

IN THE HIGH COURT OF FIJI
AT SUVA
[CIVIL JURISDICTION]

CIVIL ACTION NO. HBM 65 OF 2016

BETWEEN : **FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION** of the Republic of Fiji, Rev. John Hunt House, 3 St. Fort Street, Suva, for and on behalf of the **STATE**

APPLICANT

AND : **FEROZ JAN MOHAMMED** of Suva Prison

DEFENDANT

AND : **T.F. JAN BULLDOZING COMPANY LIMITED** a limited liability company having its registered office at Koula Road, Varadoli, PO Box 247 at Ba, Fiji.

1ST INTERESTED PARTY

AND : **TAJ JAN MOHAMMED** of Yalalevu, Ba, and **ESTATE OF AKBAR JAN MOHAMMED** (through its Executor and Trustee, Taj Jan Mohammed) as shareholders in TF Jan Bulldozing Company Limited a limited liability company having its registered office at Koula Road Varadoli, PO Box 247 at Ba, Fiji.

2ND INTERESTED PARTY

AND : **MOBIN MOHAMMED JAN** of Yalalevu, Ba as a beneficiary under the **ESTATE OF AKBAR JAN MOHAMMED** of shares in TF Jan Bulldozing Company Limited a limited liability company having its registered office at Koula Road, Varadoli, PO Box 247 at Ba, Fiji.

3RD INTERESTED PARTY

AND : **BANK OF BARODA** a body corporate registered under the Banking Act, having its registered office at 1 Thompson Street, Suva in the Republic of Fiji Islands.

4TH INTERESTED PARTY

AND : **ZARSHBINA COMPANY LIMITED** a limited liability Company having its registered office at c/- Divendra Singh & Company, Accountants, Office No. 10, Tukani Street, Lautoka.

5TH INTERESTED PARTY

- AND** : **CHANDRESH ARUN PRASAD** of Ba.
6TH INTERESTED PARTY
- AND** : **TROPIK FOREST JOINT VENTURE COMPANY LIMITED** a limited liability company having its registered office at Ba, Fiji.
7TH INTERESTED PARTY
- AND** : **FIJI ROADS AUTHORITY** a corporate body with perpetual succession and a common seal registered under the Fiji Roads Authority Act 2012, situated at Level 4, Fiji Development Bank, 360 Victoria Parade, Suva in the Republic of Fiji Islands.
8TH INTERESTED PARTY
- AND** : **FIFA HOLDINGS (FIJI) LIMITED** a limited liability company having its registered office at Rarawai Road at Ba, Fiji.
9TH INTERESTED PARTY
- COUNSEL** : Mr. R. Aslam with Mr. S. Savumiramira for the Applicant
Mr. A. K. Narayan for the Defendant
Ms. N. Tikoisuva for the 1st, 7th and 9th Interested Parties
Mr. N. Padarath for the 2nd and 3rd Interested Parties
Ms. S. Devan for the 4th Interested Party
5th and 6th Interested Parties, Absent and Unrepresented
Mr. A. Vulauno for the 8th Interested Party

Date of Hearing : 18 June 2018

Date of Ruling : 18 October 2018

WRITTEN REASONS

- [1] This application was filed by the Applicant, Fiji Independent Commission against Corruption (FICAC), by way of an Originating Summons (Forfeiture Order on Conviction), on 17 June 2016. The Applicant seeks a declaration from this Court that the properties mentioned in the annexed "Schedule of Properties" be declared as tainted properties, pursuant to

Section 11 of the Proceeds of Crime Act No. 27 of 1997 and for the issuance of a Forfeiture Order to forfeit the said properties to the State. The application was supported by the Affidavit of Frank Tora, Commission against Corruption Officer (CO) of FICAC.

- [2] An Ex-Parte Notice of Motion was also filed by the Applicant for the issuance of a Restraining Order prohibiting any transactions or dealings in the properties listed in the Schedule of Properties, until the matter is finally determined by this Court.
- [3] This Court, having considered the application of the FICAC, issued a Restraining Order on 23rd June 2016, prohibiting the disposal of the said properties listed in the Schedule of Properties. This Restraining Order has been extended from time to time upon the consent of all the parties.
- [4] The Defendant, Feroz Jan Mohammed (hereafter referred to as the Defendant), was one of four accused in HAC 349 of 2013 and was charged with, Bribery of Public Officials contrary to Section 134(1) of the Crimes Act No. 44 of 2009 (Crimes Act), Obtaining a Financial Advantage contrary to Section 326(2) of the Crimes Act and Perverting the Course of Justice contrary to Section 190(e) of the Crimes Act. After trial he was convicted of the said offences on 22nd June 2015.
- [5] In the Originating Summons filed only the Applicant and the Defendant were named as parties to this action. Subsequent to filing of the Originating Summons, the Applicant named 7 other Interested Parties. Upon notice, all of these Interested Parties appeared before Court, except for 5th and 6th Interested Parties. This Court decided to proceed in their absence as notice was duly served on them.
- [6] On 24 February 2016, the 1st and 7th Interested Parties made an application for Joinder of Parties, "*Pursuant Order 15, Rule 4 of the High Court Rules (1988) and Section 7 of the Proceeds of Crime Act 1997 (as amended)*" and they also invoked inherent jurisdiction of this Court. They sought to join the 8th Interested Party, Fiji Roads Authority (FRA), as it was the complainant to the criminal action in which the Defendant was convicted.

- [7] The factual basis in support of this application, as urged by them, was that the FRA had indicated that the Defendant and the Interested Parties owed it monies amounting to over \$3.1 Million and to avoid multiplicity of actions, the claims by FRA too had to be adjudicated upon in these proceedings.
- [8] The Defendant and 2nd, 3rd and 4th Interested Parties supported the application of the 1st and 7th Interested Parties.
- [9] Upon hearing of the application made by the 1st and 7th Interested Parties, this Court made order on 14 March 2017, granting the said application and thereby joining the FRA as the 8th Interested Party.
- [10] Subsequently, the 8th Interested Party, the FRA, filed a Notice of Motion, on 12 May 2017, seeking an order of Court ceasing to be party in these proceedings. The Notice of Motion was filed pursuant to Order 15, Rule 6 (2) of the High Court Rules and the inherent jurisdiction of this Court and was supported by the Affidavit of John Schilling Hutchinson, the Chief Executive Officer of FRA.
- [11] Furthermore, on 4 October 2017, this Court granted leave for an amended caption to be filed in these proceedings. The amended caption was filed with the consent of all parties.
- [12] Having considered the order made by this Court, on 14 March 2017 (naming FRA as a party to the proceedings), and all the pleadings subsequently filed in this application and the submissions made by all parties, this Court was of the opinion that permitting the FRA's application ceasing to be party in these proceedings at this point in time, would prejudice the rights and/or interests of the other parties' to these proceedings. In the circumstances, the application made by FRA was refused by this Court, on 23 April 2018.
- [13] The current application relates to a Notice of Assessment [NOTICE REQUIRING DETERMINATION OF ANY QUESTION OR ISSUES BETWEEN 1ST AND 7TH INTERESTED PARTY AGAINST THE 8TH INTERESTED/THIRD PARTY (FRA)], filed by the 1st and 7th Interested

Parties, together with a Summons for Directions. The Notice, which is filed under Order 16, Rule 8(1) (c) of the High Court Rules, reads as follows:

TAKE NOTICE that this action has been brought by the Applicant against the Defendant under Sections 11 – 17 of the Proceeds of Crimes Act 1997 for a declaration that the properties listed in the Scheduled of Properties annexed in the Originating Summons filed on 17th June 2016 be declared as **TAINTED PROPERTIES** pursuant to Section 11 of the Proceeds of Crime Act 1997 and the issue of a **FORFEITURE ORDER** to forfeit the aforementioned properties to the **STATE** in which proceedings the Interested Parties have interest and claims.

The above named 1st and 7th Interested Parties seek a determination of questions or issues on the claims pending in the sum not exceeding \$4,000,000.00 (Four Million Dollars) or as such sum may be assessed by the Court between TF Jan Bulldozing Company Limited and Fiji Roads Authority and the sum to be set off against the claim by TF Jan Bulldozing Company Limited against Fiji Roads Authority and the Applicant for the determination of forfeiture or payment in lieu.”

- [14] This matter was taken for hearing before me on 18 June 2018. The Applicant, the Defendant, the 1st, 7th and 9th Interested Parties and the 8th Interested Party filed written submissions, which I have had the benefit of perusing. Although, no written submissions were filed by the 2nd, 3rd and 4th Interested Parties, Counsel on their behalf made submissions during the hearing.
- [15] This matter was fixed for Ruling on 24 September 2018. On that day, Court ruled that the questions or issues set out in the Notice of Assessment relates to separate causes of action and as such the said Notice be struck out. I informed counsel that my Written Reasons for the said ruling would be provided by me later.

[16] Order 16, Rule 8 of the High Court Rules is titled 'Claims and issues between a defendant and some other party'. Order 16, Rule 8 (1) reads as follows:

"8.- (1) Where in any action a defendant who has given notice of intention to defend –

(a) claims against a person who is already a party to the action any contribution or indemnity; or

(b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already party to the action;

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined."

[17] The substantive application made by the Applicant is for a declaration from this Court that the properties mentioned in the annexed "Schedule of Properties" be declared as tainted properties, pursuant to Section 11 of the Proceeds of Crime Act No. 27 of 1997 and for the issuance of a Forfeiture Order to forfeit the said properties to the State.

[18] The Applicant states that subject matter of these proceedings is confined to determine whether the 14 items listed in the annexed "Schedule of Properties" was obtained by fraudulent means and thus tantamount to tainted property.

[19] The Applicant submits that "The contract in issue in the substantive application is **DTBW 02/07**. The Criminal proceedings and subject matters of 14 fraudulent transaction occurred within that specific contract. Therefore, there is property clearly identifiable as tainted property. Any other claims under other contracts are not related or connected with the original subject matter and warrants separate cause of actions. Any party claiming such

could originate such cause of action independently.” Therefore, the position of the Applicant is that the Notice of Assessment filed by the 1st and 7th Interested Parties shows that this subject matter on claims pending in the sum of \$4,000,000.00, is entirely a separate cause of action.

[20] The 8th Interested Party is also of the same view and submits that the Notice of Assessment filed by the 1st and 7th Interested Parties is improper and misconceived in law and that there is no legal basis for the application.

[21] The Defendant submits that this Court has jurisdiction under the Rules of the High Court and the inherent jurisdiction of Court to give directions and to hear the 1st and 7th Interested Parties’ claim against the 8th Interested Party.

[22] Having considered the written submissions filed by all parties, and the oral submissions made by counsel in Court, I am of the opinion that the questions or issues set out in the Notice of Assessment does not directly relate to the subject matter of this action, filed by the Applicant against the Defendant. It is the opinion of this Court that the issues raised in the said Notice of Assessment relates to separate causes of action which should be adjudicated in separate proceedings.

[23] Accordingly, the Notice of Assessment filed by the 1st and 7th Interested Parties is struck out.

[24] I make no order for costs.


Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Dated this 18th Day of October 2018