

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 419 of 2019

BETWEEN : KEVERIELI WAQA

PLAINTIFF

AND : SAKEASI BUREKECE, MEKU ILISONI & JONACANI
SERU

DEFENDANTS

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. A. Naco for the plaintiff
: Ms. S. Ratu for the defendants

Date of Decision : 10 August 2022

DECISION

PRACTICE & PROCEDURE: Injunction – Whether supplementary affidavit containing additional documents to be allowed – Order 28 Rule 2 (6) High Court Rules 1988 – Section 10 Civil Evidence Act 2002

The following case is referred to in this decision:

a) *Ramesh Chand Sharma & Rajendra Sharma v Rajesh Rishmi Ram [2020] FJHC 931; HBC 61.2019 (10 November 2020)*

1. The plaintiff filed action asking for a declaration that certain lands belong to the Mataqali Mataiela, Yavusa Rara in the village of Naqia, Wainibuka in Tailevu North, for a permanent order restraining the defendants from using those lands, and for damages. The plaintiff says he is a member of the Tokatoka Mataiela, Mataqali Mataiela of the Yavusa Rara in Naqia, and that he was duly appointed to conduct the action. On the same day, the plaintiff filed an *ex parte* notice of motion supported by an affidavit seeking the following orders:
 - i) A declaration that the land registered and marked in the register of Native Lease as Lot 50 in the plan J12, 2 & 4 with a total land area of 700 acres belongs to the Mataqali Mataiela, Yavusa Rara in the village of Naqia, Wainibuka in the province of Tailevu North.
 - ii) An injunction restraining the defendants and/or their servants, agents or whosoever from interfering, obstructing, threatening or abusing the plaintiff and or the other members of Mataqali Mataiela, Yavusa Rara in the province of Tailevu North from their use and enjoyment of the land known as Mataiela farm and registered an marked in the register of Native Lease as Lot 50 in the plan J12, 2 & 4 with a total land area of 700 acres”.
2. After papers were served on the defendants, an affidavit in reply was filed on their behalf on 21 February 2020. The plaintiff responded by his affidavit in response filed on 3 September 2020. When the case was next called on 29

September 2020, counsel for the defendants sought time to file a supplementary affidavit to tender certain documents from the iTaukei Lands and Fisheries Commission. Court directed the defendants to specify the documents in order to decide whether it was necessary to file a supplementary affidavit as evidence.

3. Thereafter, the defendants filed *inter parte* summons on 2 October 2020, supported by the affidavit of Sakeasi Burekece, and sought the following orders:
 - i. That the iTaukei Lands and Fisheries Commission (TLFC) is to release to the defendants a full copy of the following documents:
 - a) Annexure SB2 in the Defendants Affidavit in Reply being the Decision by the TLFC Chairman, Ratu I. K Caginavanua in 1989
 - ii. The defendants, thereafter, to file a supplementary affidavit annexing all the translations of all vernaculars and a complete copy of each annexure SB2
 - iii. Alternatively, if the court cannot give decision in (i) above, then an order that the defendants subpoena the TLFC for the same to appear with the complete and translated documents on the hearing date.
 - iv. Each party to bear its own costs".
4. When the case was called on 28 October 2020, the plaintiff objected to the discovery of the documents as it was already fixed for hearing. Both parties filed affidavits; the plaintiff filed its affidavit in response on 28 October 2020, and the defendants replied on 4 November 2020. On 24 November 2020, counsel for both parties submitted that the matter could be disposed by written submissions. Parties were directed to file their submissions within 14 days. The defendants filed submissions on 9 December 2020. However, the plaintiff did not file submissions.
5. The defendants submitted that they intended to seek leave to tender the English translation of documents annexed to the affidavit in reply and to obtain an order to verify and obtain documents from the iTaukei Lands and Fisheries Commission. The defendants relied on Order 28 Rule 2 (6) of the High Court Rules 1988 and section 10 of the Civil Evidence Act 2002 in support of their application.

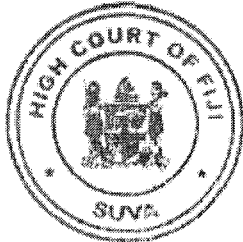
6. Order 28 of the High Court Rules sets out the originating summons procedure. Rule 2 makes provision for the filing of affidavit evidence in proceedings begun by originating summons. Rule 2 (6) says no other affidavit shall be received in evidence without the leave of the court. Section 10 of the Civil Evidence Act provides for the proof of a statement contained in a document, if such statement is admissible.
7. Order 28 r 2 (6) of the High Rules and section 10 of the Civil Evidence Act do not vest a right in the defendants to tender a supplementary affidavit annexing further documents that are said to be within the possession of the iTaukei Lands and Fisheries Commission. That is clear from the rules. The court has the discretion to decide whether or not to allow a supplementary affidavit to be filed¹. The defendants have not satisfied court that the court's discretion should be exercised to allow the defendants to tender further documents through a supplementary affidavit.
8. No order will, therefore, be made requiring the iTaukei Lands and Fisheries Commission to release the documents stated by the defendants in their *inter parte* summons filed on 2 October 2020. In the alternative, the defendants have asked court to order the commission to appear in court with the documents and translations. In my view, this is unnecessary for the hearing initiated by the notice of motion. The orders sought in the notice of motion filed on 9 December 2019 are substantially the same as those prayed for in the statement of claim. If evidence pertaining to these documents are to be admitted, that may be done by summoning a witness from the iTaukei Lands and Fisheries Commission to produce documents at the trial, after the parties go through discovery and inspection according to the rules.
9. The defendants may tender translations of documents in the vernacular language that are annexed to the affidavit in reply filed on their behalf and which are already before court. This must be done within 14 days of this decision.

¹ Ramesh Chand Sharma & Rajendra Sharma v Rajesh Rishmi Ram [2020] FJHC 931; HBC 61.2019 (10 November 2020)

ORDER

- A. Inter parte summons filed by the defendants on 2 October 2020 is struck out subject to what is stated at paragraph 9.
- B. The notice of motion filed on 9 December 2019 is to be taken up for hearing.
- C. The defendants are directed to pay the plaintiff a sum \$600.00 being costs summarily assessed within 21 days of this decision.

Delivered at **Suva** on this 10th day of **August, 2022**



A handwritten signature in black ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor
Judge