

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

**CIVIL ACTION NO. HBC 175 OF 2016**

**BETWEEN** : **ASHWEEN CHAND** of Tavarau, Ba, Factory Worker.  
**PLAINTIFF**

**AND** : **THE DIRECTOR OF LANDS** of Ministry of Lands and Mineral  
Resources, Suva.  
**FIRST DEFENDANT**

**AND** : **THE ATTORNEY GENERAL** of Fiji Suvavou House, Victoria  
Parade, Suva.  
**SECOND DEFENDANT**

**Appearances** : Mr J. Vulakouvaki for the plaintiff  
Mr J. Mainavolau for the defendant  
**Date of Hearing** : 31 January 2019  
**Date of Judgment** : 17 April 2019

## **J U D G M E N T**

### **Introduction**

[01] The plaintiff brings this action against the defendants claiming among other things specific performance of the agreement and damages.

[02] The defendant filed their statement of defence and pleaded that the first defendant withdrew the letter issued to the plaintiff on 30 May 2013 and requested him to provide the original payment receipt for the refunding of \$10,868.05.

[03] At the trial, both parties called one witness each and tendered documents in support of their respective claim. Moreover, they have also filed their closing submissions.

### **Background**

[04] The brief background facts of the case are as follows.

[05] On 13 April 2010, Mr Ashween Chand, the plaintiff (*'the plaintiff'*) made an application to the Ministry of Lands and Mineral Resources, the first defendant (*'the first defendant'*) for purchasing a vacant land reference number 4/7/1753 (*'the land'*). The first defendant, by a letter dated 30 May 2013 sent to the plaintiff, approved his application subject to payment of \$10,868.05 being rental dues. The first defendant later withdrew the letter. It was, according to the first defendant, withdrawn because of irregularities namely being the expiration of lease, confusion regarding the rental arrears sum and dispute between the plaintiff and interested parties over the subject land. The plaintiff claims that there was an implied contract between him and the first defendant and that by withdrawing the letter dated 30 May 2013, the first defendant has breached the implied contract.

### **Agreed facts**

[06] At the Pre-Trial Conference held between the parties (*'PTC'*), the following facts were agreed to by the parties:

1. *That on the 13<sup>th</sup> April 2010, the Plaintiff made an application to the Ministry of Land and Mineral Resources for purchasing a vacant land reference number 4/7/1753.*
2. *That the first Defendant, by a letter dated 30 May 2013 to the plaintiff approved the said application subject to payment of \$10,868.05.*
3. *That the Plaintiff paid the first Defendant the sum of \$10,868.05 for the purchase of the said land.*

## **The issues**

[07] The following issues are to be decided by the court:

1. *Whether there was implied contract formed between the parties as a result of the offer by the first Defendant and acceptance by the Plaintiff upon the Plaintiff paying the First defendant the sum of \$10,868.05 for the purchase of the said property?*
2. *Whether the Plaintiff is entitled to his claim as pleaded?*

## **The law**

[08] Section 10 of the State Lands Act states that:

*“Subject to the provisions of sections 21, 22, 25 and 26, and to the general or special directions of the Minister, the Director of Lands may grant leases or licences of portions of State land for such purposes and subject to such conditions as to forfeiture, renewals or otherwise as may be specified or prescribed.”*

[09] Section 5 of the State Lands (Leases and Licences) Regulations 1980 ('SLR') states that:

*“The Director of Lands may subject to any special or general directions given to him or her by the Minister approve or refuse an application and any such lease so approved shall be subject to such conditions and covenants as may be prescribed thereon.”*

## **The principles of specific performance**

[10] The governing principles to an application for specific performance are as follows.

[11] An order for specific performance requires the performance of the obligation of a party to a contract. It is an equitable remedy and is not available as of right. An order for specific performance is an equitable remedy awarded at the court's discretion where a legal remedy would be inadequate.

[12] Specific performance is asked for most often in claims for enforcement of agreements relating to land.

[13] The claimant must show that he is ready, willing and able to perform his part of the obligation or contract.

[14] In the ordinary run of cases where damages may be said to be an adequate remedy, specific performance will not be awarded. In many contracts for sale of goods, it is possible to purchase substitute goods in the market, and therefore damages, to cover the cost of obtaining substitute performance, will be adequate remedy (*Societe des Industries Matallurgiques SA vThe Bronx Engineering Co. Ltd* [1975] 1Lloyd's Rep 465).

## The evidence

### *Plaintiff's evidence*

[15] The plaintiff gave evidence in support of his claim. The summary of his evidence is that:

- (i) *On 13 April 2010, the plaintiff applied for a vacant piece of land.*
- (ii) *On 30 May 2013, the first defendant approved the application.*
- (iii) *On 30 May 2013, the first defendant writes to the plaintiff to pay the sum of \$10,868.05.*
- (iv) *The plaintiff accepts the said offer and pays the sum of \$10,686.05 to the first defendant on 17 June 2013.*
- (v) *The plaintiff is not claiming reimbursement of the above money*
- (iv) *Rather, the plaintiff only wants the lease title to be awarded to him.*

### *Defendant's Evidence*

[16] The first defendant called, Mr Laisenia Kidianaceva, a Senior State Lands Officer. His evidence is that:

- (i) *A 10 years agricultural lease effective from 1 April 1973, was issued to one Mahend Prasad over Lot 8 BA 2408 under CL 11050.*
- (ii) *The lease expired on 31 March 1983 and it was extended for another 20 years effective from 1 April 1983. The 20 years term expired on 31 March 2003.*
- (iii) *One of the trustees of the estate, one Mahend Prasad passed away on 26 September 1991 and Probate No. 28025 was extracted by his wife Saras Wati in May 1992. Therefore, one*

*undivided half share of the estate was transferred to Saras Wati through transmission by death in October 1995.*

- (iv) Saras Wati applied for renewal for lease on July 2, 2002. Inspection Report of 1 February 2003, confirmed that land was not cultivated with rent arrears and land dispute.*
- (v) Saras Wati was informed on 25 October 2004, that the lease will not be renewed.*
- (vi) The plaintiff applied for the subject land on 13 April 2010. The Inspection Report on May 2010, confirmed that the subject land was not being cultivated for more than 10 years and recommended that it be leased to the plaintiff.*
- (vii) The first defendant agreed to the Report's recommendation subject to the plaintiff clearing the arrears of \$2,326.68.*
- (viii) Saras Wati wrote again to the first defendant showing her interest in the subject land in July and August 2012.*
- (ix) The first defendant informed the plaintiff on 30 May 2012, that his application had been approved subject to him clearing the arrears which were now at \$10,868.05.*
- (x) The plaintiff cleared the arrears on 17 June 2013.*
- (xi) On 15 April 2014, the first defendant withdrew the letter issued to the plaintiff on 30 May 2013 and requested him to provide the original payment receipt for the refunding of \$10,868.05.*
- (xii) To date, the plaintiff has not produced the original receipt for reimbursement of payment by the first defendant.*
- (xiii) He explained the reasons why the first defendant decided to withdraw the letter of offer given to the plaintiff:*

- (i) There was no existing lease and therefore there was no breach by Saras Wati.*
- (ii) There was no confirmation whether the rental arrears included the years after the lease had expired.*
- (iii) Saras Wati actually applied for renewal but there was a dispute hence the cultivation was not possible.*

- (iv) *The plaintiff's application did not state any land description.*
- (v) *The first defendant informed Saras Wati in August 2012 that her application was under process.*
- (vi) *The land had not been advertised when money was received from the plaintiff for the arrears.*

## **Discussion**

[17] The plaintiff applied to the first defendant for purchase of the land. The first defendant by their letter dated 30 May 2013 and sent to the plaintiff, approved his application however subject to payment of \$10,868.05, being the arrears of rents. The plaintiff accordingly paid the aforesaid arrears of rents. Subsequently, the first defendant withdrew their approval saying that there was no existing lease as the lease had expired and there was no breach by previous owner, Saras Wati.

[18] The plaintiff says that there is an implied contract between the first defendant and the plaintiff because the first defendant's offer has been accepted by the plaintiff by making payment of arrears of rents as requested by the first defendant. The plaintiff seeks an order for specific performance of that implied contract.

[19] I should say that the plaintiff is not claiming damages in lieu of specific performance. He said, through his counsel, that he is only interested in the relief of specific performance and not damages. I would take it as clear waiver of the damages claim for breach of the agreement.

### *Formation of contract*

[20] After an inquiry with the defendant, the plaintiff applied for purchasing the land adjacent to his mother's land in Tavarau, Ba, which was described by reference number 4/7/1753.

[21] The defendant sent a letter dated 30 May 2013 to the plaintiff and informed that his application has been approved ('PE2'). The letter reads:

'...

**Re:**                    Application for vacant land

*I refer to your application dated 13/4/2010 for the above.*

*I am pleased to advise you that your application has been approved subject to the payment of rental dues amounting to 10, 868.05.*

*Failure to pay within 30 days for this letter will lead to cancellation of this offer and advertisement of this land for other interested parties to apply for.*

...'

- [22] The above letter is clearly a conditional offer for the sale or lease of the land. The condition is the payment of rent dues in respect of the land applied within 30 days. The land has been clearly identified by reference number. That is why the defendant had made an offer subject to payment of rent dues. I would reject the defendant' claim that the lease was uncertain and indeterminate at the time the implied agreement came into existence, therefore the implied contract is *void ab initio*.
- [23] The case, cited by the defendant, *Lawrence Francis Naidu v Attorney General of Fiji & Director of Lands* ABU 0094/17, where the Court of Appeal held [at para 20] that: '*... (a contract) is not valid (if the) subject (is) uncertain and determinate. There can be no valid contract in respect of indeterminate subject matter. A contract can be conditional upon the happening of an event; however no contract can come into effect in the absence of determinate and certain subject matter.*' This case has no relevance to the matter at hand because in this matter the subject matter has been clearly determined and identified by reference number and rent dues in respect of the land.
- [24] Determining the existence of agreement using offer and acceptance, there must be a valid offer, acceptance, or revocation of an offer and that offer, acceptance, or revocation must also satisfy the relevant communication requirement.
- [25] The defendant (*offeror*) had intended to make a valid conditional offer in respect of the land. The offer was communicated by a letter to the plaintiff. The plaintiff had accepted the offer made by the defendant by making payment of rental dues. Thus, the offer and acceptance have occurred. There is no evidence before the

court that the offer was withdrawn and such withdrawal was actually communicated to the offeree, the plaintiff before acceptance. This translates a valid agreement/contract had been formed between the parties.

*Breach of contract*

[26] After formation of the contract between the parties, the defendant had failed to issue the lease in respect of the land subject to such conditions and covenants as may be prescribed thereon. The defendant thereby had breached the contract.

[27] The defendant claims that there were unilateral mistake and frustration. The lease over the land has been given to a third party, Saras Wati. In the circumstances, I cannot accept the defendant's claim that there was frustrating situation. I cannot also accept that the offer was made mistakenly. If it were mistakenly, it should have withdrawn before acceptance. Therefore, I would find that the defendant had breach the contract.

*Remedy*

[28] The only remedy the plaintiff seeks against the defendant for breach of agreement is specific performance, albeit other remedies, such as damages, were available for breach of contract. The plaintiff has confined his remedy to specific performance only. I would, therefore, not consider granting damages for breach of the agreement.

*Specific performance*

[29] Specific performance is an equitable remedy which may be granted at the discretion of the court. The court will only consider ordering specific performance where legal remedy would be inadequate. Frequently, specific performance is asked for in claims for enforcement of agreements relating to land.

[30] The plaintiff is asking for specific performance in respect of a state land. Although the defendant is ready, willing and able to perform his part of the obligation under the agreement, the land is not available for performance as it has been given to a third party. In the circumstances, I would decline to grant an order for specific performance of the agreement. The legal remedy of damages



was available to the plaintiff for breach of contract, which the plaintiff has waived.

*Refund of money*

[31] Admittedly, the plaintiff had paid a sum of \$10,868.05 when accepting the offer. The official receipt (No. 533706) issued to the plaintiff confirms this payment. The defendant was ready and willing to refund that money to the plaintiff upon production of the original receipt. I find that the plaintiff is entitled to recover the money he paid.

**Conclusion**

[32] For the foregoing reasons, I would decline to make an order for specific performance as claimed by the plaintiff. However, he will be entitled to recover the sum of \$10, 868.05 from the defendant. I would make no order as to costs.

**The outcome**

1. Specific performance declined.
2. The first defendant shall pay the sum of \$10,868.05 to the plaintiff.
3. No order as to costs.

*M. H. Mohamed Ajmeer*  
17/4/19

M. H. Mohamed Ajmeer

JUDGE



At Lautoka

17 April 2019

Solicitors:

For the plaintiff: M/s Jiten Reddy Lawyers, Barristers & Solicitors

For the defendants: Office of the Attorney General