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

Civil Action No.: HBC 008 of 2015

BETWEEN : **RATU LEIENE WAQA** of Nadala, Nadarivatu, Tavua, Farmer suing on his own behalf and on behalf of Mataqali Naqereqere.

PLAINTIFF

AND : **ITAUKEI LAND TRUST BOARD** duly incorporated under the provisions of the iTaukei Land Trust Act.

1ST DEFENDANT

AND : **FIJI HARDWOOD CORPORATION LIMITED** a Government Commercial Company under Public Enterprise Act declared under Public Enterprise Act and incorporated under the Companies Act.

2ND DEFENDANT

Before : Hon. Mr Justice R. S. S. Sapuvida

Counsel : Mr Kitione Vuataki for Plaintiff
Mr Inoke Lutumailagi for 1st Defendant

Date of Judgment : 7th October 2016

JUDGMENT

INTRODUCTION

[1] The Plaintiff by Originating Summons dated 19th January, 2015 has applied for the following Orders:

1. A Declaration that land known as Bulu belonging to Mataqali Naqereqere and marked on NLC Lot 8 Sheet Reference H/15 2 on NLC Final Report Volume 3 had been reserved for agricultural use of Mataqali o Naqereqere.

2. A Declaration that 60% of adult members of Mataqali Naqereqere had not consented to de-reservation of their agricultural reserve marked on NLC Lot 8 Sheet Reference H/15 2 on NLC Final Report Volume 3 for leasing of said land to Director of Lands or the 2nd Defendant.

3. A declaration that the 2nd Defendant's Instrument of Tenancy Number 4469 over native land marked on the plan attached to the Tenancy is null and void.

4. An Order and injunction that the 2nd Defendant by itself, its employees, servants and or agents do not interfere with Mataqali Naqereqere's negotiation for use of their agricultural reserve for electrification purposes or any compensation for trees growing on said reserve.

5. General and Exemplary damages.

6. Such further or other Orders as the Court may determine.

7. Indemnity Costs.

[2] The summons is supported by the Affidavit of Ratu Leiene Nawaqaliva who in a supplementary affidavit deposed the 15th July, 2015 stated that he is also known as Leiene Waqa.

[3] The Originating Summons and Affidavit in support were served on 1st Defendant on the 12rh February, 2015 but they did not acknowledge service nor serve an Affidavit in Reply on Plaintiff.

[4] The Originating Summons and Affidavit in support were served on 2nd Defendant on the 13th February, 2015, but it did not acknowledge service nor serve an Affidavit in Reply on Plaintiff.

[5] Hearing was limited to a very brief introduction to the Plaintiff's case in Court by his counsel and the 2nd Defendant did not show any interest in joining the hearing and did so by the 1st Defendant as its Counsel joining very late at the hearing in Court as well.

[6] The 1st Defendant begged for further time to file the affidavit in opposition on the hearing day to which the Plaintiff did not object having reserved the right to file the reply.

[7] The 1st Defendant then filed the affidavit in opposition to which the Plaintiff has filed the reply.

[8] However the above move was allowed by the Court as agreed upon by both the parties provided the hearing to be concluded as scheduled.

[9] Then, later at the end of the hearing the parties insisted the Court to file further written submissions to be considered as the submissions of the hearing to which only the Plaintiff has complied with. However, the 1st Defendant did not even bother to file submissions albeit the 1st Defendant was given ample time to file the written submissions.

[10] According to the affidavit evidence before this Court, Mataqali Naqereqere ("the Mataqali") is a landowning unit of Nadala and Nagatagata villages. It owns 3048 acres of land whose boundaries are set out in the Fiji Register of Native Lands Volume 2 Folio 8 being Annexure RLN2 of the Affidavit of Ratu Leiene Nawaqalive also known as Leiene Waqa ("the Affidavit in Support"). These facts have not been challenged by the Defendants.

[11] The affidavit in opposition of the 1st Defendant was filed by Soloveni Masi, Regional Manager of 1st Defendant. What contains in his affidavit is a mere statement of a general denial of the Plaintiff's case as a whole rather than bringing forward the facts on which the 1st Defendant is relying upon to rebut the Plaintiff's position or to specifically to deny the averments of the Plaintiff's case with substantive facts . Instead, the 1st Defendant's affidavit mostly carries "**I can neither confirm nor deny the contents.....**" and so on, in almost every paragraph in it.

THE FACTS

[12] On the 24th day of July, 1962 a claim had been made for reserve of the 3,048 acres land of Mataqali to be reserved. Commissioner of Native Reserve on the same date recorded that there was no objection to this being done and that the Reserve was "for agricultural purpose". The whole lot to be reserved as far as timber use is concerned.

[13] The boundary was recorded as being "From the mouth of the Qalinasau Creek thence down the Qaliwana Creek to the Lot boundary thence following Lot boundary North and East to Tolovora then South following track Nadarivatu/Qalinasau/Nadrau to the lot where the Qalimara Creek first touches the track thence West to mouth of Qalinasau Creek 2".

[14] The Reserve was plotted on Map Sheet Reference H/15 2. A copy of the map showing the agricultural reserve was given to Plaintiff by the Reserve Section of the 1st Defendant with the Reserve Section marked purple. The agricultural reserve is called Bulu.

[15] In 2004 the 1st Defendant came to the Mataqali with representatives of the Fiji Electricity Authority and the Roko from the Ba Provincial Office. They came to hold meeting with the Mataqali for an electricity dam to be built on the Mataqali land under an electrification project called "Power 5".

[16] The Fiji Electricity Authority gave the Mataqali the contract to make a road to where drilling would take place and also where the dam was to be constructed. 792 acres of Bulu was to be flooded under the Power 5 project. Because of that a member of the Mataqali named Taivesi was given a license on 7th March, 2012 by the 1st Defendant to fell and clear trees in the area to be flooded.

[17] Taivesi paid all levies levied on the clear fell license but did not fell the trees because as some representatives of the 1st and 2nd Defendants came to see him not to cut the trees as the 2nd Defendant held a lease over Mataqali land known as Motovai.

[18] The Mataqali was surprised by this and found out that the lease included the electrification area known as Bulu. The electrification project was put on hold until discussions with 1st Defendant, Fiji Electricity Authority and the Roko from Ba Provincial Office continued again in April, 2014.

[19] On 25th November, 2014 a meeting was held between the Mataqali, 1st Defendant, Fiji Electricity Authority, Divisional Planning Officer and 2nd Defendant where the Mataqali informed Fiji Electricity Authority that their land Bulu be returned to the Mataqali before commencement of any further talks on the electrification project.

[20] By letter dated 25th November, 2014 the Mataqali's Solicitor wrote to 2nd Defendant informing them that the Mataqali had not given 60% consent to de-reserve the land known as Motovai and that the Mataqali considered the purported lease as illegal.

[21] The 2nd Defendant wrote back by letter dated 26th November, 2014 that 1st Defendant had issued a lease over the area in 1991 and transferred to 2nd Defendant through Legal Notice 13 of 1996.

THE APPLICATION

[22] The Plaintiff applies by Originating Summons dated 19th January, 2015 for the following Orders:

1. A Declaration that land known as Bulu belonging to Mataqali Naqereqere and marked on NLC Lot 8 Sheet Reference H/15 2 on NLC Final Report Volume 3 had been reserved for agricultural use of Mataqalio Naqereqere.

2. A Declaration that 60% of adult members of Mataqali Naqereqere had not consented to de-reservation of their agricultural reserve marked on NLC Lot 8 Sheet Reference H/15 2 on NLC Final Report Volume 3 for leasing of said land to Director of Lands or the 2nd Defendant.

3. A declaration that the 2nd Defendant's Instrument of Tenancy Number 4469 over native land marked on the plan attached to the Tenancy is null and void.

4. An Order and injunction that the 2nd Defendant by itself, its employees, servants and or agents do not interfere with Mataqali Naqereqere's negotiation for use of their agricultural reserve for electrification purposes or any compensation for trees growing on said reserve.

5. General and Exemplary damages.

6. Such further or other Orders as the honourable Court may determine.

7. Indemnity Costs.

[23] The summons is supported by the Affidavit of Ratu Leiene Nawaqaliva who in a supplementary affidavit deposed the 15th July, 2015 stated that he is also known as Leiene Waqa.

[24] The Originating Summons and Affidavit in support were served on 1st Defendant on the 12rh February, 2015 but it did not acknowledge service nor serve an Affidavit in Reply on Plaintiff.

[25] The Originating Summons and Affidavit in support were served on 2nd Defendant on the 13th February, 2015, but it did not acknowledge service nor serve an Affidavit in Reply on Plaintiff.

[26] It is clear from N.L.C. Record No. 88 that 3,048 acres of land being Lot 8 owned by Mataqali Naqereqere was claimed to be reserved on 24th July, 1962. It was then recommended for reserve by the Commissioner Reserve on the 24th July, 1962. That record states that the "whole" of their land was being reserved.

[27] It is also clear from the Register of Native Lands Volume 2 Folio 80 being Annexure "RLN2" that the whole of the land was being reserved as the Mataqali is shown on that Register as owning three thousand and forty eight acres.

[28] It is further clear by the purple marking on the map of the land given to Plaintiff by the Reserve Section of 1st Defendant that such land had been reserved. This had been plotted on Map Sheet Reference H/15 2 as shown on N.L.C. Record No. 88.

[29] By these facts uncontested it clearly reveals that the land known as Bulu belonging to Mataqali Naqereqere and marked on NLC Lot 8 Sheet Reference H/15 2 on NLC Final Report Volume 3 had been reserved for agricultural use of Mataqali Naqereqere.

THE LAW

[30] Section 5 of Ordinance 19 of 1968 allowed the iTaukei Land Trust Board to exclude native land from Reserve. This Section had become Section 17(1) and (2) of the Native Land Trust Act [Cap 134] in 1991 when the initial lease was given by 1st Defendant to Director of Lands. Section 17(1) state as follows;

> *Exclusion of land from native reserve with consent of native owners.*
>
> *17.-(1) The Board may, upon good cause being shown and with the consent of the native owners of the land, exclude either permanently or for a specified period any portion of land from any native reserve. (Substituted by Ordinance 19 of 1968, s.5)*
>
> *(2) Every such exclusion as aforesaid shall be published in the Gazette and in a newspaper published in the Fijian language and circulating in Fiji. (Substituted by Ordinance 19 of 1968, s.5; amended by Act 1 of 1978, s.2.)*

[31] Section 16(3) (c) of the Native Land Trust Act [Cap 134] states that

> ***(c) whenever the consent of Fijian owners is necessary under this or any other section of this Act, such consent shall be obtained by the Board in such manner and after such consultation with the Fijian owners, and shall be signified by the Fijian owners in such manner, as maybe prescribed by regulations made under Section 33, or in default of any such regulations as the Board may consider appropriate.*** *(Substituted by Ordinance 58 of 1962, s. 4.)*

[32] Regulation 2 of the Native Land (Miscellaneous Forms) Regulations states:

> *"Form of Consent of native owners.*
>
> 2. *The consent of native owners to any matter or thing in respect of which such consent is required to be given under the Act or any regulations made thereunder shall be given in such manner and evidenced in such form as the Board may consider appropriate and such consent shall be deemed to have been given if a majority of the adult native owners shall have signified their consent."*

[33] At paragraph 16 and 17 of the Affidavit in support as well as through their (Mataqali Naqereqere) Solicitor's letter dated 25th November, 2014 the Plaintiff' reiterate that they had not given 60% of majority adult consent as required for de-reservation of their reserved land. The 1st Defendant has not produced any written majority consent of the Mataqali in this proceeding nor by the 2nd Defendant. It has to be then accepted that no such consent was given by the Mataqali to exclude the land from Reserve so the Director of Lands could lease it in January 1991.

[34] On the above premise, the plaintiff has established in this case that 60% of adult members of Mataqali Naqereqere had not consented to de-reservation of their agricultural reserve marked on NLC Lot 8 Sheet Reference H/15 2 on NLC Final Report Volume 3 for leasing of said land to Director of Lands or the 2nd Defendant.

[35] Does the Section 16 of the Native Land Trust Act [Cap 134] forbid leasing of iTaukei reserve land except to iTaukei Fijian?

Section 16 states as follows;

Land in native reserve not to be alienated

> *"16.-(1) Subject to the provisions of the Crown Acquisition of Lands Act, the Forest Act, the Petroleum (Exploration and Exploitation) Act, the Mining Act, and to the provisions of this Section, no land in any native reserve shall be leased or otherwise disposed of.*
> *(Cap.135, Cap. 150, Cap. 148, Cap. 146.)*

[36] The Director of Lands does not hold the status or the legal personality of an iTaukei. So the exception in Section 16(1) does not apply to the Office of Director of Lands. The grant of Instrument of Tenancy to Director of Lands in January 1991 was therefore in breach of Section 16(1) of the iTaukei Lands Trust Act [Cap 134]. The 1st defendant had no power to grant such an instrument. The Instrument of Tenancy was therefore null and void ab initio.

[37] Registration of an instrument that is void ab initio does not give indefeasibility to that Instrument. The Court of Appeal in **Lok v Ram [2012] FJCA 92; ABU0005.2012 (30 November 2012)** stated at paragraph 42 that;

> 42. *As stated above I agree with the conclusion reached by the learned trial Judge that the Appellant had fraudulently executed the impugned transfer deed in his favour and therefore the Torrens System does not come to his rescue to safeguard the registration of the deed even though it has been registered in the Register of Titles.* ***I state further that the concept of indefeasibility of title under the Torrens System should not be allowed in instances where a deed is declared to be void ab initio as in the present case.***

[38] The Court of Appeal at paragraph 46 also approved the conclusion of the Trial Judge as follows;

> 46. ***The learned trial Judge have considered the effect of the provisions of the Native Land Trust Act concluded as follows in respect of the impugned deed of transfer:***
>
> ***"47. In the result, I hold that the Transfer of Lease No. 360347 in the name of the first defendant is an unlawful dealing in the absence of the consent of the NLTB. Such transfer is null and void ab initio within the meaning of Section 12 of the NLT Act. The Registrar of***

Titles is mandated only to register lawful dealings on native lands under the provisions of the Land Transfer Act; and, he is under a legal duty to satisfy himself in regard to the availability of the consent of the NLTB when he registers dealings on native lands. Failure to do so will result the purported registration null and void ab initio without any legal effect whatsoever."

[39] Since the Instrument of Tenancy was void its purported transfer by way of administration under Legal Notice 13 of 1996 was ineffective to transfer any form of tenure to 2nd Defendant under the maxim of *nemo dat habet non* ***["no one can give more than what he has."]***

[40] The Supreme Court in **Native Land Trust Board v Lal** [2012] FJSC 11; CBV0009.2011 (9 May 2012) at paragraph 33 defined this maxim as follows;

".....equitable maxim nemo dat habet non, which simply means that no one can give more than what he has."

ANALYSIS

[41] The Director of Lands therefore transferred nothing to the 2nd Defendant in the said Legal Notice as its purported instrument was void. Therefore, the court can clearly observe that the 2nd Defendant 's Instrument of Tenancy Number 4469 over native land marked on the plan attached to the Tenancy is null and void.

[42] The mere existence of property does not of itself entitle Plaintiff to a permanent injunction. There must be a wrong to be prevented arising from tort (or other situations not relevant to this case): **Garden Cottage Foods Ltd v Milk Marketing Board** *[1984] A.C.130.*

[43] The Mataqali owns land which is reserved for their own use. That land has trees on it. This means they own such trees and can negotiate for compensation for flooding or felling and removal before flooding. If they were to agree to give majority consent to have such land de-reserved to be leased by the non-iTaukei entity on the Power Project 5 they will have to consider the cutting down of trees that will be flooded as well as the terms they wish to agree to, to forgo, their Reserve rights and have the land be used for electrification.

[44] Since the Mataqali is not leased to 2nd Defendant, the 2nd Defendant has no right to interfere with exercise of ownership rights by the Mataqali. One of those

rights is to negotiate on what terms it will give its majority consent not to exercise its Reserve rights.

[45] In this case the Mataqali, 1st Defendant and Fiji Electricity had been negotiating for the use of Bulu for the electrification project and the felling of trees to be flooded. That negotiation has been put on hold because of the 2nd Defendant's claim to the Mataqali land under the said purported instrument of tenancy.

[46] On the basis of forgoing reasons thus far, the legal position is so clear that it does not permit the 2nd Defendant to interfere with the Mataqali's exercise of ownership and Reserve rights of their land by negotiating only with Fiji Electricity Authority and 1st Defendant. Therefore, a torturous nature of a wrong that needs to be restrained by permanent injunction which is a main relief inter alia as pleaded and sought by the Plaintiff in this case on his own behalf and on behalf of Mataqali Naqereqere.

[47] Therefore I accept the argument of the Plaintiff that an Order by way of permanent injunction is necessary against the 2nd Defendant by itself, its employees, servants and or agents do not interfere with Mataqali Naqereqere's negotiation for use of their agricultural reserve for electrification purposes or any compensation for trees growing on said Reserve.

DAMAGES & COSTS

[48] The Plaintiff in addition to the declarations and the injunction is also seeking damages & costs in two folds; i.e. general & exemplary damages and costs on indemnity basis as well.

[49] Plaintiff submits the following case law authorities in support of his claim for exemplary damages against the 1st Defendant:

- **Commander, Republic of Fiji Military Forces v Navualaba** [2010] FJCA 58; [2010] 4 LRC 709 said as follows on exemplary damages;

> **[12] The main purpose of exemplary damages is to punish a Defendant. The Judge noted a decision of Coventry J in the High Court in *Dr Anirudh Singh v Sotia Ponijiase* (unreported), Fiji HC, in which the judge ordered $100,000 exemplary damages for an extreme case where soldiers had kept surveillance on the Plaintiff. The Plaintiff was handcuffed and hooded so he had**

difficulty breathing and was brutalized for twelve hours. The Judge said, and we also agree, that the present case was nowhere near the brutality in that case.

[13] There has been a difference of approach taken to exemplary damages in the English, Australian, New Zealand and Canadian courts.

[14] In *Rookes v Barnard* [1964] UKHL 1; [1964] 1 AII ER 367 the House of Lords through Lord Devlin dramatically renounced exemplary damages as incompatible with the essentially compensatory nature of civil liability, except when expressly authorized by statute or against oppressive, arbitrary and unconstitutional acts of government servants. In Australia, New Zealand and a Canada exemplary damages have survived as a mars of public censure against extremely bad misconduct- see, for example, *Australian Consolidated Press v Uren* [1969] 1 AC 590 and *Taylor v Beere* [19812] 1 NZLR 81.

[50] In this particular case the 1st Respondent is a Statutory Trustee. It is entrusted by Parliament on Behalf of the People of Fiji to ensure that lands reserved to iTaukeis become a Reserve to them and not leased out in deliberate breach of Trust to another Government entity such as a Director of Lands or anybody else.

[51] In this case the action of the 1st Defendant in issuing a lease to the Director of Lands is clearly an act of arbitrary nature because it has carried out its own will and not given mindfulness to the prohibition in Section 16(1) of the Native Land Trust Act (Cap134) that **no land in any native reserve shall be leased or otherwise disposed of.**

[52] The Plaintiff begs that these forms of actions are autocratic use of authority and ought to be punished by exemplary damages.

[53] Hickie J in **Rokotuiviwa v Seveci [2008] FJHC 221; HBC 374.2007 (12 September 2009)** considered the views of Justice Brennan as follows;

> [144] Perhaps the views of Brennan J from the High Court of Australia (who was later a member of the Supreme Court of the Fiji Islands) encapsulate what a Court is trying to achieve by awarding

exemplary damages when in ***XL Petroleum(N.S.W.) Pty Ltd v Caltex Oil (Australia) Pty. Ltd*** **1985** 155 CLR 448; (Austlii: [1985] HCA 12, 28 February 1985, http://www.austlii.edu.au/au/cases/cth/HCA/1985/12.html), he said, at page 471 (paras 9-10):

"As an award of exemplary damages is ***intended to punish*** *the* ***Defendant for conduct showing a conscious and contumelious disregard for the Plaintiff's rights and to deter him from committing like conduct again,*** *the considerations that enter into the assessment of exemplary damages are quite different from the considerations that govern the assessment of compensatory damages. There is no necessary proportionality between the assessment of the two categories. In* ***Merest v Harvey*** *(1814) 5 Taunt 442 [1814] EngR 330; (128 ER 761)*
substantial exemplary damages were awarded for a trespass of a high-handed kind which occasioned minimal damage, Gibbs C.J. saying:

"I wish to know, in a case where a man disregards every principle which actuates the conduct of gentlemen, what is to restrain him except large damages?" *The social purpose to be served by an award of exemplary damages is, as Lord Diplock said in* ***Broomie v. Cassell & Co.*** *(1972) AC 1027, at p 1130,* ***'to teach a wrong-doer that tort does not pay".***

[54] It is therefore not only punishment but deterrence that is the guiding rule so that the 1st Defendant would not lease out Reserve land again without going through proper procedures of excluding the land from Reserve by consent of majority adult members of the landowning unit as required under the Statutory Trust.

[55] Apart from **Rokotuiviwa [supra]** there is no precedent award of exemplary damages for breach of statutory trust in particular in Fiji and the amounts set in overseas jurisdictions may assist. However, in **Rokotuiviwa [supra] Hickie J at paragraph [143] citing paragraph (13) of *Thompson v Commissioner of Police of the Metropolis [1997] 3 WLR 403, 417*** said:

143] What Lord Woolf MR actually said in *Thompson v Commissioner of Police* on exemplary damages was:

(12) Finally the.....

(13) Where exemplary damages are appropriate they are unlikely to be less than £50,000. Otherwise the case is probably not one which justifies an award of exemplary damages at all. ***In this class of action the conduct must be particularly deserving of condemnation for an award*** *of as much as £25,000 to be justified and the figure of £ 50,000 should be regarded as the absolute maximum, involving directly officers of at least the rank of superintendent."*

[56] The grounds for awarding exemplary damages for a Statutory Trustee such as the 1st Defendant was stated by the Supreme Court of New South Wales in **MacDonald v Public Trustee** [2010] NSWSC 684 (25 June 2010) as follows;

> **105. However, fortunately for the Plaintiff, and for the protection of others who fight finds themselves in a similar situation, his entitlement is not grounded exclusively upon rights in Equity. The Public Trustee ought to be held accountable for the breach of its statutory duty and of its common law duty of car; and exemplary damages in the foregoing sum are both a fitting deterrent and an appropriate example where such breaches were in contumelious disregard of the Plaintiff's rights over a period of more than forty years.**
>
> **106. In the celebrated case of *Wilkes v Wood*[1763] EngR 103; (1763) Lofft 1 at 19; 98 ER 489 at 498-499, Pratt LCJ said of exemplary damages that they are more than satisfaction for the injury received, and are awarded "as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself." (That passage was quoted with approval by the High Court of Australia in a joint judgment in *Lamb v Cotogno* [1987] HCA 47; [1987] 164 CLR 1 at 8). The foregoing description maybe regarded as having application to the conduct of the Public Trustee in the instant case. THE APPLICATION**

[57] The Court awarded $50,000 exemplary damages in that case.

[58] The Supreme Court of Victoria in the recent decision of *Erlich v Leifer & Anor*

[2015] VSC (16 September 2015) awarded $150,000.00 exemplary damages in what the Judge described as "a massive breach of trust" of a student being sexually abused resulting in psychiatric injury where $150,000.00 exemplary damages was awarded against 1st Defendant and $100,000 against 2nd Defendant.

[59] Likewise, the 1st Defendant has in this case committed a breach of trust in arbitrarily purporting to lease out 315 hectares of the Mataqali's lands and the 2nd Defendant has been trespassing on it since then and now has stopped the Mataqali's negotiating on their right to negotiate for terms on an electrification project which is I am of the view that ought to be visited with some kind of award of damages but should not be the same amount as in Erlich. However, it needs to be a moderate award of exemplary damages to avoid any prejudice to all the parties as guided by **Rokotuiviwa [supra]** . Therefore, albeit the plaintiff is seeking an award of not less than $50,000 to show its disapproval and disapprobation of the 1st defendant's action in this matter, the Court awards the plaintiff with exemplary damages in the sum of $10,000.00.

[60] The Plaintiff is also seeking costs on indemnity basis incurred on solicitor client costs basis.

[61] Justice Sheppard in the Court of Appeal as cited by Scutt J in **Prasad v Divisional Engineer Northern (No.2) [2008] FJHC 234; HBJ 03.2007 (25 September 2008)** stated the question thus:

> **The question is always 'whether the facts and circumstances of the case in question warrant making an order for payment of costs other than by reference to party and party": *Colgate-Palmolive Company v Cussons Pty Ltd [1993] FCA 536; (1993) 46 FCR 225, at 234, per Sheppard, J.***

[62] Therefore, having considered the background of this litigation and the irremediable effect to the Plaintiff and Mataqali Naqereqere, had the 1st Defendant acted with due diligence and due regard to the Native Land Trust Act and its Regulations, the Plaintiff would not have brought this action to court in this manner due to which the Plaintiff definitely has undergone immense hardships and that includes as I weigh it, the costs of this litigation as well.

[63] The Plaintiff hence is entitled for costs on indemnity basis I summarily assess in the sum of $2500.00 against the 1st Defendant.

[64] The Plaintiff has not been able to convince the Court as to the basis on which the Court should assess the general damages. For this, the Plaintiff has not brought

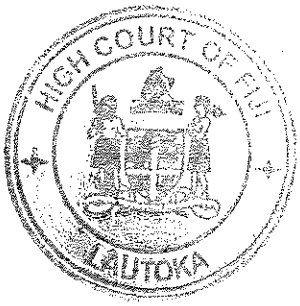
evidence before me to award the Plaintiff with general damages. Therefore, the court declines to award damages against the Defendants.

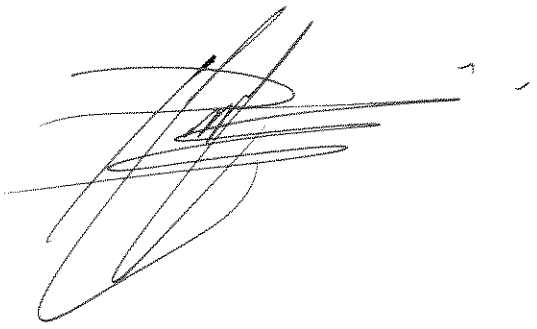
[65] For all the above reasoning, I make the following orders in favor of the Plaintiff:

1. Judgment is entered for the Plaintiff.

2. The declarations and the permanent injunction as prayed for by originating summons of the plaintiff dated 19th January, 2015 are granted including the exemplary damages and costs on indemnity basis against the 1st defendant.

3. The orders made by the Court herein shall be carried out by the 1st defendant within 21 days from this judgment.





R. S. S. Sapuvida

[JUDGE]
High Court of Fiji

On the 7th day of October 2016
At Lautoka