

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

CIVIL ACTION NO. HBC 101 OF 2016

BETWEEN : **SURUA DASS** of Korovuto, Nadi, and Cultivator **PLAINTIFF**

AND : **VENKAT DASS** of Korovuto, Nadi, and Cultivator **DEFENDANT**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. R. Prakash, for the Plaintiff
Ms. Diroiroy, for the Defendant

DATE OF HEARING : 10th August, 2022

DATE OF DECISION : 10th August, 2022

JUDGMENT.

1. This action was commenced by the Plaintiff, by way of writ of Summons filed together with his Statement of Claim, on 1st June 2016 against the defendant seeking reliefs, inter-alia:
 - a. An order for removal of the defendant as the trustee of the Estate of the deceased,
 - b. An order for the final distribution of the Estate of the deceased,
 - c. An order that the defendant do provide full and proper accounts of the Estate inclusive of the account of all monies received on the Estate Farm Registration No-2711 since been as the executor and trustee of the Estate of Hari Dass,
 - d. An Order that the defendant do pay the Plaintiff his share of all Sugarcane proceeds received on from Registration No-2711 since the defendant took over the Administration of the Estate,
 - e. Damages for the breach of fiduciary duty and/or breach of Trust, and
 - f. General damages.
2. Though, an interlocutory judgment had been entered against the defendant on 23rd September 2016, subsequently, on the application of the defendant, same was vacated by the learned Master by his ruling dated 04th October 2017 and accordingly, the defendant filed his Statement of defence on 17th October 2017.

3. All the pre-trial formalities being attended, when the matter was to be fixed for trial before me, on an Ex-parte Notice of Motion filed on behalf of the Plaintiff on 07th April 2022, a restraining order was granted by this Court in terms of paragraph (a) to the Motion restraining the defendant from interfering with the Plaintiff's share of the land and the House on Crown Lease No- 22212 until further orders are made.
4. When the matter came up for hearing into the Notice of Motion for injunction on 27th July 2022, after filing respective Affidavits in Response and Reply, learned Counsel for both the parties intimated that no need of proceeding with the hearing as there is a possibility for settlement and accordingly, the Court, having vacated the hearing, granted 14 days' time file the Terms of Settlement.
5. Accordingly, when the matter came up today a written Terms of Settlement was tendered in open court indicating that the parties have agreed to fully and finally settle the matter as per the contents of the said Terms of Settlement.
6. It was observed in the open Court that the defendant on his own went through the Terms of Settlement and placed his signature, upon which the defendant's Counsel too counter signed the same.
7. The court also made it a point to inquire from the Plaintiff, who was present in Court, whether he has signed the Terms of Settlement after duly reading and having understood the contents thereof, for which the plaintiff answered affirmatively.
8. I, being satisfied that the parties have voluntarily agreed and signed the Terms of Settlement tendered today in Court, allow the parties to settle the matter on the terms therein, which are reproduced bellow .

1. *That both the parties have agreed that the Plaintiff is a beneficiary as to one undivided half share in the Estate of the late Hari Dass of Korovuto, Nadi.*
2. *That the Defendant being the Executor and Trustee in the Estate of late Hari Dass will release all the cane proceeds from the year 2014 until date which is held in the estate trust account as agreed between both parties.*
3. *That the Plaintiff will be at liberty to order sugar, rice, fertilizer, weedicides and taking out the sugarcane statements from Fiji Sugar Corporation for his share of farm.*
4. *That the Defendant will give all the necessary consent to the relevant authority that will be required for the subdivision of the Plaintiff's one undivided half share.*
5. *That all the costs regarding the subdivision of the Plaintiff's one undivided half share will be borne by the Plaintiff.*

6. *That in the event if the Defendant has to sign any relevant documents during the subdivision process he must execute the same without any delay.*
 7. *That the Plaintiff will pay costs in the sum of \$1,000.00 to the Defendant in court during the day of settlement.*
 8. *That both parties consent that the terms of settlement to be made an order of this Honorable court.*
 9. *That this matter be fully discontinued.*
9. Judgment is hereby entered as per the above terms of settlement and it shall be sealed and served.
 10. In view of the above judgment entered on the Terms settlement, the injunction order issued against the Defendant by this Court on 07th April 2022 on the Ex-parte Notice of Motion preferred on behalf of the Plaintiff, is hereby vacated.
 11. Parties are directed to abide by this judgment entered.
 12. I thank the learned Counsel for both the parties for assisting the Court in resolving this matter amicably.



A.M. Mohamed Mackie
A.M. Mohamed Mackie
Judge

At High Court Lautoka this 10th day of August, 2022.

SOLICITORS:

For the Plaintiff: Messrs Niudamu Lawyers

For the Defendant: Legal Aid Commission