Western in respect of extension and variation of lease ('DEx1' & 'DEx2' respectively). Both letters calls Babu Lal to their office with fees (\$127.00) together with Crown Lease 4636 for execution of lease documents.
- [39] Babu Lal had failed to pay the renewal fees and renew the lease. He had reason to believe that his lease will not be renewed unless he pay the renewal fees and surrender the expired lease.
- [40] The plaintiffs had failed to adduce any evidence that the defendant had refused to renew the lease.
- [41] Babu Lal had failed to give notice to renew the lease as required by regulations. Moreover, Babu Lal had erected the building without building plans which received the prior consent of the lessor. In other word, he had built the house without approved building plans. It was the condition of the lease that lessee must, within 6 months from the date of the commencement of the lease, erect to the satisfaction of the lessor a building for residential purposes, the plans for which must have received the prior approval of the lessor (see: condition 2 of the lease).
- [42] The plaintiffs' evidence does not suggest that the lessee (Babu Lal) had, on his part, reasonably performed and observed the terms, covenants and conditions contained in the lease.

Conclusion

- [43] For the reasons I have given above, I conclude that the plaintiffs had failed to prove that the defendant refused to renew the lease despite the application for renewal made in accordance with the regulations. It was Babu Lal who had failed to pay the renewal fees and surrender the lease for execution of the new lease documents. In the circumstances, the plaintiffs are not entitled to claim compensation against the defendant for the house erected on the demised property. I would accordingly dismiss the plaintiffs' claim with summarily assessed costs of \$650.00.

The result

1. Plaintiffs' claim dismissed.
2. Plaintiffs shall pay summarily assessed costs of \$650.00 to the defendant.



M. H. Mohamed Ajmeer
27/5/20

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M. H. Mohamed Ajmeer

JUDGE

At Lautoka

27 May 2020

Solicitors:

Samuel K Ram, Barristers & Solicitors for the plaintiffs
iTaukei Land Trust Board, Legal Department for the defendant