

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 71 OF 2017

BETWEEN : **NAREND KUMAR (aka BISSUN DATT) and JASMA WATI**, both of Sabeto, Nadi, but presently of Waqadra, Nadi, Supervisor and domestic.

APPELLANTS / ORIGINAL PLAINTIFFS

AND : **JAIRU DEAN (aka PIPI) and IRHID DEAN**, both of Sabeto, Nadi, occupation not known to the Plaintiff

RESPONDENTS / ORIGINAL DEFENDANTS

BEFORE : A.M. Mohamed Mackie -J.

COUNSEL : Ms. Veitokiyaki S. for the 1st named Plaintiff- Appellant.
 : Ms. Dutt S. for the 2nd named Plaintiff – Appellants.
 : Mr. Wainiqolo E. for the Defendant -Respondents.

DATE OF HEARING : On 4th April, 2025. (By way of written submissions).

WRITTEN SUBMISSION : Filed by the Appellants on 15th March, 2025.
 No written submissions filed by the Defendant- Respondents,

JUDGMENT DELIVERED : On 16th June, 2025.

JUDGMENT

A. INTRODUCTION:

1. This is an Appeal preferred by the Plaintiff- Appellants (“the Appellants”) by filing of their NOTICE AND GROUNDS OF APPEAL on 19th January 2024 pursuant to the RULING pronounced by Hon. Lyone Seneviratne-J (as he then was) on 16th January 2024 granting Leave to Appeal and Stay against the Ruling dated 08th July 2022 pronounced by the then learned Master of the High Court. (“the Master”)

2. By the impugned Ruling dated 08th July 2022, the Master had struck out the Appellant's substantive action after considering an application for strike out preferred by the Defendant- Respondents ("the Respondents") on 11th September 2018 acting under Order 18 Rule 18 of the High Court Rules 1988.
3. The Appellants rely on the following grounds for the purpose of this Appeal.

B. GROUNDS OF APPEAL:

1. **THAT** the Learned Master erred in fact and in law by holding that the Plaintiffs action for vacant possession is unsustainable based on the Decision of Mr. Justice Ajmeer whereby his lordship nullified the Agreement to Lease 6/77/40841 in Judicial Review No. HBJ 01/2017 when in fact the substantive appeal was listed for hearing on the **9th of September 2022**.
2. **THAT** the Learned Master erred in fact by holding that the I-Taukei Land Trust Board only filed an application seeking leave to appeal the decision of Mr. Justice Ajmeer, but did not proceed to obtain leave nor did it take any step in that matter, when in fact the I-Taukei Land Trust Board obtained the Leave to appeal out of time.
3. **THAT** the Learned Master misdirected himself by holding that the allegations of fraud made by the Plaintiffs was baseless when in fact the officer representing the Appellant in Judicial Review No. HBJ 01/2017 had consented for Judgment in favour of the Applicant in that matter.
4. **THAT** the Learned Master erred in law by striking out the Plaintiffs action and not considering the I-Taukei Land Trust Board had appealed the decision of Mr. Justice Ajmeer -J that had nullified the agreement to lease in Judicial Review No. HBJ 01/2017.
5. **THAT** the Learned Master erred in fact and law when he held that the order obtained by the Mohammed Ashik was not fraudulent when in fact the order was obtained with the following defects:
 - i. The Legal officer consenting to a Judgment in favor of the respondent in Violation of section 12 I-Taukei Land Trust Act.
 - ii. The affected party in Judicial Review No. HBJ 01/2017 being the Appellants herein not being added as a party to that action when the lease was issued in favour of the Appellants herein amounts to significant miscarriage of Justice.

C. HEARING OF APPEAL:

4. When the Appeal came up before me for hearing on 4th April 2024, as an Adjournment moved for by the Counsel for the Respondent was refused by this Court, Counsel for both parties agreed to have the matter disposed by way of written submissions. Accordingly, the Appellant relied on his written submissions already filed on 15th March 2025. Though, the Respondents were given time, they have failed to file their written submissions as per the direction given on 4th April 2025 and 23rd May 2025.
5. Hence, this judgment is delivered by perusing the contents of the written submission filed by the Appellant and those of the case record, particularly, the contents of the impugned Ruling of the Master dated 08th July 2022 and those of the Ruling dated 29th November 2019 and the Judgment dated 30th September 2022 both pronounced by the Court of Appeal in Civil Appeal No- ABU 134 of 2018 granting leave to Appeal out of time and allowing the Appeal respectively in relation to the High Court judgment dated 16th July 2018 pronounced by **Mohamed Ajmeer -J** in Judicial Review **Action No- HBJ-01 of 2017 Mohammed Ashik Ali -V – itaukei Land Trust Board**, in which the subject matter land is the same and identical to that of the action hereof, though the parties in both actions are different.

D. BACKGROUND HISTORY & ANALYSIS:

6. At the outset, I find that all Grounds of Appeal enumerated above mainly revolve around the Civil Action No – **HBC 01 of 2017- Mohammed Ashik Ali -V – itaukei Land Trust Board**, and the judgment in it dated 16th July 2018 pronounced by Mohamed Ajmeer -J, which appears to have largely influenced the Master when arriving at his impugned decision to strike out the Appellant's substantive action hereof.
7. It is to be observed that the identity of the subject matter land pleaded in paragraph 1 of the Statement of claim, **as residential Lease from the Itaukei Land Trust Board ("ITLTB") (ref. 6/77/40841) under an Agreement to Lease of Land known as Naboutini (part of) situated in the Tikina of Sabeto in the province of BA and having an area of 0.4803 hectares**, has not been disputed by the Respondents in paragraph 1 of their Statement of defence. In the Application for Judicial Review bearing No- **HBC 01 of 2017** too, the first prayer thereof also refers to the same Land in dispute in this action No- HBC-71 of 2017.
8. The basis for the Plaintiff- Appellants to file this action No- HBC 71 of 2017 against the Defendant- Respondents was that they (the Plaintiffs) being the holders of Lease from ITLTB for a term of 99 years with effect from 1st day of January 2016 for the subject Land with a Residential dwelling house therein, had permitted the Defendants to take temporary shelter free of rental on the condition that they would vacate the property upon request, and they are now refusing to vacate despite numerous verbal requests being made and a notice to quit dated 20th September 2016 also being served on them on 30th September 2016.
9. The Defendants in their Statement of Defence ("SOD"), having admitted the Plaintiffs' claim for title, took up the position that the Plaintiffs had obtained the Lease by mistake and through misrepresentation from ITLTB and that it is currently under contest as the ITLTB is considering to rescind of the Agreement for Lease upon the Plaintiffs' failure to return and surrender the document as requested by ITLTB. The Defendants also took up the position that they are laborers of one **Mr. Mohamed Ashik Ali**, who had bought

the Land and premises from the Plaintiffs and permitted them to live there upon the authority and knowledge of ITLTB. Accordingly, the Defendants moved to dismiss the Plaintiffs' action.

10. It was when the ITLTB had taken an Appeal against the Judgment of Mohamed Ajmeer-J, after obtaining the extension of time to file Appeal out of time as evidenced by the Court of Appeal Ruling dated **29th November 2019**, and when the Appeal was pending for hearing on **09th September 2022**, the Master by his impugned Ruling dated **08th July 2022** had struck out the Plaintiff- Appellants' action hereof pursuant to the hearing of the Summons for strike out that had been preferred by the Defendant- Respondents hereof . It is observed that there was only two months' time gap between the date of Master's impugned Ruling made on **8th July 2022** and the date of hearing of the Appeal **09th September 2022** before the Court of Appeal, upon which the judgment was delivered on 30th September 2022 allowing the Appeal preferred by ITLTB in that action, which finally restored the Title of the Plaintiff- Appellants in this action.
11. With the above background and brief analysis, I shall now delve into the Grounds of Appeal adduced by the Appellants, careful perusal of which, in my view, clearly demonstrate that those are full of merits warranting the intervention of this Court in relation to the impugned Ruling pronounced by the Master on 08th July 2022.

GROUND-1

1. *THAT the Learned Master erred in fact and in law by holding that the Plaintiffs action for vacant possession is unsustainable based on the Decision of Mr. Justice Ajmeer, whereby his lordship nullified the Agreement to Lease 6/77/40841 in Judicial review No. HBJ 01/2017 when in fact the substantive appeal was listed for hearing on the 9th of September 2022.*
12. Undisputedly, the Appellant **Itaukei Land Trust Board** in the said action **HBJ-01/2017** was not a party to this action No- HBC 71 of 2017 before the Master. Likewise, the Plaintiff-Appellants in this action were not parties to the said HBJ -01 of 2017 either before Mohamed Ajmeer-J or before the Court of Appeal. This had been brought to the Notice of the Master by the Plaintiff-Appellants during the proceedings before him as conceded in paragraph 10 of the Master's impugned Ruling. It was also had been brought to the notice of the Master that there had been a fraud in obtaining title by the Applicant in J/R matter and the ITLTB was Appealing the Judgment therein by Ajmeer- J.
13. However, the Master did not seriously take the disclosure made by the Plaintiff's – Appellants' Counsel about the pending Appeal and the alleged fraud in obtaining the lease therein. Instead the Master purely acted upon the judgment of Mohamed Ajmeer -j, if it was the final and conclusive decision arrived at extinguishing any other claim/s for the subject land. The absence of the Plaintiff-Appellant and / or his Solicitors/ Counsel at the hearing before the Master also seems to have prompted the Master to arrive at the impugned decision.
14. The Master, by fully relying on the findings of Ajmeer-J, and observing that the claim is misconceived and baseless, proceeded to summarily strike out the Plaintiffs' claim, without affording an opportunity to

the Plaintiff-Appellants to prove their claim through a fully-fledged Trial and, particularly by disregarding the fact that the Plaintiff -Appellant was not a party to the former proceedings before Ajmeer-J. This contravened the very principles he discussed in paragraphs 7, 8, 12 and 13 of his impugned Ruling dated **08th July 2022**.

15. Had the Master permitted the Plaintiffs' action to proceed for trial, instead of dealing with it under Order 18 Rule 18 (1) (a), the Plaintiff- Appellants would have gone for their trial armed with the Judgment by the Court of Appeal.
16. With all due respect, I observe that the position taken up by the Master in paragraph 10 of his impugned Ruling to the effect that the Plaintiff- Appellants' claim of fraud is misconceived and baseless is erroneous. Further, I am of the view that the strictures passed on the Plaintiffs' Solicitors in that regard were uncalled and unwarranted. Instead, the Master could have simply allowed the action to continue as no prejudice would have been caused to the Defendants, who were in possession of the subject property. Thus, I see that the ground No-01 is meritorious and the Appeal should be allowed on this ground alone.

GROUND-2

2. THAT the Learned Master erred in fact by holding that the I-Taukei Land Trust Board only filed an application seeking leave to appeal the decision of Mr. Justice Ajmeer, but did not proceed to obtain leave nor did it take any step in that matter, when in fact the I-Taukei Land Trust Board obtained the Leave to appeal out of time.

17. As I observed in a foregoing paragraph, unfortunately, the **Itaukei Land Trust Board**, the Appellant in connected judicial Review matter, was not a party in this action. Likewise, the Plaintiff - Appellant in this action was not a party in the Judicial Review matter. The Plaintiff – Appellant, in addition to his Affidavit in opposition, had also filed a Supplementary Affidavit revealing details about the pending Appeal by the Itaukei Board against the Judgment of Mohamed Ajmeer-J in relation to the Judicial review matter. The fact that the Defendant -Respondent had not filed a Reply Affidavit by denying the pendency of the Appeal appears to have had escaped the attention of the Master when he decided to strike out the Plaintiff - Appellants' action.
18. The Master could have appreciated the undisputed fact that there was an Appeal on foot and anything contrary to that would, undoubtedly, have come up at the trial of the action, had the action continued for Trial without being struck out prematurely. On this ground too, I stand convinced that it is meritorious and the Appeal should be allowed.

GROUND-3

3. THAT the Learned Master misdirected himself by holding that the allegations of fraud made by the Plaintiffs was baseless when in fact the officer representing the Appellant in Judicial Review No. HBJ 01/2017 had consented for Judgment in favour of the Applicant in that matter.

19. The Master could have exercised a bit of caution before holding that the allegation of fraud made by the Plaintiff was baseless and misconceived, particularly, when the Appeal in the Judicial Review matter had been preferred by none other than the very Itaukei Land Trust Board, of which an officer had wrongfully consented for a judgment in favor of the Applicant in the JR matter before Ajmeer-J.
20. In the Ruling on leave to Appeal and in the substantive Judgment by the Court of Appeal, in relation to the Judicial Review matter, it has been observed that the consent by an Itaukei officer for the cancellation of the former lease was a clear violation of Section 12 of the Itaukei Land Trust Board Act.
21. Careful perusal of the case record shows that by the time Master pronounced the impugned ruling on 08th July 2022, the Ruling on the Leave to Appeal in the Judicial Review matter had already been pronounced by the Court of Appeal on 29th November 2019. Unfortunately, this was not brought to the full attention of the Master seemingly for the reasons that the plaintiff hereof was not a party to that Judicial Review matter, and the Plaintiff-Appellants were neither present nor represented by their counsel at the hearing before the Master. However, there was unchallenged evidence before the Master on the pendency of an Appeal, which was sufficient enough for the Master to have acted otherwise, instead of striking out the Plaintiff- Appellants' substantive action. I find this ground too is meritorious enough to have the Master's impugned ruling set aside and vacated.

GROUND -4 &5

4. *THAT the Learned Master erred in law by striking out the Plaintiffs action and not considering the I-Taukei Land Trust Board had appealed the decision of Mr. Justice Ajmeer -J that had nullified the agreement to lease in Judicial Review No. HBJ 01/2017.*
5. *THAT the Learned Master erred in fact and law when he held that the order obtained by the Mohammed Ashik was not fraudulent when in fact the order was obtained with the following defects:*
 - i. *The Legal officer consenting to a Judgment in favor of the respondent in Violation of section 12 I-Taukei Land Trust Act.*
 - ii. *The affected party in Judicial Review No. HBJ 01/2017 being the Appellants herein not being added as a party to that action when the lease was issued in favour of the Appellants herein amounts to significant miscarriage of Justice.*
22. For the reasons discussed above, I find that these grounds 4 and 5 also stand addressed, which warrants the allowing of the Appeal.
23. Thus, my considered decision is that the Appeal should be allowed, the Master's impugned Ruling dated 08th July 2022 should be set-aside and the Appellant's substantive matter should be reinstated to the role for the matter to proceed by taking its normal course.
24. Considering the circumstances and the agony that the plaintiff- Appellant may have undergone, I order the Defendant- Respondents to pay the Plaintiff- Appellants a sum of \$2,000.00 being the summarily assessed cost of this Appeal to be paid in 28 days.

E. FINAL OUTCOME:

- a. The Appeal by the Plaintiff- Appellant is allowed.
- b. The impugned Ruling pronounced by the Master on 08th July 2022, whereby the Plaintiff-Appellant's substantive action was struck out, is hereby set aside.
- c. The Plaintiff-Appellant's substantive action is hereby reinstated to the role.
- d. The matter is referred back to the Master's Court for the parties to comply with the remaining Orders made on the Summons for direction on 18th July 2018, and for the matter to take the normal cause.
- e. The Defendant- Respondents shall pay the Plaintiff- Appellant a sum of \$2,000.00 (Two Thousand Fijian Dollars) within 28 days, being the summarily assessed Costs of this Appeal.
- f. Parties to appear before the Master when noticed.

On this 16th day of June 2025 at the Civil High Court of Lautoka.




A.M. Mohamed Mackie
Judge
High Court (Civil)
Lautoka- Fiji

SOLICITORS:

For the Plaintiff- Appellants: **CHETTY LAW & ASSOCIATES - BARRISTERS & SOLICITORS.**

For the Defendant-Respondents: **REDWOOD LAW - BARRISTERS & SOLICITORS.**