

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**Civil Action No. HBC 207 of 2013**

BETWEEN : **MOHAMMED MUNIF KHAN & ASLAM KHAN** both of  
Varavu, Ba.

**Plaintiffs**

AND : **ITAUKEI LANDS TRUST BOARD** is a statutory body having  
its registered office at 431 Vitoria Parade, Suva.

**1<sup>st</sup> Defendant**

AND : **DAUDS TRANSPORT LIMITED** a limited liability company  
having its registered office at Vuda, Lautoka.

**2<sup>nd</sup> Defendant**

AND : **REGISTRAR OF TITLES**

**3<sup>rd</sup> Defendant**

AND : **ATTORNEY GENERAL OF FIJI**

**4<sup>th</sup> Defendant**

## **R U L I N G**

[1]. Before me is Daud Transport Limited's application to strike out the claim against it under Order 18 Rule 18(1)(a) on the ground that there is no reasonable cause of action pleaded against it in the plaintiffs' statement of claim. The law in this area is well settled. The approach to such applications is to assume that the facts as pleaded are proved. Once that assumption is made, the next question is to ask whether or not the facts do raise a legal issue or do raise a reasonable cause of action against the defendant. A reasonable cause of action means a cause of action with some chance of success based on the pleaded facts in the claim.

[2]. I have perused the statement of claim paragraph by paragraph and have found no cause of action whatsoever pleaded against the 2<sup>nd</sup> defendant. The allegations are all against the iTLTB.

- [3]. The plaintiffs, as far as I can gather from the statement of claim, are brothers. At all material times, they were lessors of iTaukei Lease No. 25855 and Instrument of Tenancy No. 4/1/5968 as well as Instrument of Tenancy No. 4/1/5964 all amalgamated to Instrument of Tenancy No. 4/1/39384. Apparently, at some point, a Receiving Order was made against the plaintiffs, as they disclose at paragraph 7 of the Statement of Claim. After the Receiving Order was entered, cane proceeds from the farm was paid to and held by the Official Receiver. It appears that the Plaintiffs also fell into arrears on their iTLTB rental payments. They plead in their statement of claim that they did then make arrangements with one Neli Turagabeci, Litigation Officer of iTLTB, who agreed to give them time until 30 June 2013 to sort out their arrears with the Official Receiver and clear all outstanding rent. The plaintiffs plead that, relying on that advice, they then **“started making efforts to clear off our arrears”**.
- [4]. In June 2013, so the plaintiffs plead, they went and sorted out the matter with the late Tui Ba **“who wrote a letter to iTLTB after which all arrears of land rental were paid by Plaintiffs to the 1<sup>st</sup> Defendant for which the 1<sup>st</sup> Defendant issued receipts numbers 336332 dated 12<sup>th</sup> July 2013 in the sum of \$7,036.30 and receipt nos. 336333 dated 12<sup>th</sup> July 2013 for \$5,344.80 and receipt no. 13458 dated 9<sup>th</sup> July 2013 amount to \$3,730.00 all totalling to \$16,101.80”**.
- [5]. The plaintiffs plead that thereafter, whilst working on their farm one day, they were told by other farmers in the area that their land had been leased to someone else. They plead that they were taken by surprise and shocked as this land has been their home since birth together with their father and

grandfathers and their families. They say that the iTLTB was still accepting land rental from them and issuing receipts to their name, however, it became clear at the hearing that the “land rental” they refer to in this regard, was in fact rental arrears. The plaintiffs plead that, upon being told that a lease had been given to Daud’s Transport, they went to iTLTB Office in Lautoka to inquire as to the truth of that story and were told by the same Neli Turagabeci that the land in question has indeed been given to Daud’s Transport Limited and that their (plaintiffs’) lease had been cancelled.

[6]. The rest of the statement of claim sets out the plaintiff’s grievances at how they were supposedly ill-treated by iTLTB officials in not having warned them that the process of re-leasing of the land to Daud’s Transport was underway.

[7]. It is conceded to clearly in the statement of claim that the plaintiffs were paying off long outstanding rental arrears with iTLTB when the iTLTB made the decision to issue a new lease to Daud’s Transport. At paragraphs 14, 15 and 16 of the Claim, the plaintiffs plead as follows:

14. That at all material times both Plaintiffs never had any knowledge whatsoever and howsoever that the 1<sup>st</sup> Defendant had lease their land to the 2<sup>nd</sup> Defendant. At all times they had the understanding and legitimate expectations that since they been paid the rental arrears which the 1<sup>st</sup> Defendant accepted and issued receipts to, the land was still theirs and they could cultivate it to generate income.

15. That at no time did the 1<sup>st</sup> Defendant advised them that they were giving their land to the 2<sup>nd</sup> Defendant nor did they were served Plaintiffs with Notice or Summons advising them that their property or land would be sold to someone else or any notice given for re-possession of Plaintiffs land.

16. That at no time did Plaintiffs have any knowledge or advised by the TLTB officers that their land would be re-leased to someone else if in arrears of rent otherwise they would have obtain loan from their family members to clear off arrears or made effort to clear off the arrears sooner.

[8]. At paragraph 25, the plaintiffs allege that the iTLTB had colluded with Daud's Transport, but all the particulars of fraud pleaded point at the iTLTB solely.

25. That the Plaintiffs believe that the 1<sup>st</sup> Defendants deliberately and fraudulently colluded with the 2<sup>nd</sup> Defendant and had the said lease issued in their name.

**PARTICULARS OF FRAUD**

- a) Obtaining rent from Plaintiffs while negotiating with the second Defendant.
- b) Not advising Plaintiffs of their intention not to give Lease to them despite the fact that they were receiving rent monies from Plaintiffs.
- c) Obtaining rent monies by deception in the false pretence that Plaintiffs will continue with old lease.

[9]. Among the relief sought by the plaintiffs, are the following at (e), (f), (g) and (h).

- (e) For a Declaration that the said transfer Document executed by the 2<sup>nd</sup> Defendant on the said proper property was executed unlawfully and/or improper and/or fraudulently.
- (f) An Order that the Transfer of the land fully described as Native Lease No. 25855 and Instrument of Tenancy No. 4/1/5968 and Instrument of Tenancy No. 4/1/5964 all amalgamated to instrument of Tenancy No. 4/1/39384 containing an area of 14.5254 hectares to the Second Defendant be set aside.

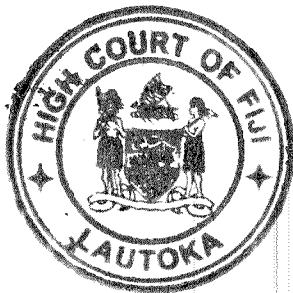
- (g) An Order that the First Defendant and Second Defendants transfer the land more fully described as Native Lease No. 25855 and Instrument of Tenancy No. 4/1/5968 and Instrument of Tenancy No. 4/1/5964 all amalgamated to Instrument of Tenancy No. 4/1/39384 containing an area of 14.5254 hectares to the Plaintiffs.
- (h) The Plaintiffs had legitimate expectations that upon payment of arrears they would get the lease from First Defendant.

[10]. I gather from an application filed by the plaintiffs on 12 March 2014 seeking an Order to injunct Daud's Transport from entering the **“disputed property and/or carrying out any form of cultivation until the determination of Agricultural Tribunal Reference No.s: WD 03/14; WD 04/14; WD 05/14; WD 06/14; WD 07/14; WD 08/14 or until a further order of this Honourable Court”**.

[11]. It is hard for me to see how a tenant of an ALTA lease who has defaulted on rental payment and whose had that lease re-entered, may then claim for a declaration of tenancy under ALTA.

[12]. I do not think that the Agricultural Landlord & Tenant Act would extend thus far in its effect. If it did, it would create a mischief as that would be tantamount to giving an iTLTB or State agricultural tenant the benefit of avoiding to pay any rent on the promise that they would still be able to maintain a claim for a declaration of tenancy under ALTA. I do not think ALTA can be used in such circumstances to taint or defeat a bona fide purchaser for value's registered lease over a leasehold. And having said that, in the absence of any particulars of fraud pleaded against Daud's Transport, the inescapable conclusion is that Daud's Transport is indeed a bona fide purchaser for value.

- [13]. And while I concede that the right to a declaration of tenancy under ALTA may apply in most situations to qualify the indefeasibility of title provisions under the Land Transfer Act (Cap 131), in the circumstances of this case, the protection of the indefeasibility-of-title provisions of the Land Transfer Act must prevail to the full as against the plaintiffs' claim.
- [14]. I find that the statement of claim pleads no reasonable cause of action against Daud's Transport Limited and accordingly, I strike out the claim against Daud's Transport Limited. I also award costs in favour of Daud's Transport Limited which I summarily assess at \$1,000-00 (one thousand dollars). Having ruled that, it follows that I should now dismiss the plaintiffs now-redundant summons dated 12 March 2014 in which they seek the injunctive orders against Daud's Transport, and I do so now dismiss the said summons.



Anare Tuilevuka

**JUDGE**

13 June 2014.