IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 229 OF 2022

BETWEEN	:	**SUDESH MANI** **Plaintiff**
AND	:	**PRAMESHWAR KUMAR & KOKILAMMA** **Defendants**
Counsel	:	**Ms Maharaj for the Plaintiff** **Mr Nand for the Defendants**
Hearing	:	**17 & 18 June 2024**
Written Submissions	:	**10 July and 18 July 2024**
Judgment	:	**11 October 2024**

JUDGMENT

[1] The dispute between the parties concerns the sale of the Defendants' property to the Plaintiff.

[2] The parties entered into a Sales and Purchase Agreement for the sale of a property in Ra. The Plaintiff has paid more than half of the purchase price and seeks specific performance of the Agreement. The Defendants' contend that the Plaintiff is in breach of the Agreement and, therefore, have repudiated the Agreement. The Defendants' also contend that the failure by the Plaintiff to obtain consent from the Director of Lands for the transfer of the Crown Lease is fatal to his claim. They have counterclaimed for the amount of $21,450, being rentals they say were collected by the Plaintiff during his possession of the property.

Background

[3] There is no dispute between the parties that they entered into a Sale and Purchase Agreement ('the Agreement') in May 2018 for the purchase of a property known as Lot 10 on Pt of Naqalau, in the province of Ra contained in Crown Lease No. 14480 and having an area of 4087 meters squared ('the Ra property'). The parties also agree that there was a variation to the Agreement in August 2019 and that the amount of $10,000, from monies already paid by the Plaintiff under the Agreement and held by their solicitors, Neel Shivam Lawyers (who acted for both parties in the sale), were to be released to the Defendants in accordance with the variation. The other fact not in dispute is that on 4 July 2022 the Defendants sent an eviction notice to the Plaintiff's parents who were then living on the Ra property (and still are).

[4] The Agreement is central to the dispute. It is necessary to set out the key terms.

Sale & Purchase Agreement

[5] The Agreement was executed on 21 May 2018. The Defendants are the owners of the Crown Lease on the Ra property and agreed to sell it to the Plaintiff for the amount of $40,000. The sum of $8,000 was required to be deposited with the solicitors, Neel Shivam Lawyers, upon execution of the Agreement. The sum of $500 per month was required to be paid to the solicitors until the purchase price was paid in full. The settlement date was stipulated at clause 4.01 as:

> *The date of settlement shall be within 14 (fourteen) days upon fulfillment of the 2.01 and 23.01 clauses or any other date as mutually agreed by the parties in writing.*

[6] Clause 2.01 provided that the Plaintiff was to pay the amount of $40,000. Clause 23.01 stipulated '*Special Conditions*', being the satisfaction of six conditions being:

> *a) Subject to the consent of the Crown Lease and;*

b) *Subject to the portion of the land was to be subdivided before the settlement date; and*

c) *Subject to the portion of the land maintained by the Vendors as shown in the annexure 'A' on which Temple is constructed; and*

d) *Both the parties agree that the Purchaser will purchase the whole of the portion of the land comprising (4087m²), and post settlement the portion of the land as per annexure 'A', having an area of ¼ acre will be maintained by the Vendors at their cost; and*

e) *That the Vendors will be liable for all legal and other cost arising to maintain the portion of the land mentioned in clause 'd' above; and*

f) *The Vendors consent the Purchaser to protect his interests by filing a Caveat on the subject property on/after the execution of this Agreement against the title of the said property consisting first charge.*

[7] Clause 5.0 deals with possession of the Ra property while payments are being made by the Plaintiff. The clause reads:

5.01. The vacant possession of the property will be given to the Purchaser upon execution of this Agreement;

5.02. The Purchaser will be entitled to all income generated from the said property excluding the area maintained by the Vendors with the existing dwelling on it upon execution of this Agreement;

5.03. The Vendors will maintain the possession of ¼ acre of land on which the Temple is constructed on.

5.04. The Vendors will clear or will be responsible for any payments of town rates, electricity and water charges paid up to the date of possession.

[8] Clause 6.01 (c) provides that the '*Vendors will subdivide the property as agreed by the parties by/before the date of settlement*'.

[9] The Plaintiff took possession after the execution of the Agreement in May 2018. As per the Agreement, the Defendants were responsible for subdividing the land where the Temple is situated.

[10] On 26 August 2019, a variation was made to the Agreement and signed by the parties. They agreed to allow the Defendants to use $10,000 from the monies already deposited by the Plaintiff with Neel Shivam Lawyers. The monies were to be used by the Defendants '*towards subdivision of the said property as mentioned in the Sales and Purchase Agreement*'.

[11] In 2022, the Plaintiff sought to finalize the Agreement and have the Ra property transferred to him. The Defendants resisted this, instead purporting to repudiate the Agreement. As a result, the Plaintiff filed the present proceedings in August 2022.

The proceedings

[12] The Plaintiff filed a Writ of Summons on 12 August 2022. He pleads that there has been a breach of the Agreement. The Plaintiff also pleads that he has made improvements to the Ra Property and claims $102,205 by way of unjust enrichment. The Plaintiff seeks an order of specific performance against the Defendant in respect to their obligations under the Agreement and/or that the Defendants pay damages for the amount already paid by the Plaintiff plus interest and costs.

[13] The Defendants filed their Defense on 9 November 2022. The Defendants plead, at paragraph 17, that the Plaintiff is trespassing on the Ra property in the absence of consent from the Director of Lands. The Defendants seek, by way of a Counterclaim, the amount of $21,450 for rents illegally collected by the Plaintiff for flat one of $150 per month and for flat two at $400 per month.

Plaintiff's evidence

[14] The Plaintiff called three witnesses at trial. The first witness being himself. He provided the following evidence in Examination in Chief:

i. He had lived in that area for about 15 years prior to signing the Agreement in May 2018. Neel Shivam Lawyers acted for both parties He produced the Agreement **[PE1]**[1].

ii. It was a term of the Agreement that a portion of the Ra property would be retained by the Defendants where a Temple is situated as the Defendants wished to donate the Temple.

iii. He agreed to the 2019 variation, releasing $10,000 to the Defendants, so that they could organize the subdivision of the land where the Temple is situated **[PE2]**.

iv. The Plaintiff described the Ra property and produced a copy of Crown Lease 14480 **[PE3]**[2]. He explained:

- There is one main house where his family has moved into.
- There is the area where the Temple is situated.
- There are two other smaller houses, both occupied when he took possession in 2018. One dwelling is occupied by an elderly couple and the other is a two bedroom house which was occupied by tenants who paid a rental of $150/month.

v. The Plaintiff's family moved into the house and began collecting the rental of $150/month in line with the Agreement. The main house that the family moved into was small with three bedrooms. It was not in good condition as Cyclone Winston had caused damage to the house and there had been no one living in the house for a while before they purchased the Ra property. He arranged, through his father, to renovate and enlarge the house. A number of receipts and invoices were produced in evidence in respect to the renovation costs. The Plaintiff put together an itemization of these costs which amounted to $76,051.50 cents **[PE9]**. The receipts were from hardware stores, a company that hired out a digger and the business that

[1] PE = Plaintiff Exhibit.
[2] The Defendants are the registered proprietors. The Plaintiff lodged a caveat on the Crown Lease on 28 June 2022 shortly before commencing these proceedings.

undertook the construction in the amount of $68,000.00. The Plaintiff also produced an invoice for electrical work of $3,950 [**PE10-13**]. The period during which the costs were incurred was from 2018 to 2022. The invoices were made out to 'Subra Mani', the Plaintiff's father, but the Plaintiff stated that he paid these costs.

vi. The Plaintiff stated that the renovations included extending the kitchen and bedrooms, building an extra bedroom, building a master bedroom, a bigger port, a two-car garage and grading the land.

vii. The Plaintiff also produced invoices for payments made to Neel Shivam Lawyers, being the solicitor's costs in 2018 for the Agreement and an invoice dated 13 July 2018 for $218 '*being payment for consent fee* '[3] **[PE8]**.

viii. Finally, by way of payments, the Plaintiff provided a statement of account from Neel Shivam Lawyers from about August 2022, itemizing the payments made by the Plaintiff under the Agreement **[PE7]**.[4] The total amount paid by the Plaintiff being $28,700 from 21 May 2018 to April 2022.[5]

ix. The Plaintiff states that following the release of $10,000 to the Defendants to subdivide the land around the Temple, the Plaintiff had been waiting for the subdivision to happen. After several years of waiting without any action by the Defendants, he contacted Neel Shivam Lawyers to request that the solicitors ask the Defendants to make arrangements to finalize settlement of the Crown Lease. He was advised that the Defendants were not prepared to do so. The reason being that the Plaintiff's wedding in 2022 had taken place during a religious period which appears to have offended the Defendants. The Plaintiff, therefore, instructed Capital Law to send a notice to the Defendants demanding that the Agreement is settled. The Notice, dated 24 June 2022, reads **[PE4]**:

> 6. *We have been advised and verily believe that our Client has indicated his willingness to settle the transaction by paying the balance and remainder sum owed to you under the Agreement, although you have*

[3] This description is recorded on the invoice.
[4] I note that the Plaintiff kept up with his payments through 2018 to 2019 missing only the odd payment (December 2019, February 2020). He missed payments in July, August & November 2021, and then February and March 2022. His last payment according to the Statement (which has a balance date of 16 August 2022) was on 1 April 2022.
[5] The total amount that should have been paid by the Plaintiff up to June 2022 (when the parties fell out), including the deposit of $8,000, is $32,000. He was in arrears to the amount of $3,300.

failed and/or neglected to attend to all the necessary requirements and prerequisites to settle the transaction as agreed.

7. *Our Client is willing and able to pay the balance and remainder sum owed under the Agreement to settle the transaction.*

8. *In view of the aforementioned, we **DEMAND** that you immediately attend to perform the following obligations under the Agreement without further delay:*

   (i) Attend to the subdivision of the subject land pursuant to the Agreement and the Variation of Sale and Purchase Agreement dated 26 August 2019, (the Variation);

   (ii) Attend to execute all the necessary consent to assign and/or transfer documents as and when required;

   (iii) Attend to provide our Client with a clear title of the portion of land, which he is entitled to pursuant to the Agreement;

   (iv) Attend to settlement at the office of the Register Titles office;

x. The Notice was delivered to the Defendants on 25 June 2022 in Rakiraki.[6]

xi. The Defendants responded with a letter from their own solicitor, Law Parmendra, dated 4 July 2022 **[PE5].** The letter was addressed to the Plaintiff's father (Mr Subarmani) and purported to be an '*Eviction Notice*'. Mr. Subarmani was informed that his occupation of the Ra property was illegal and the solicitors demanded that he deliver vacant position by 5 August 2022.

xii. The Eviction Notice caused the Plaintiff to initiate the present proceedings. He obtained an interim injunction from the Court on 18 November 2022 restraining the Defendants from seeking vacant possession and from selling or transferring the Ra property **[PE6].**

[6] The Defendants signed acknowledgment of the same on the Notice.

xiii. The Plaintiff stated that the Defendants have resided in New Zealand but have returned to Fiji from time to time and were aware of the renovations. Further, the Defendant's son lived next door and neither the Defendants nor their son, who had Power of Attorney for his parents, stopped them from undertaking the renovations.

[15] The Plaintiff provided the following evidence in cross-examination:

i. He moved to Suva in 2012 to teach and was living in Suva when he purchased the Ra property in 2018. He moved to Canada in November 2022.

ii. While he did not, at any time, live in the Ra property permanently, he stayed there during his holidays from work.

iii. It was pointed out that he had pleaded, in his Statement of Claim, that he had paid $26,200 towards the purchase price of the Ra property. This figure was also contained in the Notice sent by Capital Law to the Defendants on 24 June 2024. This figure was not the same as contained in the Statement from Neel Shivam Lawyers from August 2022 of $28,700.

iv. He rejected the assertion that the elderly couple that lived in one of the houses paid rental of $400/month.

v. He accepted that the receipts that he produced were, in fact, tax invoices and not invoices for monies paid. He did not have any evidence to show that payments had been made.

vi. He accepted that the Eviction Notice of 4 July 2022 was to his father and not himself.

vii. He collected the rental from the paying tenant by way of direct payment transfer to his accounts. He received these up until 2022 when the Defendants refused to settle. He has used part of these rental monies for the renovations to the main house.

viii. He authorized his father to live on the Ra property. He accepted that he did not obtain consent from the Defendants for his father to live on the property. He also accepted he has no evidence of any consent from the Director of Lands.

[16] In re-examination, the Plaintiff stated:

i. He stated that the amount contained in the Statement from Neel Shivam Lawyers, re the payments he had made towards the purchase price, was the correct amount paid and not the figure contained in his Statement of Claim.

ii. He stated that he was ready and willing in 2022 to settle and pay the outstanding amount of the purchase price upon the Defendants complying with their obligations as per paragraph 8 of his lawyer's letter of 24 June 2022.

iii. He had relied on Neel Shivam Lawyers to organize the paperwork and ensure that the proper consents had been arranged, including the consent from the Director of Lands.

iv. Although he did not have the receipts for the payments made, he confirmed that he did pay for all the renovations that were undertaken.

v. The amount of $150 per month rental that he collected from the tenant on the Ra property amounted to about $7,200.

vi. His father is still residing on the Ra property.

[17] The second witness for the Plaintiff was Mr. Subramani, the Plaintiff's father. He is 64 years old. He lives at the Ra property in Rakiraki which he moved into in 2018. His evidence was as follows:

i. He confirmed many of the details provided by the Plaintiff. He stated that the house was not in a good condition when he moved in.

ii. He confirmed the fact of the renovations to the property, stating that he organized these for the Plaintiff. He built a bigger porch ie 20 x 20, as well as a master

bedroom for his son, a separate washroom and he tiled the porch, sitting room and kitchen. He organized for hot and cold water, built cabinets in all the rooms, extended a room and also built a porch for one of the other houses in the compound. He also painted the roofs and walls. He organized for the gradings because of land sliding.

iii. He said that his son paid for the renovations and the amount paid was somewhere between $76,000 to $78,000. He said that there are now four bedrooms and three bathrooms in the house.

[18] In cross-examination he confirmed that his son had been staying in Suva but that he came for short periods during holidays and weekends to stay at the house in Rakiraki. He said that he did not seek consent from the Defendants to stay on the property and that his son gave him consent.

[19] The third witness for the Plaintiff was Mr Rakesh Kumar. He lives in the same village as the Plaintiff and the Defendants. He has known the Plaintiff for more than 20 years. He stated in examination-in-chief:

i. The Defendants previously owned the Ra property.

ii. When the Plaintiff purchased the Ra property, the house they moved into on the property was old and small. The Plaintiff organized renovations that made the house larger, including a garage and three bathrooms.

iii. He was involved in the renovations as one of the carpenters. He was paid by the contractor that did the work. He stated the house is now very different from when the property was purchased in 2018. He also confirmed that the Plaintiff has paid for the renovations.

[20] In cross-examination he stated that the Defendants were living in New Zealand from 2018 when the house was purchased but stated that the Defendant's' son was living in Rakiraki. The Plaintiff was living in Suva whilst his family were living on the Ra property.

Defendant's Evidence

[21] The first-named Defendant, Prameshwar Kumar, gave evidence. His examination-in-chief was as follows:

i. He has been residing in New Zealand since he migrated there in 2007. He is currently 58 years old and self-employed. He owns three trucks and a digger and supplies metal, which he started four to five months ago. Previously he was an excavator driver.

ii. He and his wife purchased the Ra property in 2006. There are five houses on the property. There is a Temple, a house occupied by an elderly couple, a house which was a rental property, a house on top of the hill, and the main big house where the Defendants had been living.

iii. When he purchased the property in 2006 his solicitor, D Kumar, told him that the electricity from the main house to the top house needed to be separated before he sold the property. He stated that there was separate power to the Temple and to the elderly couple's house.

iv. The Plaintiff was known to him before the Agreement was executed. The Plaintiff was a neighbour. The Plaintiff approached him to buy the house. The Plaintiff had some difficulty securing a loan from the bank because there was no engineers certification for the main house. Eventually the Plaintiff suggested that he pay a deposit and make monthly payments of $500 until the purchase price of forty thousand dollars was paid. The Defendants agreed to this and an Agreement was executed in May 2018. Mr Kumar was led through the Agreement. With respect to possession at clause 5.0 he stated that he agreed to this because the Plaintiff had a house on the hill and he thought it would be more convenient for them to live in the main house without having to walk up the hill. He did not know that other people (being the Plaintiff's parents) were living in the property and was not informed of this by the Plaintiff.

v. There was a variation in 2019 with respect to subdivision. He received $10,000 for the variation. He used $7,000 to separate the power lines from the main house and intended to subdivide the property. The power lines were separated in 2020.

vi. In or about 2021, the Plaintiff's father came and saw him when he was separating the power lines and told him that he (namely the Plaintiff's father) owned the property. The Defendant reminded the father that it was in fact the Defendants that still owned the property.

vii. He stated that after the power lines were separated he waited for the Plaintiff to complete payments and kept asking the Plaintiff every time Mr Kumar came to Fiji how the payments were going. The Plaintiff stated that they were nearly there and when he came to Fiji in 2022 he followed the matter up. He found out at this time that the Plaintiff had got married and was intending to travel to Canada to live. He phoned the Plaintiff and asked to have a meeting at the lawyer's office. He asked why the Plaintiff was behind and suggested that the Plaintiff live in one house and that the rest of the property be separated rather than the Plaintiff purchase all of the Ra property. The Plaintiff declined this. The Defendant then went back to Rakiraki for a wedding for his niece and whilst there received the Notice from Capital Law dated 24 June 2022 demanding settlement. He stated that at that time the payments made toward the purchase price was only $26,200 whereas it should have been $32,500. He, therefore, organized with his solicitor to send an eviction notice to the Plaintiff's father.[7]

viii. He stated that in 2022 he spoke to the tenant in the rental property and organized a tenancy agreement with him. He also made arrangements with the tenant to make his payments to the Defendants from then onwards. He stated that the tenant moved out of the property in early 2024 and that the Plaintiff's father put a padlock on the tenant's house – Mr Kumar reported this to the police; the police declined to become involved in what they considered to be a civil dispute.

ix. Mr Kumar stated that the alleged amount of $68,000 for the costs of renovating the main house is excessive and that he himself had done renovations on another property which only cost $17,000. Mr Kumar stated that he has not been inside the main house but has been to the compound to pray at the Temple and from what he could see the condition of the house was pretty much the same as when he sold it in 2018, except there was an extra bedroom and a carport.

[7] In fact, the Plaintiff had made payments of $28,700 and the amount that should have been paid was $32,000.

x. He was not aware of the renovations when they were being undertaken and his son did not inform him of this.

xi. With respect to the Defendants counterclaim, the $150 pertains to the rental property whereas the $400 sought is for rental for the main house that has been occupied by the Plaintiff's family.

[22] In cross-examination. Mr. Kumar stated:

i. He did not know how much the Plaintiff had paid toward the purchase price by 2022 but noted that the figure of $26,200 was mentioned in the Notice of 24 June 2022. He was adamant however that the Plaintiff was behind on payments as the figure should have then been $32,500.

ii. He accepted that there was nothing in the Agreement that stopped the Plaintiff from authorizing other family members to stay in the Ra property. As such, he accepted that he did not have any basis to evict the Plaintiff's father.

iii. There was discussion of the events in 2022. It appears that Mr. Kumar accepts that the Plaintiff had stated to him in 2022 that he wished to pay the rest of the amount outstanding on the purchase price of $40,000. Mr Kumar stated that he was agreeable to this but the money was not in the solicitors account so the Plaintiff could not go ahead.

iv. He said that he has never signed a consent regarding the transfer to the Plaintiff and accepted that the variation of the Agreement pertained only to the subdivision. Nevertheless, he was adamant that the separation of the power lines was part of the subdivision process.

v. Mr. Kumar stated that since he has been collecting rent from the tenant in June 2022, he has only received two payments and then they were stopped by the tenant.

vi. His son does not live next door but his brother lives in the property which is owned by Mr. Kumar next to the Ra property.

vii. Mr. Kumar normally visits Fiji either once or twice a year for rituals and would usually stay in Rakiraki as he has properties there. He did not come to Fiji after COVID for a while.

viii. He was not aware of the renovations although would come to the Temple on the property but did not see the renovations.

ix. He did not ask the Plaintiff to stop the renovations as he was not aware of it but accepted that the Agreement did not prevent the Plaintiff from doing renovations before the Plaintiff paid the $40,000.00.

x. He was unable to say whether the property was worth more because of the renovations and stated that he would need a valuation to know.

xi. He was asked about the figure of $400 for a value for the rent of the house. He said that he has another property in the area which he receives rental of $500 a month.

xii. He accepted he did not seek the consent of the Director of Lands to rent out the 2 bedroom house and accepted that he had been illegally renting that house.

[23] In re-examination, Mr Kumar stated:

i. The Agreement did not expressly state that the Plaintiff could authorize someone else to stay on the Ra property other than the Plaintiff.

ii. He was never informed by Neel Shivam Lawyers to sign any consent for the transfer of the Ra property.

iii. If the Plaintiffs were able to pay $68,000 for renovations why could they not pay the $40,000.00 for the purchase of the house. It was evident that Mr Kumar was put out by this as well as the statement from the Plaintiff's father in 2021 that the father owned the Ra property.

iv. He stated that if the Plaintiff wished to buy his property then he will sell but he will check the amount that the Ra property is currently valued at.

v. He was referred to the Neel Shivam Lawyers Statement from August 2022 and confirmed that there were no payments made by the Plaintiff in February and March 2022 and, therefore, the Plaintiff was at least two months behind.

vi. He did not go back to Fiji after Covid until 2021.

[24] I had an opportunity to clarify some matters with Mr Kumar. He stated:

i. With respect to the variation and release of $10,000 for the subdivision of the Temple, he accepted that the separation of the power lines had no relevance to the subdivision of the Temple. The Temple had its own power supply. The reason for the separation of the power lines arose because of the conversation he had from D Kumar in 2006 and the need to separate the power lines before selling the property to the Plaintiff.

ii. He contacted Neel Shivam Lawyers from time to time to check whether the payments of $500 a month were up to date. He was advised at times that the Plaintiff was behind and he chased this up with the Plaintiff.

iii. He confirmed the events in June 2022 beginning with the meeting and the fact that the Plaintiff's proposal was rejected and there followed the Notice of 24 June 2022. He advised that this shook him causing him to not want to proceed with the sale and therefore contacting his lawyer to issue the eviction notice. He believes that the Notice from 24 June could have impacted on his ability to leave Fiji and that his wife was emotional as was, by the sounds of it, Mr Kumar. This event appears to have caused a breakdown in the relationship with the Plaintiff as up until this point the Defendants intended to go ahead with the sale. It was about this time that Mr Kumar decided he did not wish to do so.

iv. Mr Kumar confirmed that he would be prepared to continue with the sale of the property to the Plaintiff for the amount of $40,000 if he had not incurred the cost of this litigation.

Decision

[25] The Plaintiff seeks orders of specific performance compelling the Defendants to fulfill their obligations under the Agreement and arrange for the transfer of the Ra property to the Plaintiff. In the alternative, the Plaintiff seeks compensation in the amount of $102,205.00 for unjust enrichment as well as reimbursement of the monies already paid (being $28,700) toward the purchase price.

[26] The Defendants argue that the Agreement is illegal. They argue that the requisite consents have not been obtained under s 13 of the State Lands Act 1945 (for the transfer of the Crown Lease to the Plaintiff) and under ss 3 and 4 of the Subdivision of Land Act 1937 (for the subdivision of the land where the Temple is situated). The Defendants argue that the Plaintiff is not entitled to special or general damages. The Defendant's therefore contend that the Plaintiff's possession is illegal and they counterclaim for the lost rental in the amount of $21,450.00.

[27] The issues in this proceeding are:

i. Whether the Agreement is null and void in light of the failure by the parties to arrange for the consent of the Director of Lands under s 13 of the State Lands Act?

ii. If the Agreement is illegal, is the Plaintiff entitled to damages for unjust enrichment for the improvements made to the main house on the Ra property?

iii. Are the Defendant's entitled to compensation for lost rental while the Plaintiff has been in possession of the Ra property?

Section 13 - consent of the Director of Lands

[28] There is no dispute by the partes that the Director of Lands consent was required under s 13 of the State Lands Act as the property in question is a Crown Lease. Indeed, the Agreement expressly requires the consent. The question is what, if any, effect does the failure to arrange for the consent have on the Agreement and these proceedings.

[29] Section 13(1) reads:

Whenever in any lease under this Act there has been inserted the following clause:-

"This lease is a protected lease under the provisions of the Crown Lands Act"
(hereinafter called a protected lease) it shall not be lawful for the lessee thereof to alienate or deal with the land comprised in the lease of any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever, nor to mortgage, charge or pledge the same, without the written consent of the Director of Lands first had and obtained, nor, except at the suit or with the written consent of the Director of Lands, shall any such lease be dealt with by any court of law or under the process of any court of law, nor, without such consent as aforesaid, shall the Registrar of Titles register any caveat affecting such lease.

Any sale, transfer, sublease, assignment, mortgage or other alienation or dealing affected without such consent shall be null and void.

[30] The requirement for the consent of the Director of Lands under s 13, and the equivalent requirement from the iTaukei Land Trust Board under s 12 of the iTaukei Land Trust Act 1940, have been the subject of considerable judicial discussion over the years. A helpful summary of the principles that have been established is provided in the relatively recent Supreme Court decision of *Inspired Destinations (INC) Limited v Graham and others* [2022] FJSC 50 (28 October 2022). The Supreme Court was considering the consent required under s 12 of the iTaukei Land Trust Act. In that case, the purchaser had entered into a formal agreement with the vendor to purchase a resort that was situated on leased iTaukei land. A second agreement between the parties provided for the purchaser to manage the resort pending completion of the sale. The first agreement required the purchaser to obtain the iTaukei Land Trust Board's consent to the transfer as soon as reasonably practical. The purchaser failed to take any steps to obtain the consent and the vendor cancelled the agreement, retaining the deposits paid of $900,000. It was in this context that the plaintiff-purchaser relied on s 12 to argue that the agreement was unlawful and it should receive the return of its deposits. The High Court accepted the argument.

However, the Court of Appeal set aside the High Court's decision. The matter went on appeal to the Supreme Court, which upheld the Court of Appeal's decision but, as Keith J noted[8], *'by a very different route'*.[9] It is worthwhile setting out Keith J's discussion of the principles is some detail. Keith J stated:[10]

> *[43] Three preliminary points. There are three preliminary points I wish to make. The first focuses on the Purchaser's case at the trial. I have no doubt that it was flawed. The mere fact that the consent of the Board to the transfer had not been obtained could not on its own have rendered the transfer unlawful. As the Privy Council said in Chalmers v Pardoe [1963] 1 WLR 677, a decision of the Privy Council on appeal from the Court of Appeal of Fiji:*
>
> > *" ... it would be an absurdity to say that a mere agreement to deal with land would contravene Section 12, for there must necessarily be some prior agreement in all such cases. Otherwise there would be nothing for which to seek the Board's consent."*
> >
> > *In any event, it is important to remember that the agreement did not provide for the transfer of the lease to take effect on the signing of the agreement. The transfer of the lease would only take effect on the Settlement Date by when the balance of the purchase price had to be paid. Clause 4.1(a) of the agreement contemplated that the Board's consent to the transfer would have been obtained by then because otherwise the transfer would have been unlawful. In other words, the transfer would only have been unlawful if it took effect on the Settlement Date without the Board's consent having been obtained.* ***In Kulamma v Manadan [1968] AC 1062, the Privy Council said that the parties "should be presumed to contemplate a legal course of proceeding rather than an illegal [one]". Since it was never contemplated that the transfer of the lease would take effect without the Board's consent, there was no question of the proposed transfer being***

[8] Keith J provided the main decision for the Supreme Court.
[9] At [60].
[10] Footnotes not included.

unlawful simply because the Board's consent to the transfer had not been obtained earlier. *That is the effect of a series of cases including the decision of the Court of Appeal in Jai Kissun Singh v Sumintra (1970) 16 FLR 165, the decision of the Court of Appeal in D B Waite (Overseas) Ltd v Wallath (1972) 18 FLR 141, and the decision of the Supreme Court in Reggiero v Kashiwa [1998] FJSC 8.*

[44] Secondly, the trial judge thought that "the primary responsibility" for applying to the Board for its consent to the transfer of the lease lay with the Vendor. That was despite clause 4.1(a) of the agreement which provided that it was for the Purchaser to obtain the Board's consent. The judge came to the view he did because section 12 said that it was unlawful for the lessee to deal with the land without the Board's consent. Indeed, that was one of the reasons which led Gould VP in Waite to conclude that it was for the transferor to obtain the Board's consent. I do not agree. Section 12 was focusing on the consequences of an alienation of, or dealing with, land without the Board's consent: it would render the transfer unlawful. Since it was the lessee who was alienating or dealing with the land, it was inevitable that section 12 would be drafted in such a way as to make the lessee's alienation or dealing with the land unlawful. Section 12 was not purporting to lay down who should apply for that consent. If the parties wanted to provide for who was to apply for consent, that was entirely up to them. In this case, they decided to do that by agreeing in clause 4.1(a) of the agreement that it was the Purchaser who had to apply for the Board's consent.

[45] Having said that, ***who had the responsibility for applying for the Board's consent was, in my respectful opinion, irrelevant to whether there had been an alienation of, or dealing with, the land within the meaning of section 12. Whoever had the responsibility of applying for the Board's consent, the critical issue was whether there had been an alienation of, or dealing with, the land which came within section 12. If there had not been, the question of the Board's consent fell away: the Board's consent was not required. If there had been, the Board's consent was required, whoever had the***

responsibility for applying for it. Who had the responsibility for applying for the Board's consent was highly relevant to whether the Purchaser had been in breach of the agreement, but not to whether there had been an alienation of, or dealing with, the land within the meaning of section 12.

[46] ***Thirdly, section 12 did not seek to identify what might constitute an alienation of, or dealing with, the land which would trigger the requirement to obtain the Board's consent. However, it was intended to cover the many forms which such an alienation of, or dealing with, the land can take by saying that it would be unlawful whether the alienation of, or dealing with, the land was "by sale, transfer or sublease or in any other manner whatsoever". The Court of Appeal did not think that the words "or in any other manner whatsoever" added anything. They referred to the eiusdem generis rule, namely that when a list of specific items belonging to the same class is followed by general words, the general words are to be treated as confined to other items of the same class. That led the Court of Appeal to ask whether the agreement in this case could be categorized as a sale, transfer or sub-lease. That was the wrong approach. It gives no effect to the words "or in any other manner whatsoever". The application of the eiusdem generis rule to these words merely limits the alienation of, or dealing with, the land contemplated by section 12 to any other forms of alienating or dealing with land. As we shall see, the courts have often considered whether particular arrangements other than a sale, transfer or sublease of land amount to the sort of alienation of, or dealing with, land contemplated by section 12. If the Court of Appeal's approach were correct, the approach of those courts (which include the Privy Council and the Supreme Court of Fiji) would have been wrong.***[11]

[31] Keith J proceeded to identify the issue for consideration in that case, noting at [47]:

> *What was rendered unlawful? The issue on which both the High Court and the Court of Appeal focused their attention was on one particular feature of the agreement – namely* ***whether the access which the Purchaser had to the***

[11] My emphasis.

resort during the Interim Period, coupled with the payment by the Purchaser of the deposits, amounted to an alienation or dealing with the land for which the Board's consent was required. But there was, I think, another issue which arose. Let us assume that the trial judge had been right to hold that these things had amounted to an alienation of, or dealing with, the land for which the Board's consent had been required. What should the effect of that conclusion be? In other words, what was it that this alienation or dealing with the land should render unlawful? The whole of the agreement, or just that part of the agreement which related to the things for which the Board's consent had been required? *So far as I can tell, that issue was never addressed. The trial judge just assumed that it rendered the whole of the agreement unlawful. It is a point which I would have had to return to if I had agreed with the trial judge's conclusion that there had been an alienation of, or dealing with, the land for which the Board's consent had been required.*[12]

[32] Keith J determined:

[48] *The nature of a licence. Against this background, I turn to the access which the Purchaser was given to the resort in the Interim Period, that being one of the two things which the Purchaser now says, and which the judge found, constituted an alienation of, or dealing with, the land for which the Board's consent was required. Such access in law amounts to the grant of a licence. At the risk of being accused of going back to first principles, I want to say something about the nature of a licence. There is in Fiji no general right to go onto someone else's land. You need the owner of the land's permission to do that. Otherwise, you would be committing the tort of trespass. If you get the owner's permission to go onto their land, you are said to have been granted a licence to do that. A licence legitimises what would otherwise be a trespass.*

[49] *The effect of the grant of a licence: generally.* ***In legal orthodoxy a licence which merely entitles someone to go onto someone else's land does not***

[12] My emphasis.

create any proprietary interest in the land. *Obvious examples are the postman or the window-cleaner, who have permission to go onto someone's land to deliver letters or clean their windows. No-one would say that they have acquired an interest in land of the type contemplated by section 12.* ***At the other end of the spectrum, there is the case of someone who is allowed onto someone else's land to build houses there.*** *That was the position in Chalmers, as well as in Imam Hussain v Shiu Narayan [1978] FCA 23 (Court of Appeal), Logessa v Pachamma [1980] FCA 2 (Court of Appeal) and Ram Swamy Adi Narayan v Padma Wadi [1998] FJSC 5 (the Supreme Court). The Privy Council in Chalmers held that such a licence was close to a lease, but it was at the very least a dealing with the land within the meaning of section 12. The licence in the present case falls between these two extremes, and as the Privy Council said in Kulamma:*

> *" ... the term licence covers the whole range between one which confers such extensive rights over the land as almost to amount to a lease and one which merely confers permission to enter without liability to an action for trespass: the question is where, on the scale, the rights conferred by the [agreement in question] are to be found."*
>
> *The fact of the matter is, as the Privy Council made clear in Kulamma, merely because an agreement can amount to a licence, it is not necessarily to be described as a dealing in land. It all depends on a proper analysis of the agreement in question.*

[50] ***I have looked at all the cases referred to in the parties' written submissions to see if any of them lay down any principles for determining on which side of the dividing line a particular transaction falls, or if the facts of any of them are so close to the present case that the conclusion in that case is a guide to the right conclusion in the present case. I have not found one where the facts are sufficiently close to the present case to be a helpful guide, but it is plain that a licence of a purely contractual and personal nature is very likely not to amount to a dealing in land.*** *For that reason, in*

Kulamma itself, the grant of a licence to farm land could not be said to be a dealing in land. Nor could a purely personal right arising from promissory or equitable estoppel, whereby a separated de facto wife was entitled as against her de facto husband to live permanently on land: see Maharaj v Chand [1986] AC 898.

[51] The effect of the grant of the licence in this case. ***Having considered carefully the terms of the agreement in this case, I have concluded that it did not amount to an alienation of, or dealing with, land within the meaning of section 12. The agreement was, of course, for the transfer of the lease, but since the transfer was not going to take effect until the consent of the Board had been obtained, the fact that the agreement was for the transfer of the lease did not render the agreement unlawful...***

[33] The principles I have gleaned from the above passages are as follows:

i. Parties may enter into a written agreement to sell a crown lease or an iTaukei lease without having already obtained the requisite consent. However, the agreement should make provision for obtaining the requisite consent before the property is transferred. Ideally, the terms of the agreement ought to set out which party has the responsibility of making the application for consent and identify when that application is to be made.

ii. The critical question, in the event that the requisite consent has not been obtained, is whether there had been an alienation of or dealing with the land that comes within the relevant provision.[13]

iii. Whether or not there was an illegal alienation of or a dealing with the land will turn on the facts of each case and, in large measure, the terms of the written agreement. Mere access to or possession of the land may not amount to an illegal alienation of or a dealing with the land. For example, a licence to farm land was not considered a dealing with the land[14] yet being allowed on the land to build

[13] Being s 13 of the State Land Act or s 12 of the iTaukei Land Trust Act.
[14] As in *Kulamma v Manadan* [1968] AC 1062.

houses was not permitted as it was considered to be akin to a lease[15]. In *Inspired Destinations (INC) Ltd* access to the land to run the existing resort was considered by the Supreme Court not to be an illegal alienation of or a dealing with the land under s 12.

iv. Keith J raised a further issue. Where a particular use of the land, or term of the agreement, constitutes an illegal alienation of or a dealing with the land, this may not of itself invalidate the whole agreement but may render only part of it invalid. The Supreme Court did not elaborate on the matter as the question did not arise in that case.

[34] Turning to the present case. Provision was made in the Agreement of 21 May 2018 for the requisite consent to be obtained - although, the wording in the Agreement could have been better. The provision is found at clause 23.01 a) which reads '*Subject to the consent of Crown Lease*'. This purports to be the requirement to obtain the consent of the Director of Lands under s 13 of the State Lands Act. As per clause 4.01 the consent was required to be obtained before settlement but other than that the Agreement does not stipulate which party is responsible for making the application[16] or provide a timeframe for compliance – except as stated it must be effected before settlement.

[35] As stated, there is no dispute by the parties that the consent of the Director of Lands has not to this day been obtained, although the Plaintiff understood that Neel Shivam Lawyers was arranging for this - he produced a receipt from Neel Shivam Lawyers dated 13 July 2018 in the amount of $218 which, according to the invoice, was for payment of the *'consent fee'*.[17] No evidence was placed before the Court that the solicitors arranged for the consent. That being the case, for the purposes of this proceeding, I have no evidence that Director of Lands has consented to any transfer of ownership of the Crown Lease to the Plaintiff.

---

[15] As in *Chalmers v. Pardoe* [1963] 3 All E.R. 552, *Imam Hussain v Shiu Narayan* [1978] FCA 23 (Court of Appeal), *Logessa v Pachamma* [1980] FCA 2 (Court of Appeal) and *Ram Swamy Adi Narayan v Padma Wadi* [1998] FJSC 5 (the Supreme Court).

[16] There is an argument that clause 6.01 (b) places that responsibility on the vendor. That provision, however, deals with transactions on settlement not transactions before settlement.

[17] PE7.

[36] The question is whether the Agreement is null and void in light of the failure to obtain the consent of the Director of Lands. I have decided that the Agreement is null and void. I am satisfied that there has been an alienation of or dealing with the land that is in contravention of s 13 in the absence of the consent of the Director of Lands. My reasons are these:

i. Clause 5.01 of the Agreement expressly provides that the Plaintiff is to be given possession of the property upon execution of the Agreement. There was no requirement in the Agreement for the parties to obtain the consent of the Director of Lands before the Plaintiff was permitted to take possession. Indeed, the Plaintiff took possession on execution in 2018, placing his parents onto the Ra property from 2018 and also staying at the Ra property himself during his school vacations.

ii. Clause 5.02 provides that the Plaintiff is entitled to all income generated from the Ra property (with the exception of the area of the Temple) on execution of the Agreement. The Plaintiff acted on this, collecting rental payments of $150 each month from the existing tenant from 2018 to 2022 when the Defendants resumed collecting such payments.

iii. If the Agreement simply provided for the Plaintiff to take possession prior to obtaining the consent of the Director of Lands, this may not of itself have amounted to an illegal alienation of or dealing with the land – it did not suffice in *Inspired Destinations (INC) Ltd* (supra) or *Kulamma* (supra). However, the Plaintiff's use of the land went further than mere possession, as per clause 5.02 and the significant renovations done to the main house by the Plaintiff. By the Plaintiff's own evidence, the costs of the renovations was about $76,000. Add to this the fact that the Agreement provided that the Plaintiff make monthly payments of $500 (until the purchase price was paid). The cumulative effect is that the Plaintiff's use of the land (before any consent is obtained) is looking very much like a lease. In *Inspired Destinations (INC) Ltd*, Gates J stated at [13]:

> *In **Ihaka v Prakash** ABU 17 of 2015, 15 April 2016 Calanchini J in an enlargement of time application in the*

Court of Appeal held the making of payments pursuant to the schedule in the Sales and Purchase Agreement and the acceptance of those payments by the Appellant constituted a dealing with the land by sale and required the prior consent of the Board. This was a different situation from the instant case. In the present case there was only one payment made, an initial deposit, and that was in connection with an agreement which acknowledged the need to obtain consent before the sale could proceed further. This was not a schedule for the payment of regular sums towards the settlement of the full purchase price as in ***Ihaka.***

[37] Counsel for the Plaintiff drew my attention to *Kumar v Honey Drew Farms Ltd & Anor* [2018] FJHC 65 (12 February 2018) on the basis that this decision supports the Plaintiff's case. In my view, the comments by the learned Judge in that case are, in fact, consistent with my findings in the present case. Mackie J stated:

> *15. In my view, the mere signing of a Sale and Purchase Agreement by and between two parties need not necessarily fall within the meaning of "Dealing" until and unless it affects the rights and interest of the State / Land Owners in any manner. For instance, if such a S.P.A paves the way for the would be buyer to remove Earth, engage in Mining of Sand or Minerals or Fossils or removal of Trees or to engage in any act that brings detrimental results, before the actual sale takes place, it is such a SPA that has to be necessarily executed with the prior consent of the Director of Lands.*
>
> ...
>
> *19. According to the Section, what is made null and void is any Sale/ Transfer/ Sublease/ Assignment/ Mortgage or other alienation or dealing effected without such consent of the Director of Lands. For such an invalidation or nullification to take place, there should have been a dealing in any manner stated above and in the absence of such a dealing no invalidation or nullification can take place.*
>
> ...

24. *In the concurring decision in* ***Courts Bros. (furnishers) Ltd V Sunbeam Transport Ltd[1969] 15 FLR 206*** *(per Hutchinson JA) held , p 211*

> *"...Looking at the question free of authority I do not think that it is. Sale, transfer or sublease or mortgage, charge or pledge, the precise words used in the subsection, all appear to me to indicate a transaction in which an immediate interest in the land is created in the other person to the transaction. The words "in any other manner whatsoever" may certainly widen the scope of the subsection to cover transactions that do not necessarily fall within the particular words used in it, and so, in Chalmers v Pardoe [1963] 3 All ER 552, the Privy Council said that a licence to occupy coupled with a giving of possession would be a dealing within the subsection.* ***But that does not mean that something that does not confer an immediate interest in the land falls within that word".***

[38] The remaining question is whether it may be concluded that the Agreement is wholly null and void or only partially so, such that parts may be severed from the Agreement. I am satisfied, given the terms of the Agreement and the Plaintiff's use of the land, that it is not possible on the facts of this case to sever some parts of the Agreement to allow that whole Agreement to be saved.

Unjust enrichment

[39] The Plaintiff claims, in the alternative, damages for unjust enrichment in the amount of $102,205.00[18] being the estimated value of the improvements to the Ra property brought about by the Plaintiff's renovations to the main house. The costs of the renovations themselves being said to be $76,051.50.[19]

[40] Sharma J set out the test to be considered for unjust enrichment in *Prasad v Kumar* [2024] FJHC 577 (24 September 2024) as follows:

[18] Para 18(vi) of Statement of Claim.
[19] PE9.

62. *The question that now comes to mind is this:* ***Is there an unjust enrichment arising herein where the Defendant has enriched himself at the expense of the claimant [Plaintiff]?***

63. *I make reference to the case in* ***Manohan Aluminium Glass (Fiji) Ltd v Fong Sun Development*** *Ltd [2018] FJCA 23; ABU 0018.2015 (8 March 2018) Honourable Justice Jameel, J.A. in paragraph 33 defined unjust enrichment as:*

"Unjust enrichment arises in a situation in which the defendant is enriched at the expense of the claimant and there is in addition a reason, not being a, manifestation of consent or a wrong, why that enrichment should be given up to the claimant" (Peter Berks, Unjust Enrichment, second ed. 2005)

64. *In Paragraph 34, Honourable Justice Jameel, JA. goes on to provide:*

"The principle of unjust enrichment requires first, that the defendant has been enriched by the receipt of a benefit, secondly that this enrichment is at the expense of the claimant, and that the retention of the enrichment be unjust and finally that there is no defence or bar to the claim". (Chitty on Contracts, Vol 1, para 29-018, Sweet & Maxwell, 2004).

65. *In paragraph 38, Honourable Justice Jameel, JA. Refers to the case of* ***National Bank of New Zealand Ltd v Waitaki International Processing (NI) Ltd*** *[1997] 1 NZLR and provide the three elements of unjust enrichment, which are:*

a. ***Proof of enriched by receipt of a benefit.***
The evidence of an oral contract upon the mutual understanding between the Plaintiff and the Defendant has been establish. The Plaintiff paid the Defendant an upfront sum of $20,000, and continued with monthly installment payment(s) of $500 in access of more than Agreed Purchase Price of vehicle and transfer of permit of $25,000.

The evidence proofs and establishes that the defendant received the money(s) on the admitted Exhibit- P1 to all three receipts.

b. ***Enrichment at the Expense of the Plaintiff***
The defendant took and accepted the Agreed money for the purchase and transfer of the vehicle and the permit LM 62 now MB 62.

However, when time came for the Defendant to transfer and fulfill his promise and objectives to the Plaintiff as agreed upon between them, the defendant reneged from that and hence sold his permit to a third party by the name of Suresh Kumar instead. The same is supported and is evident by letter of 31 October 2023 sent by LTA to Sunil Kumar Esquire facilitating the search for Mini Bus Permit MB 62.

Evidence from the Defendant and the Plaintiff revealed that the vehicle is still under the Defendant's name after the Defendant's permit was placed on vehicle and transferred at LTA that the vehicle is now parked idle, collecting rust, scrapped and unfit for road worthiness at the backyard of the Plaintiff.

c. ***Retention of the Benefit is unjust***
The Plaintiff's evidence establishes that the sole reason for him paying the Defendant was for the purchase of said vehicle and transfer of the Defendant's permit onto the Plaintiff's names.

[41] Relying on the receipts/invoices produced by the Plaintiff it appears that the renovations were undertaken from late 2018 to 2022.[20] Mr Kumar stated that he was unaware of the renovations being done to the main house. Mr Kumar stated that he visited Fiji regularly up to the time of the Covid pandemic in 2020 but again from 2021. He also stated that the renovations were of a minor nature only and does not accept the figures presented by the Plaintiff. I accept the evidence provided by the Plaintiff's witnesses as being true and reliable. I accept that extensive renovations were made to the main house, both inside and outside. I accept that the costs of this were about $76,000, in line with the invoices.

[42] Given the significant nature of the renovations I do not accept that Mr Kumar was unaware of them. He visited the Ra property from time to time and I am satisfied he will have seen the renovations himself. I am also satisfied that between his son and his brother, who were living locally, they will have noticed the work and informed Mr Kumar of this. As such, I am satisfied that Mr Kumar was aware of the renovations yet did not complain or ask the Plaintiff to desist from doing so.

[43] That said, I am not prepared to make any orders for damages for unjust enrichment. The pleadings and the evidence do not permit this Court to make any safe findings on the matter. For example, while I accept that the Plaintiff made the renovations, I am also satisfied that the Agreement did not allow for this and the Plaintiff did not obtain the Defendant's agreement before doing so. The Plaintiff chose of his own accord to make the renovations. In addition, while I accept that the Plaintiff incurred costs of about $76,000 he used monies from the rentals collected from the tenant on the Ra property for some of these costs. Also, he and his family will have benefited from living rent free on

[20] PE10 to PE13

the Ra property from 2018 to the present. Further, I am unable to place an amount on the value of the improvement to the Ra property in the absence of a valuation.

[44] The result is that the Plaintiff's claim for damages for unjust enrichment fails.

Defendant's counterclaim for loss of rentals

[45] The premise for the Defendants counterclaim is that the Agreement is illegal (due to the failure to obtain the consent of the Director of Lands under s 13) and thus the Plaintiff's occupation is illegal. On this basis, the Plaintiff was not entitled to collect the rental from the tenant on the Ra property (of $150/month) and the Defendants have suffered a loss from missing out on rental payments of $400/month for the main house that the Plaintiff's family have been occupying.

[46] The Defendants seek damages in the amount of $21,450.00.[21] I am satisfied that the Defendants cannot succeed with their counterclaim. They agreed to allow the Plaintiff possession of the Ra property on execution of the Agreement. It would be unconscionable to permit them to derive a financial gain in such circumstances. They have benefited financially in that the rentals from the tenant were used toward the renovation costs and the main house has been significantly improved by the renovations undertaken by the Plaintiff.

Other matters

[47] The Plaintiff has paid $28,700 toward the purchase of the Ra property. It appears that $18,700 is still held in the Trust Account of Neel Shivam Lawyers while $10,000 was released to the Defendant's in 2019. As the Agreement (and the 2019 variation) is null and void, the Plaintiff is entitled to reimbursement of these monies from Neel Shivam Lawyers and the Defendants.

[48] There remains the issue of costs. Both parties have been successful in part. As such, each should bear their own costs.

[21] Para 33 of Statement of Defence.

Orders

[49] My orders are as follows:

i. The Sale and Purchase Agreement between the parties dated 21 May 2018, for the sale of the property known as Lot 10 on Pt of Naqalau, in the province of Ra contained in Crown Lease No. 14480 and having an area of 4087 meters squared, is in breach of s 13 of the State Lands Act 1945 and, therefore, null and void.

ii. The Plaintiff is entitled to reimbursement of the monies he has paid toward the purchase, being the amount of $28,700. Neel Shivam Lawyers must pay the amount of $18,700 held by it to the Plaintiff and the Defendants must pay the amount of $10,000 to the Plaintiff. These payments must be paid within 21 days.

iii. There will be no order as to costs.

HIGH COURT OF FIJI SUVA

.....

D. K. L. Tuiqereqere

JUDGE

Solicitors:

Capital Legal for the Plaintiff

Nand's Law for the Defendants