

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 294 of 2020

BETWEEN : **AKHTAR ALI** of Naboutini Sabeto, Nadi, Farmer

PLAINTIFF

AND : **JOLAMI GAUGAU** of Sabeto, Driver

DEFENDANT

Appearances: Ms. Prasad P. for the Plaintiff
Mr. Daveta F. for the Defendant
Date of Hearing: 08 March 2022
Date of Ruling: 13 May 2022

R U L I N G

1. On 01 December 2020, the Plaintiff filed a Writ of Summons and Statement of Claim against the Defendant.
2. According to an Affidavit of Service of Veremo Tulevu sworn on 22 December 2020, Tulevu personally served the Defendant at the Defendant's residential address in Sabeto Village on 05 December 2020.
3. On 01 December 2020, the Plaintiff also filed an Ex-Parte Notice of Motion seeking an injunction to restrain the Defendant or his servants or agents from interfering with his (Plaintiff's) quiet possession of the land which is at issue in this case.
4. The land which is at issue in this case is described as TLTB Ref. No. 6/77/41043 known as Delanivatu Onaka (part of) in the Tikina of Sabeto, Province of Ba -- having an area of 5.7115 hectares.
5. I gather from the documents filed by the Plaintiff that the said land is subject to survey.
6. The *Ex-Parte* Notice of Motion was supported by an Affidavit of Akhtar Ali sworn on 01 December 2020.

7. Ali deposes inter alia that:
 - (i) he (Ali) had engaged a tractor operator to plough the land in question.
 - (ii) however, the Defendant, together with others assisting him, had prevented the tractor operator from carrying out his job.
 - (iii) the Defendant actually went to the tractor operator's house and warned him not to cultivate the land as the land belongs to him.
8. The Plaintiff further deposes:
 - (i) that he has an agreement with the Agricultural Marketing Authority to plant sweet potatoes and cassava.
 - (ii) that the Defendant's interference with his quiet enjoyment and use of the land is likely to adversely affect his performance of the agreement with the AMA.
9. The Plaintiff gives an undertaking as to damages in his affidavit For this purpose he pledges his interest in Instrument of Tenancy NLTB No: 4/07/6063.
10. Mr. Justice Ajmeer did grant Order in Terms of the *Ex-Parte* Motion on 01 December 2020, and then adjourned the matter to 21 January 2021.
11. On 21 January 2021, the matter was called before Mr. Justice Jude Nanayakkara. On that occasion, the Defendant appeared in person and sought 21 days to engage a Lawyer. He did not object to the extension of the orders.
12. On 05 February 2021, Nacolawa & Company filed a Notice of Appointment.
13. When the matter was called on 12 February 2021, Mr. Nacolawa appeared and was given 21 days to file Affidavit in Opposition and Statement of Defence. Mr. Singh did not object.
14. When the matter was called before Nanayakkara J. on 08 March 2021, the Defendant appeared in person and informed the Court that Mr. Nacolawa's Practicing Certificate was yet to be renewed.
15. Again, before Nanayakkara J. on 30 March 2021, the Defendant appeared in person and sought further time to file Affidavit in Opposition. However, Nanayakkara J. refused the Defendants plea and simply extended the interim orders of Ajmeer J. until further orders. He then adjourned the matter to the Master for pre-trial steps.
16. On 12 October 2021, Anil J. Singh, for the Plaintiff filed a summons pursuant to Order 19 Rule 7 (1 & 3) of the High Court Rules 1988 seeking an order that default judgment be entered against the Defendant in the following terms:

- (i) An Order that the Defendant by himself or his servants or agents or group otherwise howsoever, shall be restrained from interfering with the quiet possession of the Plaintiff's land being Agreement for Lease, TLTB Ref. No. 6/77/41043 known as Delanivatu Onaka (part of) in the Tikina of Sabeto, Provinces of Ba having an area of 5.7115 ha (subject to survey).
 - (ii) That the Defendant pay the Plaintiff's cost of this proceedings on an indemnity basis.
- 17. The Application is supported by an affidavit of the Plaintiff sworn on 12 October 2021.
- 18. On 29 October 2021, the summons was called before me. Mr. Daveta appeared for the Defendant. He advised the Court that he had just been instructed by the Defendant. Accordingly, Pillay Naidu & Associates will file Notice of Appointment in due course.
- 19. The Notice of Appointment was duly filed on 18 November 2021.
- 20. On 24 November 2021, the Defendant's Affidavit in Opposition was filed. The jurat does not state the date when the affidavit was sworn. The Defendant annexes his proposed Statement of Defence in his affidavit.
- 21. The key points raised by the Defendant in his affidavit and proposed Statement of Defence are as follows:
 - (i) the Agreement for lease relied on by the Plaintiff has not been executed by the Manager of iTLTB. It is also undated.
 - (ii) the Defendant holds a caveat lease over the land in question. There is yet a balance of 10 years left on the said lease. The Defendants lease is a registered lease. It has neither become cancelled by the iTLTB nor has the iTLTB taken steps to repossess it.
 - (iii) the delay in filing the defence has been due to COVID-19.
 - (iv) the iTLTB must be joined as a Defendant to clarify the issues raised.
- 22. In my view, after considering all, the Defendant has a defence on the merits.
- 23. However, I do not accept his excuse that COVID-19 must be blamed for his delay.
- 24. The records will show that the Court has already granted him extension after extension but to no avail.
- 25. Accordingly, I am of the view that I must decline the application for default judgment and grant leave to the Defendant to file an Acknowledgement of Service and Statement of Defence in 14 days.

ORDER:

- (1) Plaintiff's application for Default Judgment declined.
- (2) Leave to the Defendant to file and serve Affidavit of Service and Statement of Defence in 14 days.
- (3) Costs to the Plaintiff which I summarily assess at \$800.00 only.
- (4) Adjourned to 27 May 2022 for mention.




Anare Tuilevuka
JUDGE
Lautoka

13 May 2022