

IN THE HIGH COURT OF FIJI AT SUVA

IN THE CENTRAL DIVISION

CIVIL JURISDICTION

Civil Action No. HBC 235 of 2016

BETWEEN: ANDRES LEHESTIK

FIRST PLAINTIFF/APPLICANT

AND: RYAN MACDONALD

SECOND PLAINTIFF/APPLICANT

AND: FRANCES VERMA

THIRD PLAINTIFF /APPLICANT

AND: AVIN PRAKASH

FIRST DEFENDANT/RESPONDENT

AND: THE REGISTRAR OF TITLES

SECOND DEFENDANT/RESPONDENT

Date of Hearing : **12th December 2024**
For First and Second Plaintiff/Applicant : **Mr Maisamoa I.**
Counsel for the Second Defendant/Respondent: **Mr Singh A.**
Counsel for the Third Defendant/Applicant : **Mr Chauhan V.**
Counsel for Third Defendant : **Mr Bauleka A.**
Date of Decision : **8 May 2025**
Before : **Waqainabete-Levaci S.L.T.T, J**

RULING

(APPLICATION FOR LEAVE TO GIVE EVIDENCE BY ELECTRONICALLY)

BACKGROUND

1. This is a Claim alleging that the First Defendant had fraudulently transferred a property owned by the First Plaintiff known as Lot 11 on DP 4042 located in Serua in Fiji described as CT 16357 known as Lot 952, Great Harbour Drive, Pacific Harbour to himself after having placed a Caveat on the property for payments alleged to be owed for building services rendered to the First Plaintiff. The First Plaintiff seek orders for:
 - (a) Declarations that the 1st Defendant acted unlawfully in transferring the title;
 - (b) A Declaration that the 1st Defendant had conspired or misled others to unlawfully approve the transfer of title and seizure action;
 - (c) An Order that transfer of the 1st Plaintiffs title registered on 30th January 2015 be rendered void and setaside;
 - (d) Orders for damages;
 - (e) Exemplary damages against 1st Defendant for \$50,000;
 - (f) General Damages against the 1st Defendants;
 - (g) Costs in the action.
2. When the matter was affixed for trial from 10th to 12th of December 2024, Stand in Counsel sought leave for adjournment and that the new trial date be moved to the 12th of December 2024 as the Counsel in carriage of the matter would be present and the Defendant's witness would travel in from Australia.

3. On 12th of December 2024 the Counsel for the Plaintiff contested a letter from the Defendant arguing that no confirmation was forwarded by the Plaintiff regarding the settlement and sort to have the matter adjourn to another trial date. The Counsel for the Defendant consented to adjournment as his client is unable to travel into the Country.
4. Counsel for the Plaintiff thereafter made an oral application for leave to deduce evidence by electronic means relying on Order 29 Rule 1 of the High Court Rules.
5. Cases referred to Great Wall of China Builders LTD -v- Liu (2024)FJHC 670; HBC 177.2021 (11 November 2024) where it was held that the court had a discretion to grant obtaining evidence electronically where it was in the interests of justice.

ANALYSIS

6. Considering the cases of Great Wall of China Builders Ltd (Supra), the Court thereafter referred to the Supreme Court Practice Book (Vol 1, Sweet and Maxwell, London) page 634 at para 39/1/2 which stated:

“Effect of Rule 1 - This rule (which embodies an ancient practice of the superior common law courts among others) is the rule under which the High Court makes its orders for the evidence to be taken in this country, before the trial, of a witness who will be unable to attend it. This rule however not limited to the taking of evidence in this country, and where it is sought to take evidence abroad before a special examiner (before the British Consular Authority at as special examiner in a convention country. Where the circumstances render it expedient in the interest of justice to do so, the Court has power, instead of making an order for the examination of a witness (e.g. an elderly lady) under this rule, to adjourn trial of an action to the place where the witness is, so as to hear the oral evidence of the witness upon the trial’
7. Therefore having considered the principle when exercising discretion, the Court considered the application before it. The witness called upon, is located overseas in Estonia, Europe and is unable to travel due to his age and his inability to have the means to travel. This is sufficient to satisfy the Court why such evidence should be taken by Skype given the vulnerable age and difficulty in travel of the witness.
8. Given these complexities the Court grants the taking of evidence at trial by electronic means. The Court will therefore arrange for skype evidences.
9. The Witness is required to give evidence by zoom swearing his oath before a Notary Public. The evidence must be given in the district court room or police station or if there is a nearby Consul for Fiji, at the Consular’ s office.

Orders

10. Court Orders:

- (a) Granting of the evidence of the Plaintiff by zoom, swearing on oath before a Notary public;
- (b) Evidence to be given from the nearest district court or district police station or from the nearest Counsellor's office or at an independent venue for which the Counsellor can be present.
- (c) Costs borne by the Plaintiff.




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Justice Senileba Waqainabete-Levaci
Judge of the High Court of Fiji