

**HBC Action No. 378 of 2011 Taniela B. Rogoyawa & Fiji Police Force Fiji Military Force
vs Attorney General of Fiji**

In the High Court of Fiji at Suva
Civil Jurisdiction

HBC Action No. 378 of 2011

Between

Taniela Bola Rogoyawa

Plaintiff

And

Fiji Police Force

First defendant

And

Fiji Military Force

Second defendant

And

Attorney General

COUNSEL: Mr R.P. Singh with Mr A.Nand for the plaintiff
Mr A. Prakash with Ms M.Lee for the defendants

Date of hearing : 2nd October,2017

Date of Judgment: 25th January,2018

Judgment

1. In these proceedings, the plaintiff, in his statement of claim alleges that in early 2010, the servants and/or agents of the first or second defendants wrongfully detained his motor vessel "KAIONI". The plaintiff states that he had been in the business of hiring the vessel, since 1st November,2009.He claims damages for detention and trespass. Alternatively, for conversion. The defendants, in their statement of defence state that the "KAIONI" was deregistered by the Maritime Safety Authority of Fiji,(MSAF) from 19th January,2007. The vessel was operating illegally. The detention was justified. The vessel was released by an Order of Court of 30 January,2012. The plaintiff, in his reply joins issue with the defence and states that when he checked the vessel after it was released, it was difficult to move the vessel, as half the engine, navigation systems and gear box had been removed by agents of the defendant.

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2. *The hearing*

(a) PW1, (*Nick Vosatabu*, Power of attorney holder of the plaintiff, his brother) in his evidence said that the plaintiff purchased the boat in late 2009, for \$100,000. In support, he produced a sale and purchase agreement of 30th October, 2009, between the plaintiff (trading as Vu-Valu Traders) and Est Marine Company Ltd. PW1 said that when he was on a fishing expedition with his brother in 2010, they received a phone call from Suva informing them that they could not fish. Two army men came and checked their boat, but never returned. The plaintiff then hired out the boat at \$ 5000.00 per month. The boat was taken to Lakeba. One year later, it was seized. The plaintiff was not charged for any offence. In 2007, the value of the boat was \$300,000. It was sold cheap to the plaintiff at \$ 100,000. PW1 produced a permit granted to the plaintiff to fish.

In cross-examination, it transpired that the plaintiff's license to fish expired on 31st December, 2009. Mr Prakash, counsel for the defendants pointed out to the witness that in evidence in chief, he said that he went to fish in 2010. PW1 then said it was in 2009. He had a stroke and could not recall if it was in 2010. He used his chief Ratu Tevit's license. PW1, as Director of Vu-Valu Traders, by letter of 9th August, 2011, had sought the assistance of the Director, "FIMSA" to register the vehicle. He admitted that he had applied for registration one year after the boat was seized. He had "never" seen the registration of the "KAIONI". He started using the boat in October, 2009.

PW1 was not re-examined.

(b) PW2, (*Mesake Qalitanayalau*) said that he was a brother of PW1. In 2010, he was living in Lakeba. His brothers brought the boat to the island twice in 2010. On the first occasion, the boat was ordered to leave the island without engaging in fishing. On the second occasion, the boat was hired by Chief Ratu Tevita who had chased them earlier.

In cross-examination, he said that the boat had gone to Lakeba twice. The boat was damaged before the Police came and toured it. PW2 said that he toured the boat to his village after the boat was released by Court

PW2 was not re-examined.

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(c) DW1, (Surenra Prakash, Registration & Licensing Officer, Maritime & Safety Authority of Fiji, (MSAF) said that the registration of the "KAIONI" was cancelled on 19th November, 2007. A ship cannot operate after its registration is cancelled.

In re-examination, DW1 confirmed that the registration of the "KAIONI" was cancelled on 19th November, 2007.

The determination

3. The plaintiff's vessel was detained by the agents of the first defendant in early 2010.

4. The question for determination, as raised in issue 2 recorded at the PTC, is as follows:

Whether or not the said motor vessel was legally registered to operate in Fiji waters at the material time it was detained by the 1st and 2nd Defendants ?

5. At the commencement of the hearing, Mr Prasad moved that issue 2 be taken up as a preliminary issue of law. Mr Raman, counsel for the defendants agreed with Mr Prasad that issue 2 should be taken up as a preliminary issue.

6. I declined the application for the reason that the issue involved a question of fact.

7. The plaintiff had purchased the vessel on 30th October, 2009. PW1, by letter of 9th August, 2011, had sought the assistance of the Director, MSAF to register the vehicle. In cross examination, PW1 admitted that he had applied for registration a year after the boat was seized.

8. It transpired in the evidence of DW1 that the "KAIONI" was registered on 6th February, 2006. The registration was cancelled on 19th November, 2007. DW1 produced the cancelled certificate.

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9. The closing submissions filed on behalf of the plaintiff contends that there is no provision in the Marine Act,1986,which authorises the relevant authorities to detain a vessel deregistered by the MSAF.

10. Section 14(1) of the Marine Act,1986 provides that the owner of a vessel shall apply for the registration of the vessel. Sub-section (3) states that a “ *vessel required by subsection (1) to be registered is liable to be detained at a port or place in Fiji until the master of the vessel, if requested to do so by the Director produces to the Director the vessel’s registration certificate.*”(emphasis added)

11. Section 14(1) requires a vessel to be registered. Section 14(3) provides that a vessel may be detained, if its registration certificate is not produced.

12. In the present case, the “*KAIONI*” was not registered at the time it was detained by the agents of the first defendant. The registration was cancelled on 19th November, 2007.

13. In my view, the detention of the “*KAIONI*” was justified. It follows that the question of damages or conversion does not arise. The vessel was returned to the plaintiff.

14. The plaintiff’s claim fails.

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15. *Orders*

- (a) The plaintiff's action is declined.
- (b) The plaintiff shall pay the defendants costs summarily assessed in a sum of \$ 1500.



A.L.B. Brito-Mutunayagam

JUDGE

25th January, 2018