

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO: HBC 257 of 2014

BETWEEN : **ULAIASI NANOVO** of Lot 30 Moce Place, Tirikula Road, Davuilevu Housing, Suva, Self Employed.

PLAINTIFF

AND : **GREEN GOLD MARITIME SAWMILLING LIMITED** a limited liability company having its registered office at Suva, Fiji.

DEFENDANT

BEFORE : Justice Riyaz Hamza

COUNSEL : Mr. Emosi Koroi for the Plaintiff
Ms. Shoma Devan for the Defendant

JUDGMENT

[1] The Plaintiff commenced this action by way of a Writ of Summons, issued on 4 September 2014.

[2] As per the Amended Statement of Claim filed the Plaintiff, inter alia, submits as follows:

1. On 23 April 2014, the Plaintiff as the Landlord had entered into a tenancy agreement with the Defendant Company, Green Gold Maritime Sawmilling Limited (hereinafter called 'the Tenant') having its registered office in Suva.

2. The said agreement was for the Landlord to let and for the Tenant to lease a parcel of land being Lot 1 on SO 3553 Vunisea, in Kadavu, comprised of iTLTB Lease No. 24236 containing an area of 2,674 square meters, for a period of one year, from 9 April 2014, on a monthly rental of \$1,000.00 payable in advance of each month.
3. The Tenant was to keep the said land and at the termination of the lease in good substantial order and condition and to make good, reinstate and repair all damages caused or occasioned to the said land by any act or neglect of the Tenant.
4. The said agreement contained the terms and conditions relevant to the business to be conducted on the said land by the Defendant Company and agreed to by the Plaintiff.
5. Apart from the Defendant having paid the initial \$2,000.00 in rent as bond, the said Defendant had not honoured the said agreement by not paying the rest of the rent of \$1,000.00 per month and then abandoning the said land leaving it in a devastated condition due to the excavations it had done on the site.
6. After being informed of the Defendant's negligence and desertion, the Plaintiff had called for an assessment of damages which was conducted by Property Solutions, a duly registered Property Valuation, Property and Project Management, Consultancy and Real Estate Agent Company. The outcome of the said valuation and assessment of damages revealed the following:
 - (i) Physical Damage to the land assessed at \$16,046.07;
 - (ii) Crop Compensation assessed at \$521.19;
 - (iii) Disturbance assessed at \$17,500.00;
 - (iv) Loss of income assessed at \$10,000.00; and
 - (v) Consequential loss in value of the land assessed at \$26,740.00,

(vi) A total of \$70,807.26 in damages.

- [3] Accordingly, the Plaintiff claims the following reliefs against the Defendant:
- (a) The sum of \$70,807.26 in damages for breach of contract.
 - (b) Damages for distress and inconvenience.
 - (c) Interest at 4% per annum under the Law Reform (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree No 46 of 2011.
 - (d) Costs.
- [4] The Defendant filed their Statement of Defence to the Amended Statement of Claim on 26 March 2015.
- [5] As per the Statement of Defence filed the Defendant, inter alia, states as follows:
- (1) That the Tenancy Agreement was subject to the following integral terms and conditions:
 - (i) The said Tenancy Agreement was subject to the consent of the iTaukei Land Trust Board.
 - (ii) The Defendant could occupy the land upon grant of the consent of the iTaukei Land Trust Board.
 - (iii) That the Defendant paying the rent reserved and performing the tenant's covenants and obligations contained in the said Tenancy Agreement, shall and may peacefully hold and enjoy and said land during the term of the Agreement without interruption of disturbance from any person or persons.
 - (2) The Defendant was required to make good, reinstate and repair all damage caused or occasioned to the land by any act or neglect of the Defendant or any of the Defendant's visitors, servants, invitees, licensees, clients or agents.

- (3) Pursuant to its obligations, the Defendant paid the Plaintiff the initial rent.
- (4) The Defendant states that they were compelled to exit the said land due to the Health Department causing a notice to the Defendant to stop all work and vacate the said land.
- (5) The Defendant claims that the Tenancy Agreement was frustrated due to the Health Department issuing a notice to stop all works as a result of which the Defendant was unable to perform its contractual obligations under the said Tenancy Agreement.
- (6) The Defendant further states that the Plaintiff failed to obtain the consent of the iTaukei Land Trust Board on the said Tenancy Agreement and as such the Agreement cannot be enforced in law and is void.
- (7) Accordingly, the Defendant states that it is not liable to the Plaintiff for the sums claimed as per its Statement of Claim.

[6] On 14 April 2015, the Plaintiff filed a Reply to the Statement of Defence.

[7] The Minutes of the Pre-Trial Conference record the following:

PART A. AGREED FACTS

1. The Plaintiff and the Defendant entered into a Tenancy Agreement on the 23 of April 2014 in respect of a parcel of land, legally described as Lot 1 on SO 3553, comprised in Native Lease No. 24236 containing an area of 2,674 square meters situated in Vunisea, Kadavu, for a term of one year commencing from 9 April 2014, at a monthly rental of \$1,000.00 per month and made payable in advance.
2. The Tenancy Agreement contained the terms and conditions relevant to the business to be conducted on the said land by the Defendant.
3. Pursuant to the Tenancy Agreement, the Defendant was required to make good, reinstate and repair all damage caused or occasioned to

the said land by any act or neglect of the Defendant or any of the Defendant's visitors, servants, invitees, licensees, clients or agents.

PART B. ISSUES TO BE DETERMINED BY THE COURT

4. Did the Defendant fail to honour the Tenancy Agreement by failing to pay the rest of the rent of \$1,000.00 per month?
5. Whether the Defendant abandoned the said land subject of the Tenancy Agreement?
6. Did the Defendant give notice to the Plaintiff before abandoning the said land?
7. Did the Defendant leave the land in a devastated condition due to the excavations carried out on the land?
8. Whether the Tenancy Agreement was subject to the consent of the iTaukei Land Trust Board?
9. Whether the Defendant could occupy the land upon the grant of the consent of the iTaukei Land Trust Board?
10. Whether the Defendant was entitled pursuant to the Tenancy Agreement having paid all rent reserved and performing its obligations to peacefully hold and enjoy the said land without interruption or disturbance from or by any person?
11. Did the Health Department at Vunisea, Kadavu, give notice to the Defendant to stop all works and vacate the land?
12. Was the Defendant compelled to exit the Plaintiff's land due to Health Department causing a notice to the Defendant to stop all works and to vacate the land without giving notice to the Plaintiff?
13. Whether the Tenancy Agreement dated 23 April 2014 was frustrated due to Health Department issuing a notice to the Defendant to stop

all works as a result of which the Defendant was unable to perform its contractual obligations under the said Tenancy Agreement?

14. Whether the Health Department's intervention was caused by the Defendant's own heavy excavation on the site?
15. Whether the Plaintiff had notified the Defendant of availability of 65m x 20m flat land where the Defendant could construct its office?
16. Whether the Tenancy Agreement is void abinitio and unenforceable?
17. Whether the Plaintiff is entitled to damages in the sum of \$110,736.19? [As per the Amended Statement of Claim this amount should now read \$70,807.26].

THE PLAINTIFF'S CASE

[8] The following four witnesses testified on behalf of the Plaintiff:

- (1) Ulaiasi Nanovo, (the Plaintiff himself).
- (2) Emosi Vitilevu Toga (Registered Valuer)
- (3) Senicibicibi Matavesi (Health Inspector, Kadavu)
- (4) Anare Lewacola (Senior Agriculture Officer, Kadavu)

[9] During the course of the Plaintiffs' case the following exhibits were tendered to Court:

- P1** - Tenancy Agreement, dated 23 April 2014, between Plaintiff and Defendant.
- P2** - Application for Consent to Sub-Lease, dated 22 May 2014 (In terms of Section 12 of the iTaukei Land Trust Act-Chapter 115).
- P3** - Copy of Native Lease No. 24236, dated 12 September 1997.
- P4** - Plaintiff's letter to Health Inspector, Kadavu, dated 17 April 2015.
- P5** - Reply by Senicibicibi Matavesi, Acting Secretary Kadavu Rural Local Authority, to Plaintiff, dated 20 April 2015.
- P6** - Letter from Neel Shivam Lawyers to Koroi Law, dated 9 July 2014.

- P7** - Compensation Valuation Report of Native Lease No. 24236, prepared by Property Solutions, dated 26 June 2014.
- P7A** - Revised Compensation Valuation Report of Native Lease No. 24236, prepared by Property Solutions (totalling amount of \$70,807.26), and dated 25 May 2016.
- P8** - Letter from Plaintiff to Health Inspector, Kadavu, dated 29 April 2014.
- P9** - Letter from Anare Lewacola, Senior Agriculture Officer (Kadavu), Ministry of Primary Industries, addressed "To Whom It May Concern", dated 25 May 2014.
- P10** - Undated Report on land damaged and Environmental Impact Assessment (EIA) prepared by Anare Lewacola, Senior Agriculture Officer (Kadavu), Ministry of Agriculture, Fisheries and Forests.
- P11** - Copy of Fiji Government Gazette of Friday 21 February 2014.

- [10] The Plaintiff Ulaiasi Nanovo, is Landlord of iTaukei Land Trust Board (iTTLTB) Native Lease No. 24236, dated 12 September 1997. The Plaintiff is the registered proprietor of the parcel of land being Lot 1, on SO 3553, in Vunisea, Kadavu, and comprised in iTTLTB Lease No. 24236, containing an area of 2,674 square meters.
- [11] The Plaintiff testified that the Defendant had approached him and inquired if they could lease out the said land for the purpose of their logging business (to log or cut pine trees in Kadavu). The Plaintiff had agreed.
- [12] Accordingly, the Plaintiff had entered into a Tenancy Agreement with the Defendant Company, for sub-leasing of his land at Vunisea, in Kadavu, for a period of one year, commencing 9 April 2014. As per the Tenancy Agreement (P1), the monthly rental payment was \$1,000.00 and was payable in advance. The Tenant had also to pay an advance rent of \$2,000.00 at the time of executing the Tenancy Agreement.
- [13] The Plaintiff stated that the Agreement was drawn up by the Defendant's Law firm and was executed between the parties on 23 April 2014.

- [14] After signing of the Agreement, the Plaintiff and the Defendant had gone to the iTLTB and talked to the Officer in Charge of the Kadavu Division. The said Officer had requested the Plaintiff to update the lease premium on the Native Lease and he had given an application form - Application for Consent to Sub-Lease (P2) - to be completed by the parties. The Plaintiff testified that he had proceeded to the Defendant's Solicitor's office and filled up the form and handed it back to iTLTB on the same day.
- [15] The Plaintiff further testified that as per the terms of the Tenancy Agreement, the Defendant had paid him the advance rental payment. The Plaintiff has used part of this money to pay up the outstanding lease premium to the iTLTB. The amount paid to the iTLTB at the time was \$1,100.00.
- [16] Thereafter, the same evening, the Plaintiff and the Managing Director of the Defendant Company, Krishna Murti, had left for Vunisea, Kadavu in motor vessel named Sinuwasa. They had arrived in Vunisea around 6.00 in the morning the next day, which was the 24 April 2014.
- [17] On arrival, they had gone to the Provincial Administrator's Office in Vunisea, Kadavu to brief them about the Plaintiff sub-leasing of his land to the Defendant Company.
- [18] Thereafter, the parties had proceeded to the Plaintiff's property. The Plaintiff had shown the boundaries of his land. He had pointed out a piece of flat land (about 65m x 20m) and given instructions to the Defendant to set up his logging office/camp site on the said piece of land. The Plaintiff testified that the portion of land required a little scrapping to make it more even.
- [19] After having given clear instructions to the Defendant of where to set up his logging office/camp site, the Plaintiff had departed to Suva in the same motor vessel Sinuwasa, around 12.00 noon, on 24 April 2014. Krishna Murti had also given instructions to his employees on what they need to do when setting up the camp site, and departed to Suva along with the Plaintiff.

- [20] On 1 May 2014, the Health Inspector Kadavu had called the Plaintiff in Suva to raise his concerns about what had transpired at the logging camp site and more so about the deep excavation being carried out by the Defendant at the site. He was informed that the deep excavation had spilled over the boundary and had blocked the drain.
- [21] The Plaintiff testified that he had gone to the Defendant's Office at Waila in Nausori and informed the Defendant about the concerns raised by the Health Inspector Kadavu. The Defendant had said that he cannot comply with what the Health Inspector wants him to do, which was to put up a retaining wall for loose soil, the clearing of the blocked drains and putting a drainage system. The Defendant had stated that this would cost him about \$5,000.00.
- [22] The Plaintiff testified that on 7 May 2014, he had been informed by the Vunisea Provincial Council representative that the Defendant had vacated the Plaintiff's property. He also came to know that the Defendant had moved to another property, about 200 meters away from his land, paying a cheaper rental of \$600.00 per month.
- [23] The next witness for the Plaintiff was Emosi Toga. He is a Registered Valuer of lands, with wide experience in the subject. The witness prepared Exhibit P7, which was a Compensation Valuation Report of Native Lease No. 24236, dated 26 June 2014.
- [24] The witness testified that he did all his valuation assessment in Suva based on the raw data and photographs supplied to him by the Plaintiff and Government Agencies in Vunisea, Kadavu.
- [25] Due to certain discrepancies in the computation of the compensation, the witness prepared and tendered to Court a Revised Compensation Valuation Report, dated 25 May 2016 (P7A). Court permitted the witness to be recalled by the Plaintiff for the purpose of testifying to the contents of the Revised Compensation Valuation Report.
- [26] The next witness for the Plaintiff was Senicibicibi Matavesi, Health Inspector, Kadavu. The witness stated that pursuant to the request made to him by the Plaintiff by letter dated 17 April 2015 (P4), he had prepared a reply dated 20 April 2015 (P5). Therein, it is stated that he had perused the Inward and Outward Register maintained at the

Kadavu Rural Local Authority, for the period April to June 2014. Based on the said records, he testified that there had been no Eviction Notice served on the Defendant Company from his office during the relevant period.

[27] The final witness for the Plaintiff was Anare Lewacola, the Senior Agriculture Officer, Kadavu. He tendered to Court documents P9 - which was a letter dated 25 April 2014 estimating the crop damages caused to the Plaintiff's property and P10 - which was an undated report prepared by him on land damaged and Environmental Impact Assessment on the Plaintiff's land. The witness also took measurements and pictures of the excavations done at the Plaintiff's property and submitted to Property Solutions in Suva. Witness Emosi Toga had based his Valuation Report on the said data.

[28] That was the case for the Plaintiff.

THE DEFENDANT'S CASE

[29] The following four witnesses testified on behalf of the Defendant:

- (1) Eva Solei
- (2) Anirudh Lal (Andrew Lal)
- (3) Kamlesh Kumar Swamy
- (4) Krishna Murti (Managing Director of Defendant)

[30] During the course of the Defence case the following exhibits were tendered to Court by the Defendant:

- D1 (a) - Payment Voucher in the sum of \$1,100.00, dated 23 April 2014.
- D1 (b) - Payment Voucher in the sum of \$400.00, dated 28 April 2014.
- D1 (c) - Payment Voucher in the sum of \$275.00, dated 2 May 2014.
- D2 - Rough sketch of the Plaintiff's lease land and other surrounding areas.

[31] The first Defence witness was Eva Solei. She was working at the Defendant's Company from 2010 to 2014, as a Clerical Officer. She testified that the Defendant was a saw milling company.

- [32] She recalls going to the Island of Kadavu around April or May 2014. Later she agreed that it was on 23 April 2014. She had travelled to Kadavu by boat which was boarded at the Narayan Jetty in Suva. She travelled to Kadavu together with her boss, Krishna Murti, the Plaintiff, the Digger Operator, Kamlesh Kumar and a Mechanic/Driver, Ravin Kumar.
- [33] After reaching Kadavu at 6.00 in the morning, they had started to unload their equipment. Thereafter, the Plaintiff had taken them to his property, which was a flat land besides the sea. The land was flat and then went up the hill. There was an altitude at the back of the land. The Plaintiff had pointed out the boundaries of the site, and had shown them where they could stay.
- [34] Since the land was not entirely even, it was nicely levelled to make it even. The levelling of the land was done with the use of a digger. However, she testified that no digging was done at the land but only levelling. The land was then cleared. Thereafter, a 12 foot container and house was brought in to the land. The house was a trailer on wheels, so it could be easily wheeled into the property. The witness testified that the Plaintiff had given approval for the land to be levelled and cleared so that the container and house could be brought in.
- [35] The Plaintiff and Krishna Murti had left for Suva the same day. The two digger operators - Kamlesh Kumar and Ravin Kumar had remained with her on the site.
- [36] The witness testified that two days later, the Health Inspector, Kadavu, Aisake Vesi had come to the property and asked for her boss. She had informed that her boss had already returned to Suva. The Health Inspector had told her thus: "That there was (that there should be) one drainage and fence and a culvert made there so that the water can flow smoothly." The witness had informed that she will communicate with her boss. The Health Inspector had said that he will contact the Plaintiff and inform him of this as well.

- [37] The witness said that she had called Krishna Murti and informed him about what the Health Inspector had told her. Krishna Murti had directed her not to do anything else on the land but to just stay there, since there is no water source to the land.
- [38] Accordingly, the witness said she had stayed on the land for three weeks. During this period, water was obtained from the market nearby. Krishna Murti had told her that since there is no source of water supply to the land, and since the Health Inspector had wanted a drainage, fence and culvert constructed to look for another land. Thereafter, they had found another piece of land nearby belonging to one Ropate and shifted to the said land.
- [39] The next witness for the Defence was Anirudh Lal (Andrew Lal). He is a Businessman based in Vunisea, Kadavu. His business involves selling of fishing equipment, and running of a general hardware store.
- [40] The witness confirms seeing the Plaintiff and the Defendant on the day they arrived in Kadavu in April 2014. He is also familiar with the Plaintiff's land and its location. To describe the exact location of the land, he tendered to Court Defence Exhibit D2, which was a rough sketch of the Plaintiff's lease land and other surrounding areas.
- [41] The witness testified that he observed clearing operations taking place in the Plaintiff's land for about 10 minutes. The clearing was done by the use of a digger.
- [42] A few months later, the witness said, Krishna Murti had called him inquiring from him whether he knows of any bare land for lease. The witness had suggested Ropate's land. The Defendant had then taken on lease the said land.
- [43] The next witness for the Defence was Kamlesh Kumar Swamy. He is a digger operator and had been employed at the Defendant Company for 2 years and 7 months. He too, testified as to how he along with his boss Krishna Murti, the Plaintiff, Eva and Ravin had travelled to Kadavu in April 2014.

- [44] The witness explained as to how he had cleared the Plaintiff's property and buried the rubbish. Some amount of levelling (scrapping) had to be done on the land to make the land even, so as to accommodate a 12 foot container and house.
- [45] The final witness for the Defence was Krishna Murti, the Managing Director of the Company. He had served as Managing Director for 4 years at the time. The witness testified that the Defendant Company was the largest pine pole (post) supplier in Fiji. Recently, the Company had started a saw mill which was located in Princess Road, Sawani.
- [46] The witness confirmed that a Tenancy Agreement had been entered into with the Plaintiff, on 23 April 2014, to lease the Plaintiff's land in Vunisea, Kadavu. The witness tendered to Court Defence Exhibits D1 (a), (b) and (c).
- [47] The same day on which the Agreement was executed he had travelled by boat to Kadavu together with the Plaintiff, Eva Solei, Kamlesh Kumar and Ravin Kumar. The witness testified as to what transpired after their arrival in Kadavu the next morning. He had returned to Suva the same day together with the Plaintiff.
- [48] The witness testified that the next day, Eva had called him and informed that the Health Inspector had come to the leased premises and told her that the Defendant will have to construct a retaining wall and a v-drain on the property.
- [49] The witness stated that he had then called the Plaintiff and informed of what the Health Inspector had told Eva. The Plaintiff had asked him to put up the retaining wall and the v-drain. The witness had said that he was not in a position to do this as it would cost \$35,000 – \$40,000 to do so.
- [50] Krishna Murti testified that this development had compelled the Defendant to move out of the Plaintiff's land. They had shifted their operations to Ropate's house which was nearby.

[51] The witness denied that the Defendant had caused damage to the Plaintiff's property as claimed for by the Plaintiff.

[52] That was the Defendant's case.

[53] At the conclusion of the hearing both Counsel for the Plaintiff and Counsel for the Defendant were granted time to file written submissions. Accordingly, the parties filed detailed written submissions, which I have had the benefit of perusing.

ANALYSIS AND DETERMINATION

[54] During the course of the trial, the Counsel for the Defendant stated that although the Defendant had taken up the position that due consent to sub-lease the Plaintiff's land had not been obtained by the Plaintiff from the iLTB, the Defendant was no longer pursuing that issue.

[55] Therefore, based on the facts of this case the primary issues for determination by this Court are the following:

1. Did the Defendant fail to honour the Tenancy Agreement by failing to pay the rest of the rent of \$1,000.00 per month?
2. Did the Defendant abandon the said land subject of the Tenancy Agreement?
3. Did the Defendant give notice to the Plaintiff before abandoning the said land?
4. Whether the Defendant was entitled pursuant to the Tenancy Agreement having paid all rent reserved and performing its obligations to peacefully hold and enjoy the said land without interruption or disturbance from or by any person?

5. Did the Health Department at Vunisea, Kadavu, give notice to the Defendant to stop all works and vacate the land?
6. Was the Defendant compelled to exit the Plaintiff's land due to Health Department causing a notice to the Defendant to stop all works and to vacate the land without giving notice to the Plaintiff?
7. Whether the Tenancy Agreement dated 23 April 2014 was frustrated due to Health Department issuing a notice to the Defendant to stop all works as a result of which the Defendant was unable to perform its contractual obligations under the said Tenancy Agreement?
8. Whether the Health Department's intervention was caused by the Defendant's own heavy excavation on the site?
9. Whether the Tenancy Agreement is void abinitio and unenforceable?
10. Did the Defendant leave the land in a devastated condition due to the excavations carried out on the land?
11. Whether the Plaintiff is entitled to damages in the sum of \$70,807.26?

[56] In my opinion points 1-9 are inter-connected and relate to the Tenancy Agreement entered into between the Plaintiff and the Defendant (P1).

[57] It is stipulated in the Tenancy Agreement that the Defendant was entitled pursuant to the Tenancy Agreement having paid all rent reserved and performing its obligations to peacefully hold and enjoy the said land without interruption or disturbance from or by any person.

[58] From the evidence it is clear that the Health Inspector, Kadavu, Aisake Vesi had directed that a drainage, fence (retaining wall) and culvert for the water to flow, be constructed on the Plaintiff's land. It is the opinion of this Court that this task should have been undertaken by the Plaintiff prior to the land being sub-leased to the Defendant. The Managing Director of the Defendant Company, Krishna Murti testified

that when he had informed the Plaintiff about this matter, the Plaintiff had requested for the Defendant to carry out this work. The witness had said that he was not in a position to do this as it would cost a large sum of money.

- [59] The Health Inspector, Kadavu, Aisake Vesi, was not called as a witness by the Plaintiff. It is stated that he has been transferred to the Navua Health Office (as per document P5). He would have been the best person to testify as to the directions he gave to the Plaintiff and the Defendant in relation to the lease property.
- [60] Witness Senicibicibi Matavesi testified in place of Aisake Vesi. The witness stated that pursuant to the request made to him by the Plaintiff by letter dated 17 April 2015 (P4), he had prepared a reply dated 20 April 2015 (P5). In the said reply, it is stated that he had perused the Inward and Outward Register maintained at the Kadavu Rural Local Authority, for the period April to June 2014. Based on the said records, he testified that there had been no Eviction Notice served on the Defendant Company from his office during the relevant period.
- [61] I agree that the Health Department at Vunisea, Kadavu, did not give any formal notice to the Defendant to stop all works and vacate the land. I also agree that no formal Eviction Notice may have been given to the Defendant Company by the Health Department, Kadavu. However, based on the testimony of Eva Solei which is confirmed by Krishna Murti, it is evident that the Plaintiff's land could not have been leased out in its present condition, unless and until the drainage, fence (retaining wall) and culvert for the water to flow was constructed on the said land.
- [62] Therefore, I am of the opinion that the Tenancy Agreement dated 23 April 2014 was frustrated due to Health Department, Kadavu, notifying the Defendant to carry out additional work on the property, as a result of which the Defendant was unable to perform its contractual obligations under the said Tenancy Agreement.
- [63] The next issue is to decide whether the Defendant left the Plaintiff's land in a devastated condition due to the excavations carried out on the land. I have considered the testimony of all witnesses in this case. I am of the opinion that no proper or

independent evidence has been provided by the Plaintiff to prove that the deep excavation of the Plaintiff's land was carried out by the Defendant.

[64] In any event, I am of the opinion that the Plaintiff has failed to establish the damage caused to his property, if any. The witness Emosi Toga, the Registered Land Valuer testified on behalf of the Plaintiff. He confirmed that he had not physically seen for himself the extent of the damage caused to the property. He also confirmed that the photographs attached to his report were not taken by him. His assessment of the monetary compensation was based on figures provided to him by the Senior Agriculture Officer, Kadavu (P10). Therefore, this Court cannot place much reliance on the Valuation Report P7A.

[65] For all the aforesaid reasons, I am of the opinion that the Plaintiff has failed on a balance of probabilities to establish the case against the Defendant. For the above reasons, I dismiss the Plaintiff's claim made against the Defendant.

FINAL ORDERS

1. This action is dismissed.
2. I make order that the parties should bear their own costs.

 
Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 11th Day of February 2020

Solicitors for the Plaintiff : Koroi Law, Barristers & Solicitors, Nausori.
Solicitors for the Defendant : Neel Shivam Lawyers, Barristers & Solicitors, Suva.