IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 144 of 2020

BETWEEN : **ROHIT KUMAR**
First Plaintiff

SUBHASH CHAND
Second Plaintiff

BISHWAR NANDAN
Third Plaintiff

SHERAL VIKASHNI PRASAD
Fourth Plaintiff

BIRENDRA PRASAD
Fifth Plaintiff

SHYAM NAND
Sixth Plaintiff

NILESH KUMAR
Seventh Plaintiff

DRON PRASAD
Eighth Plaintiff

HEMANT KUMAR RAJ
Ninth Plaintiff

SARWAN KUMAR SINGH
Tenth Plaintiff

SHIRI NAND
Eleventh Plaintiff

AND : **KISHORE CHANDRA, KIRAN CHANDRA, POOJA PRANITA PRASAD** aka **POOJA CHANDRA, AMIKA DEVI CHAND & VINAY CHANDRA**
First Defendants

REGISTRAR OF TITLES
Second Defendant

ATTORNEY-GENERAL OF FIJI
Third Defendant

REALEADER COMPANY PTE LIMITED
Fourth Defendant

Counsel : **Mr. Maharaj & Mr. Lachman for the Plaintiffs**
Ms. A Singh for the First Defendants
Ms. S Taukei with Ms. C Mangru for the Second & Third Defendants
Ms. K Singh with Mr. S Kumar for the Fourth Defendant

Hearing : **3-6, 17 & 18 September 2024**
Closing Submissions : **30 October 2024[1], 8 November 2024[2], 25 November 2024[3] & 29 November 2024[4]**
Judgment : **30 June 2025**

JUDGMENT

[1] This proceeding concerns a large parcel of land situated in Navua. The land is Certificate of Title No. 5079 being Block 2 Deuba (part of) containing a total area of 149 acres 1 rood 11 perches (**the Navua property**). The Plaintiffs claim an interest to approximately 45 acres of the Navua property where they are living and were previously farming.[1]

[2] The Plaintiffs occupy this land along with about 300 other persons.[2] Some of them have lived there all their life and many are second or third descendants of those that originally moved onto the land. Kunj Behari was the registered proprietor of the Navua property when the Plaintiffs ancestors originally moved onto the land. According to the Plaintiffs, the late Mr. Behari invited their ancestors onto the land to occupy it, farm it and to develop it. They have been paying rent as tenants for several decades. The Plaintiffs say that the arrangement from the time they were invited onto the land was that they would be offered first opportunity to purchase the land at a 'nominal' price where they were residing and farming.

[3] Mr. Behari passed away in about 1960. The First Defendants are his descendants. They made several efforts in the 1990s and early 2000s to sell part of the Navua property to the Plaintiffs and the other residents. The parties were unable to reach agreement. In 2017, the First Defendants sold the Navua property to the Fourth Defendant. The transfer was registered in September 2018. The First Defendants are satisfied with the sale and say they were entitled as registered owners to sell the Navua property.

[4] The Fourth Defendant is the current registered owner of the Navua property. It says it has acquired good title from the First Defendants and that it has no liability to the Plaintiffs.

[5] The Second and Third Defendants are joined on the basis that the Second Defendant, the Registrar of Titles, allegedly unlawfully removed caveats from the title, thereby allowing the transfer of ownership from the First Defendants to the Fourth Defendant.

[1] They claim that the Fourth Defendant has stopped their farming.
[2] Other residents have brought two separate proceedings involving similar issues, being *Prasad v Chandra & Ors* Civil Action HBC 43/2018 and *Nand & Ors v Chandra & Ors* Civil Action HBC 281/2018.

Pleadings

[6] The Plaintiffs plead that the First Defendants promised to sell part of the Navua property to them. That the Fourth Defendant fraudulently acquired title in September 2018. They plead they are entitled to the land by adverse possession pursuant to ss 77 to 79 of the Land Transfer Act 1971.[3] The Plaintiffs plead that the Registrar of Titles wrongfully and negligently cancelled their caveats in 2018. The Plaintiffs seek, by way of relief, declarations that they are entitled to 5 acres each of the Navua property or, in the alternative, compensation and damages for their loss.

[7] The First Defendants take issue with many of the alleged facts pleaded by the Plaintiff. The First Defendants plead that they were the registered proprietors of the Navua property at the material time and as such legally permitted to sell the Navua property to the Fourth Defendant. The Fourth Defendant pleads that it is a bona fide purchaser of the Navua property and that the Plaintiffs are unlawfully occupying its property.

[8] The Second and Third Defendants plead that the removal of the Plaintiffs' caveats and the registration of the Fourth Defendant's name on the title was done in in accordance with the statutory provisions.

Timeline

[9] The following is a timeline of the material events:

Date	**Event**
1939	Kunj Behari is registered as the proprietor of the Navua property
1940s	Mr. Behari invites families to live on the Navua property and farm it. Each family is given approximately 5 acres.
1949	Mrs. Rudra Wati (PW2[4]), aged 15 years, moves to the Navua property to marry her husband who has been living on the property with his family. Her evidence is that her in-laws had a house already built of wood and tin with several bedrooms.

[3] The Plaintiffs have now abandoned this cause of action.
[4] Plaintiffs' Witness 2.

	There were about five other families living on the property with their own homes at this time. Each family paid rent to Mr. Behari of about five shillings.
Subsequent years	Over the subsequent years and decades, more families are invited to move onto the Navua property. They build homes, farm the land, and raise families. These families, and their descendants, remain up to the present time The families develop the land, leveling it to deal with flooding (the land was swampy when the families originally moved on and flooding was a problem). Another road is constructed. The families arrange to install drains, electricity, water etc - there are now a number of permanent houses on the Navua property, numbering about 45 families and 300 people.
1960	Mr Behari passes away and title is transferred to the Public Trustee.
1962	The title is transferred to Mr. Behari's children who remain the registered proprietors of the property until it is transferred to the Fourth Defendant on 10 September 2018.
1975	Water is installed to the Navua property by Public Works Department.
1994	Negotiations begin between the First Defendants and the residents of the Navua property (including the Plaintiffs) for the sale of portions of land on the Navua property to the residents. Solicitors are involved.
4/12/1994	Meeting between the landowners and the residents over a process to sell portions of the Navua property to the residents.
1996	Fiji Electricity Authority connects electricity to the dwellings of the residents.
15/08/1996	Letter from First Defendants' solicitor to the residents enclosing an offer of between $3,000 to $6,000 per acre (depending on the category of land; residential agricultural or part-time agricultural).
03/09/1996	The resident's solicitor responds declining the First Defendants' offer and making a counter offer of $3,000 per acre for 50-80 acres.
10/03/1997	The solicitors for the First Defendants write to the residents' solicitor declining the counter offer. The letter concludes, '*Your client is invited to reconsider its counteroffer but if nothing definitive comes about, our client will proceed to consider other options available to it'*.
23/04/1998	The First Defendants' solicitor writes again with a further offer to the residents. This time the offer is made in terms of lots (58 lots in total), the prices ranging between $8,000 to $20,000 per lot. A map of the lots is supplied – it is apparent

	that many of the residents will be required to move from where they have already built their homes.
25/05/1999	Letter by residents to First Defendant's solicitor, offering to buy 21 acres at $5,000 per acre. The residents request a meeting with the First Defendants to discuss.
04/08/1999	Letter by residents to First Defendants increasing its offer to $7,000 per acre for the 21 acres.
09/08/1999	The First Defendants respond declining the offer. They state that the then market value is $10,500 per acre. They give the residents until 30 September 1999 to accept the offer.[5]
11/06/2001	The First Defendants write to their solicitor to update them on ongoing negotiations; the First Defendants advise that they have reached agreement with 7 residents over terms to sell part of the Navua property while agreement was yet to be reached with 9 other residents – it is unclear whether there were negotiations pending with the remaining residents.[6]
2001/2002	In or about 2000, the First Defendants brought proceedings in the Suva High Court against three residents seeking vacant possession (HBC 236 of 2000). The application was dismissed by the High Court. An appeal to the Court of Appeal was also dismissed in or about 2002. The Court of Appeal determined that the residents' interest required proper investigation.
21/07/2004	Letter from First Defendants to their solicitors advising that fresh negotiations are being conducted with the residents. A summary of the landowners meeting with the residents is attached. It is noted that there are 21 lots for consideration with a likely price of $10 per square metre. A map of the lots shows that the lots being proposed were along Nakaulevu Road and Rovodrau Road, on one side of the road only.[7]
24/03/2009	The First Defendants seek to regularize the tenancy arrangement with the residents.
12/05/2015	Letter from Nilesh Prasad (PW1[8]), as President of Rovadrau Land Purchase Society, to First Defendants making an offer to purchase 45 acres of the Navua property at $10,000 per acre for the residents.
02/06/2015	Email from Kishor Chandra (for First Defendants) declining the offer.

[5] I should add that it is clear from the correspondence and the evidence from the witnesses at trial that there were a number of meetings between the First Defendants and the residents, or groups of residents over this period. While deadlines were placed on offers, the parties still met to discuss new terms and offers. None, however, bore fruit.
[6] The agreements did not materialize.
[7] The residents are living on both sides of the two roads.
[8] Plaintiff Witness 1.

January 2016	First Defendants advertise the Navua property for sale in a local newspaper.
25/10/2016	Vijendra Prasad (resident[9]) lodges caveat against the Certificate of Title for the Navua property, being Caveat No 834993.
06/10/2017	Sale & Purchase Agreement executed by First and Fourth Defendants for sale of the Navua property for the amount of $3,900,000. The Fourth Defendant is required to pay a deposit of $400,000 within 21 days of signing the Agreement and the balance to be paid on the settlement date. In exchange for payment of the balance, the First Defendants are required to provide the purchaser with title.
21/02/2018	Vijendra Prasad (PW3[10]) commences proceedings against the First, Second and Third Defendants seeking an extension to Caveat No 834993; ie HBC 43/2018.
14/06/2018	Decision by the High Court in HBC 43/2018 declining to extend caveat as the Writ of Summons originally identified the wrong caveat number.
16/07/2018	Transfer document is signed by the First Defendants seeking a transfer of the property to the Fourth Defendant.
30/07/2018	The First Defendants apply for removal of the remaining caveats on the Navua property.
10/09/2018	Registrar of Titles cancels the caveats on the title and registers a transfer of ownership of the Navua property to the Fourth Defendant.
14/09/2018	The Plaintiffs' solicitors write to the Registrar of Titles taking issue with its action on 10 September 2018
17/09/2018	The Plaintiffs' solicitors write to the High Court seeking an urgent hearing re the caveats on the Navua property.
13/03/2020	Eleven residents on the Navua property lodge caveats on the Certificate of Title for the Navua property.
28/04/2020	The Registrar of Titles receives an application for removal of the caveats.
19/05/2020	The present proceedings are filed.
25/05/2020	The Court extends the caveats on the title until the determination of this proceeding.

[9] And Plaintiff in Civil Action No HBC 43of 2018. He is also Plaintiff Witness 3.
[10] Plaintiff Witness 3.

Background[11]

[10] The late Kunj Behari purchased the Navua property in 1939. It is a large parcel that extends inland from the shore. The land is mostly flat and by all accounts was originally swampy. It appears that it was originally cane fields but farming turned to rice no doubt because of the swampy land.

[11] Shortly after Mr. Behari purchased the land, he began inviting families onto the land to live there and farm it. He allocated these families somewhere between three to five acres. The families put up shelters, sometimes more solid housing, and farmed the portion allocated to them. Many families were invited onto the land over the years and the numbers grew.

[12] The evidence for the Plaintiffs is that when invited onto the land the families paid a rental to Mr. Behari. Further, at the time they were invited, and did in fact move onto the land, the Plaintiffs evidence is that Mr. Behari promised them that when he sold the land he would sell it first to the families living on the Navua property for a '**nominal'** price.

[13] Mr. Behari died in about 1960. The Navua property was left to Mr. Behari's children, who have since passed away. Their estates, including the Navua property, were then managed by Mr. Behari's grandchildren – the First Defendants. Even after Mr. Behari died, his descendants have continued to invite more families onto the Navua property.

[14] As the years passed, the children born on the Navua property have grown up, married and raised their own families on the Navua property. For example, PW3, Vijendra Prasad, is 69 years of age, His father was invited by Mr. Behari onto the land. Mr. Prasad was born on the Navua property in 1954 and raised on the land. His children, including PW1, were also born and raised on the same land. The dwellings have become more substantial over the years. The infrastructure has developed. There are drains and roads. Electricity has been connected as has water. The witnesses for the Plaintiffs stated that Rovodrau Road was constructed both with the assistance of the Public Works Department and the labour and contributions of the resident families.

[11] The background is taken from the evidence produced at trial.

[15] I undertook a site visit on 18 September 2024. The Fourth Defendant objected to the visit, questioning the purpose of doing so. The purpose was to see first-hand the matters spoken of in evidence in court regarding the developments made to the Navua property; the housing, roads and infrastructure. Nevertheless, counsel for the Fourth Defendant is correct to state that my findings and determination in this case will turn not on the site visit but the evidence produced in court. The site visit confirmed that there is a significant infrastructure established and a thriving community. In addition to housing, roadways, drains, electricity, and driveways there are also religious temples, a grocery shop and a sporting field under floodlights.

[16] It will not be surprising that 70-80 years of occupation by generation after generation of many of the original families will have fostered a feeling of closeness and community amongst the 300 residents. What is also evident from the evidence of the witnesses for both the Plaintiffs and the First Defendants is that there was, for much of the time, a close relationship between the residents and the owners of the land. The witnesses for the Plaintiffs spoke fondly of Mr. Behari and his descendants. Their relationship was almost family-like. Mr. Behari ate with them. His descendants fished and socialised with them and one, Kishore Chandra, lived amongst them for a period. It is clear that there was, until the recent events, mutual respect and some considerable goodwill between them.

[17] As can happen, as time passes and new generations have different interests and objectives, their relationship changed – most likely due to the unsuccessful negotiations to sell plots of the land to the residents. From about the 1990s the descendants of Mr. Behari looked to sell at least part of the Navua property. Negotiations began in earnest in about 1994. There were offers and counter-offers and further offers over the next ten years but each without success. The stumbling block appeared to be the amount sought or offered and the quantity of acreage. There were meetings, communications - lawyers were involved - all aimed at arriving at a package that satisfied both parties.

[18] In July 1996, the First Defendants offered categories of land with different per acre values of between $3,000 to $6,000. The counter-offer in September 1996 was for $3,000 per acre. A further offer by the First Defendants in about 1998 was on a per lot basis, each lot having a particular price. An offer by the First Defendants in 2004 was on a per square meter basis. The owners negotiated with the Rovodrau Land Purchase Society but also negotiated with individuals and groups of the resident families. It is clear from the evidence of Kishore

Chandra (first named of the First Defendants), who was directly involved in these meetings and communications from 1994 onwards, that he found the entire process frustrating. I am sure, given the task involved, that the process would have been challenging for both parties. The resident families represented a wide range of financial means and viewpoints. It cannot have been easy for their representatives reaching an outcome that met the needs and financial capabilities of each of the families.

[19] What appears to have developed, over this time, was a level of distrust between the landowners and the resident families. No doubt the unsuccessful negotiations will have contributed as would the civil proceedings brought by the landowners in 2000 to remove some residents. From about 1998, many of the residents lodged caveats against the Certificate of Title to protect their interests. The failed efforts and court proceedings appear to have taken the wind out of the negotiations.

[20] Following a pause of about a decade, the new chairperson of the Rovodrau Land Purchase Society, ie PW1, endeavoured to reignite negotiations with the landowners. He wrote to the landowners on 12 May 2015 reminding them that there were '*37 houses, 45 families and close to 300 people staying in the land'.* PW1 advised that they were '*not in a position to relocate and build new houses as times are quite hard for everyone especially most people are below average earners*'. He stated that they occupied about 45 acres of the land and were '*willing to buy the land and our offer price is $10,000 per acre'*. PW1 explained that the residents were willing to form a cooperative venture so that they could collectively secure a bank loan to raise the funds.

[21] Kishore Chandra responded to PW1 by email on 2 June 2015 on behalf of the First Defendants. Mr. Chandra stated:

> *After consulting these shareholders, they have all come to a conclusion that we are not willing to sell portion, (45 acres) at this stage.*
>
> *Should we decide to sell a portion, in the future we will be looking at the market value plus other expenses.*

[22] PW1 stated in his evidence that following a phone call with the landowners, he was advised that they would come back to him if they intended to sell the land.

[23] The landowners did not do so. Instead, they formed the view that they could not reach a suitable outcome with the residents and looked further afield for a purchaser for the entire property. Although the Plaintiffs were not aware that the First Defendants were looking for a purchaser, in light of the distrust between them, a number of the resident families obtained caveats in September 2015 to protect their interest - some 18 individual caveats were lodged, some of which were lodged by the Plaintiffs in the present case.

[24] In January 2016, the First Defendants advertised for the sale of the Navua Property in the local newspaper. There followed contact between the Fourth Defendant and the First Defendants with a view to the former purchasing the land. This culminated in a Sale and Purchase Agreement signed on 6 October 2017. The Fourth Defendant is a company with overseas directors and, therefore, required government approvals before the Agreement could be signed. The original amount sought by the First Defendants was $4 million but the final price as recorded in the Agreement was $3,900,000. Kishore Chandra stated in evidence that they agreed to deduct $100,000 on the basis that the Fourth Defendant would deal with the resident families on the Navua property – in other words, it would be the Fourth Defendant's problem. Mr. Chandra stated that he tried to close the deal as fast as possible and as far as he was concerned it was up to the new owners to look after the resident families, whether that meant relocation or whatever the Fourth Defendant wished to do. He stated it was not his concern after he sold the Navua property and that once they received the sale monies he was not interested in what the Fourth Defendant did.

[25] This is in contrast to the evidence of the director for the Fourth Defendant, Mr. Aidong Zhang, who stated that he was trying to obtain the best price possible and was aware that the landowners had made a discount of $100,000. He was unaware why the First Defendants offered the discount. He stated there was no conditions attached to the discount. I find this difficult to accept. Whilst I accept that the Fourth Defendant was almost certainly looking to obtain the best price, it is likely, as Kishore Chandra stated, that the Fourth Defendant will have been informed that the discount was in exchange for the Fourth Defendant taking on the issue of the resident families. Mr. Zhang was aware that there were families on the Navua property. His evidence was that he left it to the Fourth Defendant's lawyers to sort this out after the purchase and that as far as he understood as the new owner he could simply remove the families.

[26] The stumbling block to the settlement of the Sale and Purchase Agreement were the caveats lodged by the resident families, including some of the Plaintiffs. In addition to the caveats, PW3 had brought proceedings against the First Defendants and the Registrar of Titles. PW3 sought an extension of his caveat. In a decision dated 14 June 2018, Seneviratne J dismissed the application on the basis that it was not properly brought - the learned Judge did not need to consider the merits of the application. The outcome was conveyed to the Registrar of Titles, the same being recorded on the Certificate of Title on 17 July 2018.

[27] On 30 July 2018, the First Defendants applied to remove the other caveats lodged on the Title so that the transfer could be registered to the Fourth Defendant. Notices were sent by the Registrar of Titles to the caveators informing them of the applications for removal.

[28] On 10 September 2018, the Registrar recorded on the Certificate of Title that as there had been no application for an extension after 21 days following the application for removal, the caveats were cancelled. On the same day a transfer of the property was registered in the name of the Fourth Defendant - a land transfer had been signed by the First Defendants on 16 July 2018. Accordingly, on 10 September 2018, the Fourth Defendant became the new registered owner of the Navua property.

[29] In addition to the proceedings brought by PW3, being HBC 43 of 2018, which remains live, a separate proceeding has been brought by eight other residents on the Navua property, being HBC 281 of 2018 – brought against the First Defendants, the Registrar of Titles and the Attorney-General. The present proceedings were filed in 2020. Caveats were lodged to protect the interests of the Plaintiffs and other residents in March 2020 and remain against the title until the conclusion of this proceeding.

[30] The Plaintiffs and the resident families remain living in their dwellings on the Navua property awaiting the outcome of these proceedings. The Fourth Defendants intends to develop the land but has not yet done so, also no doubt awaiting the outcome of these proceedings. It appears that there was previously some discussion regarding the consolidation of the three proceedings. It does not appear that the defendants supported this course. In any event, no such order has been made.

Parties respective positions

[31] The Plaintiffs rely on a promise from Mr. Behari to sell the land at a nominal price to them, thus allegedly creating an equitable interest in the land. They allege that the Fourth Defendant was aware of the dispute concerning the Plaintiffs' interest in the land and deliberately took advantage of the alleged unlawful removal of the caveats to arrange the transfer. They claim that the Fourth Defendant colluded with the First Defendants to remove the Plaintiffs' caveats and that the Fourth Defendant acted deliberately and with dishonest intention to defeat the Plaintiffs' interest. They seek declarations that the Plaintiffs are entitled to five acres each of the Navua property as occupied by them and, in the alternative, damages and compensation for their loss based on the valuation of their dwellings by Fairview Valuations which was produced in evidence by the Registered Valuer, Ramesh Behari.

[32] The First and Fourth Defendants argue that the Fourth Defendant has indefeasible title and that the transfer was lawful. They deny any promise by Kunj Behari or any equitable interest held by the Plaintiffs. The Registrar of Titles denies any failure with respect to the removal of the caveats on 10 September 2018.

[33] The trial proceeded in September 2024. The Plaintiffs called 17 witnesses. Most were persons living on the Navua property. In addition, the Plaintiffs called the registered valuer and an employee of Post Fiji in respect to the delivery of the notices for removal of the caveats in August/September 2018.

[34] The First Defendant called Kiran Chandra and Kishore Chandra. They are grandsons of Kunj Behari. The Second and Third defendants called Ana Dainiteri, an officer of the Register of Titles. The Fourth Defendant called its director, Mr. Zhang.

[35] Each party produced its own bundle of documents.

Decision

[36] The Fourth Defendant has purchased the parcel of land that is the subject of this proceeding. It wishes to develop the land. In order to do so, it must remove more than 45 families, comprising of more than 300 men, women and children. These families and their ancestors

have lived on the land for about 80 years. Many, now in their 60s and 70s, were born on that land.[12] They consider the land to be their own and it is their evidence that they understood that that was intended as between Kunj Behari and their ancestors when they first moved onto the land. Not all the residents, and/or their ancestors, were invited by Kunj Behari. Some were invited after Mr. Behari passed away. The First Plaintiff (PW5) was invited to move onto the land by Kishore Chandra in 1992. There is no suggestion that Mr. Chandra promised to sell a portion of the land to the First Plaintiff.

[37] There appears to be three issues for determination in this proceeding, being:

i. Whether the Plaintiffs have an equitable interest in the Navua property?

ii. Whether the removal of the caveats by the Registrar of Titles on 10 September 2018 was lawful?

iii. If the Plaintiffs have an equitable interest, whether the interest is defeated by the transfer of title to the Fourth Defendant - does the Fourth Defendant have indefeasible title?

Do the Plaintiffs have an equitable interest in the Navua property?

[38] The Plaintiffs have abandoned their cause of action for adverse possession under ss 77 to 79 of the Land Transfer Act. They instead claim an equitable interest in part of the Navua property by virtue of proprietary and/or promissory estoppel.

[39] The Fourth Defendant, understandably, complains that the pleadings do not reflect these changes. There was no notice or indication during the proceedings that the Plaintiffs were abandoning adverse possession and no amendments were sought to be made to the pleadings to include proprietary estoppel or promissory estoppel. The First Defendant argues that it is too late to change course.

[12] This would include the third, fourth, fifth, sixth, seventh, eighth, ninth and eleventh plaintiffs. The Fifth & Sixth Plaintiffs are aged 61, and the Eleventh Plaintiff is 65 years. PW3 was born on the Navua property and is in his 70th year.

[40] I agree that the Plaintiffs ought to have made the appropriate application during the proceedings. That said, the facts as pleaded in the Statement of Claim against the First Defendants would suffice (if accepted to be established) to support promissory estoppel and proprietary estoppel. The defendants cannot complain that the facts themselves establishing proprietary estoppel or promissory estoppel are a surprise. Indeed, the evidence presented by all the parties at trial have been focused at identifying, amongst other matters, what, if any, interest the Plaintiffs have in the Navua property.

[41] The question, then, is whether the Plaintiffs are able to establish an equitable interest in the Navua property?

[42] I have already set out the evidence of the occupation of the Navua property by the Plaintiffs, their families and the other residents affected. I can do no better than refer to the evidence of Mrs. Rudra Wati, PW2. She is 89 years old. At age 15 years, in 1949, she married and moved to her husband's family house on the Navua property. Her father-in-law had been invited by Kunj Behari onto the land. She has remained there since 1949, some 75 years, and is best placed to comment on many of the historical factual matters, including the arrangement made with Kunj Behari when originally invited onto the land. I found Mrs. Wati to be a reliable and honest witness. She stated that her father-in-law and his subsequent generations lived on and cultivated the land. They were invited by Mr. Behari to do so. Mr. Behari promised that if he ever sold the land, it would be sold to them. She met Mr. Behari who came to their home and had meals and drinks with them. She described him as a nice man. She has seen firsthand the developments on the land and the surrounding area. She has no interest in leaving the land. She stated that she has no other place to go. She was asked why she would not want to leave the land. She explained that she did not have any other land, and nor can she afford any other land because they are poor people. That is the story more or less of many of the others, including the Plaintiffs.

[43] Having heard and observed the evidence of the witnesses for the Plaintiffs, including Ms. Rudra Wati (PW2), I am satisfied that Mr. Behari made a promise of this nature to the families during his lifetime. While the word ‘nominal’ has been identified as being used by Mr. Behari, I take the meaning intended to be a fair price. The First Defendants refute the promise. Kiran Chandra was unable to say whether the promise was made while Kishore Chandra denied that any promise was made. Both were teenagers when Kunj Behari passed away. I accept the evidence from the Plaintiffs’ witnesses, including Mrs.

Wati, who had direct knowledge of the same. I further note that the efforts by the First Defendants to sell portions of the land to the residents in the 1990s and 2000s is consistent with the fact of the promise and the First Defendant's awareness of their obligations arising from Kunj Behari's promise.

[44] Eight of the eleven Plaintiffs were born at the Navua property and raised by their parents on the land. The Eleventh Plaintiff was born there as long ago as 1959. The most recent is the Fourth Plaintiff who was born there in 1980. All except the First Plaintiff had been invited by Kunj Behari to move onto the land[13] - the First Plaintiff was invited by Kishore Chandra to move onto the Navua property in 1992. Their ancestors moved on believing that they had a future on that property based on the promise from Mr. Behari. The Plaintiffs inherited that belief passed, in some cases, from generation to generation. They toiled the land and improved their dwellings over the decades based on that promise. Their friendship with Mr. Behari and his descendants only served to deepen this understanding as well as their connection to the land.

[45] Promissory estoppel or proprietary estoppel is based on an unambiguous promise that is intended to affect the legal relations of the parties and which the other party alters their position in reliance on the promise. Tuilevuka J offered the following helpful summary of the law on equitable or promissory estoppel in *Stephens v Kwai* [2023] FJHC 613 (28 August 2023):

> *88. I start by reiterating the words of Brennan J in **Waltons Stores (Interstate) Ltd v Maher** [1988] HCA 7; (1988) 164 CLR 387:*
>
> > *A non-contractual promise can give rise to an equitable estoppel only when the promisor induces the promisee to assume or expect that the promise is intended to affect their legal relations and he knows or intends that the promisee will act or abstain from acting in reliance on the promise, and when the promisee does so act or abstain from acting and the promisee would suffer detriment by his action or inaction of the promisor were not to fulfil the promise.*

[13] The invitations being made to their ancestors.

89. *Generally, the principle of equitable estoppel is aimed at protecting one (A) who suffers detriment as a result of his reliance on a promise made by another (B) and which promise (B) has reneged upon or failed to honor. The Courts will grant a relief to redress the detriment suffered by (A) as a result of (A)'s act to change his position in response to (B)'s promise.*

90. *As Kaye J said in* ***Harrison v Harrison*** *[2011] VSC 459:*

> *....in the case of promissory estoppel, the relief fashioned by the court is principally directed to redressing the detriment arising from the change of position made by the promisor in reliance on the promise.*

91. *In* ***Legione v Hately*** *(1983) 152 CLR 406, the Australian High Court reiterated that an alleged promise or representation must be clear and unambiguous before it can found a claim in equitable estoppel:*

> *10. First, it has long been recognized that a representation must be clear before it can found an estoppel in pais ..... In* ***Western Australian Insurance Co. Ltd. v. Dayton*** *[1924] HCA 58; (1924) 35 CLR 355, at p 375, Isaacs A.C.J., referring to the requirement that a representation must be "unambiguous" if it is to found an estoppel in pais said:*
>
> > *"The word 'unambiguous' is explained by Kay L.J. in* ***Low v. Bouverie*** *(1891) 3 Ch, at p 113, the word and its explanation occurring on the same page. The Lord Justice says: 'It is essential to shew that the statement was of such a nature that it would have misled any reasonable man, and that the plaintiff was in fact misled by it'. Bowen L.J. says (1891) 3 Ch, at p 106: 'It must be such as will be reasonably understood in a particular sense by the person to whom it is addressed'. This is confirmed in* ***George Whitechurch Ltd. v. Cavanagh*** *(1902) AC, at p 145 by Lord Brampton and in* ***Bloomenthal v. Ford*** *(1897) AC, at p 166 by Lord Herschell."*
>
> *The requirement that a representation must be clear before it can found an estoppel is, in our view, applicable to any doctrine of promissory*

*estoppel (see **Woodhouse A.C. Israel Cocoa Ltd. S.A. v. Nigerian Produce Marketing Co. Ltd**.; **China-Pacific S.A. v. Food Corporation of India** (1981) QB 403, at pp 429-430). In the **Woodhouse** Case Lord Hailsham of St. Marylebone L.C. (with whose speech Lord Pearson agreed) commented (1972) AC, at p 757:*

> *"Counsel for the appellants was asked whether he knew of any case in which an ambiguous statement had ever formed the basis of a purely promissory estoppel, as contended for here, as distinct from estoppel of a more familiar type based on factual misrepresentation. He candidly replied that he did not. I do not find this surprising, since it would really be an astonishing thing if, in the case of a genuine misunderstanding as to the meaning of an offer, the offeree could obtain by means of the doctrine of promissory estoppel something that he must fail to obtain under the conventional law of contract. I share the feeling of incredulity expressed by Lord Denning M.R. in the course of his judgment in the instant case when he said (1971) 2 QB 23, at pp 59-60: 'If the judge be right, it leads to this extraordinary consequence: A letter which is not sufficient to vary a contract is, nevertheless, sufficient to work an estoppel - which will have the same effect as a variation"*

In the Court of Appeal (1971) 2 QB, at p 60 , Lord Denning M.R. had proceeded to refer to the higher standard of clarity required of a promissory representation relied upon to found an estoppel if compared with that required when a representation is put forward as an agreed variation of contract:

> *" . . . If the representation is put forward as a variation, and is fairly capable of one or other of two meanings, the judge will decide between those two meanings and say which is right. But, if it is put forward as an estoppel, the judge will not decide between the two meanings. He will reject it as an estoppel because it is not precise and unambiguous. There is good sense in this difference. When a contract is varied by correspondence, it is an agreed variation. It is the duty of the court to give effect to the agreement if it possibly can: and it does so by resolving*

ambiguities, no matter how difficult it may be. But, when a man is estopped, he has not agreed to anything. Quite the reverse. He is stopped from telling the truth. He should not be stopped on an ambiguity. To work an estoppel, the representation must be clear and unequivocal. That is clear from ***Low v. Bouverie*** *(1891) 3 Ch 82 and* ***Canadian and Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships Ltd****. (1947) AC 46." (at p437)*

[46] With respect to proprietary estoppel, Sharma J noted in *Nand v Shand* [2022] FJHC 107 (4 March 2022):

> *42. Proprietary estoppel used to be called 'estoppel by acquiescence' (Lord Denning, The Discipline of Law, Butterworths, New Delhi, Aditya Books, 1993 at page 216).*
>
> *In Denny v Jessen [1977] 1 NZLR 635 at 639 Justice White summarized proprietary estoppel as follows:*
>
> > *"In Snell's Principles of Equity (27th Ed) 565 it is stated that proprietary estoppel is "... capable of operating positively so far as to confer a right of action". It is "one of the qualifications" to the general rule that a person who spends money on improving the property of another has no claim to reimbursement or to any proprietary interest in the property. In Plaimmer v Wellington City Corporation (1884) 9 App CAS 699; NZPCC 250 it was stated by the Privy Council that "...the equity arising from expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated." (ibid, 713, 29). After referring to the cases, including Ramsden v Dyson (1866) LR 1 HL 129, the opinion of the Privy Council continued, "In fact the court must look at the circumstances in each case to decide in what way the equity can be satisfied" (9 App Cas 699, 714; NZPCC 250, 260). In Chalmers v Pardoe [1963] 1WLR 677; [1963] 3 All ER 552 (PC) a person expending money was held entitled to a charge on the same principle. The principle was again applied by the*

Court of Appeal in Inwards v Baker [1965] 2 QB 29; [1965] 1 All ER 446. There a son had built on land owned by his father who died leaving his estate to others. Lord Denning MR, with whom Danckwerts and Salmon L JJ agreed, said that all that was necessary;

> *"... is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do." (ibid, 37,449).*
>
> *(Underline is mine)*

43. *Reference is made to the case of* ***Wilfred Thomas Peter v Hira Lal and Frasiko;*** *HBC 40 of 2009 where Her Ladyship Justice Wati stated:*

> *'I must analyse whether the four conditions have been met for the defense of* ***proprietary estoppel*** *to apply. The* ***four conditions*** *are:*
>
> *i. An expenditure;*
>
> *ii. A mistaken belief*
>
> *iii. Conscious silence on the part of the owner of the land; and*
>
> *iv. No bar to the equity*

[47] In my view, on the facts as I have found them to be in this case, the elements of proprietary estoppel and promissory estoppel are both established. The promise by Mr. Behari was clear. In consideration for the families moving onto the land, building a home, cultivating the land and paying a rental, Mr. Behari promised (if he ever sold the property) to sell the portion to them that they were using at a fair price. The promise was certainly designed to affect the legal relations of the two parties. The residents fulfilled their part of the arrangement. They moved onto the land, cultivated it, and paid a rental. They also remained, raising families. These families also remained, marrying and raising their own families, all the while cultivating the land, improving their homes and developing the infrastructure on the Navua property. Over 8 decades, the land has been modernized. A side road has been constructed providing access to more of the Navua property. Electricity

and water have been connected. There is a thriving community established by the residents on the Navua property.

[48] The Plaintiffs have also acted to their detriment, altering their position. They have placed their trust in a future on that land contributing labour and expense to the development of the infrastructure, the road, drains and levelling of the land. They have incurred the cost of constructing solid homes made of brick, concrete and wood. The value of the dwellings is set out in the Valuation Report by Ramesh Behari. Thirty-four houses were valued. The Plaintiffs houses range in value from $32,300[14] to $116,500[15]. The amounts are not trivial. The pictures of the dwellings demonstrate substantial dwellings.

[49] I am, therefore, satisfied that the Plaintiffs have established an equitable interest in a portion of the Navua property founded on the promise by Mr. Behari. That interest is confined to that portion of land that they occupy (with dwellings and related structures) and does not include any land farmed. The evidence regarding the farming of the land varied. Some residents farmed the land, others did not. Some farmed the land occasionally.

[50] I accept there is a question as to whether this promise applies to those that moved onto the property after Mr. Behari's death in 1960. The First Plaintiff (PW5) falls into this category. He did not receive any such promise from Kunj Behari. He moved onto the land in 1992, three decades after Mr. Behari had passed away. Kishore Chandra invited the First Plaintiff to move onto the land – the First Plaintiff's in-laws were already living on the Navua property having been invited by Kunj Behari. There is no suggestion that Kishore Chandra made any such promise. The First Plaintiff does not appear to have been involved in the negotiations in the 1990s and 2000s. In his evidence, he stated that the previous offer in the 1990s by the landowners was given to his in laws. Although the First Plaintiff stated that he has a house on the Navua property which he built in 1994 there is no reference to this house in the Valuation Report – or at least that I can find. Indeed, in cross-examination he clarified that he was staying on the same land as his in laws (quite possibly his interest may belong to his in-laws). In light of this, I am unable to accept that the First Plaintiff has established any equitable interest in the Navua property.[16]

[14] Eleventh Plaintiff.
[15] Sixth Plaintiff.
[16] I should add here that if the First Plaintiff has been included in the negotiations with the landowners in the 1990s and 2000s, and is able to identify a dwelling on the Navua property, I may have reached a different conclusion.

Were the Plaintiffs' caveats removed unlawfully?

[51] On 11 and 12 June 2018, a number of caveats were lodged by the residents on the title of the Navua property. Some of the Plaintiffs took this opportunity, such as Subhash Chand (Second Plaintiff), Sheral Prasad (Fourth Plaintiff), Birendra Prasad (Fifth Plaintiff), Nilesh Kumar (Seventh Plaintiff) and Dron Prasad (Eighth Plaintiff).

[52] On 14 June 2018, Seneviratne J, in HBC 43 of 2018, dismissed PW3's application for an extension of Caveat No. 834993. This decision set in motion action by the First and Fourth Defendants, and with some degree of urgency, to transfer title to the Fourth Defendant. The First Defendants needed to first remove the other caveats on the title – the new owner could not be registered unless and until the caveats were removed. A letter from the Fourth Defendant's solicitors to the Ministry of Lands & Mineral Resources on 3 July 2018, seeking urgent consent, reveals the reasoning behind the First and Fourth Defendants' actions . The solicitors stated:

> *6. The delay in this matter has been primarily for the reason that the individuals residing on the property have continuously been placing caveats on the property.*[17]
>
> *7. The last of which has been taken out of the title by way of a court hearing in the Masters Court.*[18]
>
> *8. We have been advised by Messrs Kholi & Singh being solicitors for the Vendor that the Caveatees are likely to apply for an injunction in the High Court which may again delay settlement for the subject property.*[19]

[53] In mid-July 2018, the First Defendants informed the Registrar of Titles of the High Court's decision of 14 June 2018 as well as executed a Transfer on 16 July. There followed an application by the First Defendants on 30 July 2018 to the Registrar of Titles to remove the remaining caveats on the title. Pursuant to s 110(1) of the Land Transfer Act, upon receipt of an application for removal of a caveat:

[17] This shows that the Fourth Defendant was aware before obtaining title of a dispute between the Plaintiffs and the First Defendants.
[18] This was not correct. There were still about 14 caveats registered against the title.
[19] The Minister provided consent on 13 July and the Transfer was signed by the First Defendants on 16 July 2018.

…the Registrar shall give 21 days notice to the caveator requiring that the caveat be withdrawn and, after the lapse of 21 days from the date of the service of such notice at the address mentioned in the caveat, the Registrar shall remove the caveat from the register…unless he or she has been previously served with an order of the court extending the time as herein provided.

[54] A caveator may apply to the High Court under s 110(3) for an order extending the caveat. Time is clearly of the essence for the caveator to avoid removal of the caveat.

[55] The events following the First Defendant's application for removal are critical. The evidence on this is from PW1, a witness employed with Fiji Post, Ajay Narayan (PW14) and a witness for the Registrar of Titles, Ana Dainiteri. The address for service for the caveators was PO Box 48, Pacific Harbour, which is the post box address for PW1. It was PW1's evidence that he normally checks the post box every second day. The Register of Titles sent the notices for removal by registered post to PW1's post box address. The events were as follows:

i. On 15 August 2018, the notices were provided by the Registrar of Title to Post Fiji's Suva branch to be delivered to the caveators by registered post.

ii. The notices were forwarded to Post Fiji's Pacific Harbour branch, being received at that branch on 17 August 2018. A **delivery notification card** was generated for the notices and placed in PW1's post box on the same day, ie 17 August.

iii. As the applications were not uplifted, a second delivery notification card was generated at Post Fiji's Pacific Harbour Branch on 29 August 2018, and placed in PW1's post box the same day.

iv. On 10 September 2018, the Registrar of Titles removed the caveats on the title and registered the transfer of ownership of the Navua property to the Fourth Defendant.

v. According to Post Fiji's records, the delivery notification card was presented on Friday 14 September 2018. It was PW1's evidence that he presented the card on this day and received the notices. This is, in fact, evidenced by the

signature of PW1 and the date '14/9' found on Post Fiji documents produced in court.

vi. Upon receiving the notices, and learning of the application for removal of the caveats, PW1 immediately contacted their solicitors the same day. The solicitors wrote to the Registrar of Titles on 14 September 2018 confirming that the notices had been received that day and enquiring as to when the 21 days expired so that they could take steps to file an application with the High Court for an extension - the Registrar of Titles had, of course, already removed the caveats.

vii. On Monday, 17 September 2018, the Plaintiffs solicitors filed proceedings seeking orders to extend the caveats.

[56] The facts, then, are these. An application for removal was lodged by the First Defendants on 30 July 2018. The Registrar of Titles sent notices of the application to the caveators by registered post on 15 August 2018. The notices were received at the Pacific Harbour Post Office on 17 August 2018. A notification card was placed in the post box that same day and again on 29 August 2018. The notification card was presented on 14 September 2018 and the notices received by PW1, on behalf of the caveators, that same day.

[57] The Plaintiffs argue that the Registrar of Titles was not permitted to remove the caveats until 21 days after PW1 received the notices on 14 September 2018. They rely on the Court of Appeal decision of *Attorney-General of Fiji v Kumari* [2015] NZCA 139 (2 October 2015).

[58] The Court of Appeal was faced with much the same issue that arises in the present matter. In that case, an application was made to the Registrar of Titles on 11 March 2005 for the removal of the caveat. The Registrar sent a 21 days' notice on 17 March 2005 by registered post to the caveator, which was received by the caveator's solicitors on 30 March 2005. The caveat was removed by the Registrar of Titles on 12 April 2005 acting on the basis that the 21 days ran from 17 March 2005. The question arising in that case was whether the 21 days ran from 30 March 2005 or the earlier date applying the postal rule. The trial Judge determined that the 21 days ran from the date of actual service.

[59] The Court of Appeal considered the authorities and a number of the relevant provisions, including s 2(5) of the Interpretation Act 1967 – this provision had a significant influence on the Court of Appeal's analysis and conclusion. The Court of Appeal determined that the 21 days ran from actual receipt of the notice on 30 March 2005. Prematilaka JA providing the decision for the Court of Appeal, explained the rationale behind the interpretation:

> *[44] I believe that there should be a level playing field for both parties under either of the sections they are called upon to act. Thus there is no justification to give a liberal interpretation of section 110(1) as sought by the Appellants to the words 'date of service' to the point of equating it to 'date of posting'. I think that both sections should be read with section 2(5) of the Interpretation Act and the court should approach both sections in the manner as already discussed above in the light of judicial precedents.*

[60] Prematilaka JA further stated:

> *[46]…Therefore the 21 days' time period should have started to run from the 30 March and the caveator had time at least till 20th April to take steps under section 110 (1).* ***Thus, clearly the removal of the caveat on the 12 April 2005 was contrary to section 110(1) and has no force or avail in law****.*
>
> *…*
>
> *[54] Therefore I am of the view that to say that the date of service is the date of posting as adverted to by the Appellants is wrong. Similarly, to say that the date of service is always the date of actual service is also erroneous and the High Court Judge has erred in this respect. Both views do not reflect the correct position of law.* ***My view is that under the Land Transfer Act the receipt of notice under section 110(1) by the caveator is essential, for otherwise he or she cannot act under section 110(3) and take steps within 21 days of service of notice to have the time extended beyond 21 days****. However, when the Registrar furnishes evidence of posting of the notice by registered post the service is deemed to have been effected and the fact of service is presumed under the first limb of section 2(5) of the Interpretation Act read with section 110(1) and 176 (1) of the Land Transfer Act. Under the second limb of section 2(5) concerning the time of service, the service is deemed to have been effected at the time at which the*

envelope would be delivered in the ordinary course of post in the absence of any proof to the contrary, the burden of proof of which is on the caveator. Therefore ordinarily 21 days would run from the date of presumed service. ***If the caveator proves that he or she did not receive the notice at the time at which the envelope would have been delivered in the ordinary course of post but on a different date, the second limb of section 2(5) of the Interpretation Act becomes applicable and the date of service would be the actual date of service and 21 days would run from that date.***

[55] Therefore I hold that the removal of the caveat by the Registrar on 12 April 2005 is invalid in law and liable to be set aside. I also hold that the High Court Judge's final conclusion on the validity of the removal of the caveat was right but grounded on wrong reasons.[20]

[61] The Court of Appeal's interpretation is binding on this Court. PW1 did not receive the notice until 14 September 2018. There is no evidence to the contrary. His evidence is supported by Post Fiji. The removal of the caveats on 10 September 2018, before the notices had been properly received, was contrary to the provisions of the Land Transfer Act and, therefore, unlawful.

Does the Fourth Defendant have indefeasible title?

[62] I turn to the third and final question, whether the Fourth Defendant has indefeasible title, thus defeating the claim of the Plaintiffs.

[63] The equitable interest of the Plaintiffs is against the First Defendants only. It is not a right that they enjoy against the Fourth Defendant. If the Fourth Defendant has indefeasible title the Plaintiffs will have no recourse with respect to the Navua property. The Plaintiffs remedy will lie in damages only against the First Defendants and the Registrar of Titles.

[64] As Keith J noted in *Wati v Kumar* [2019] FJSC 5 (26 April 2019), at 44:

…Fiji has adopted the Torrens system of registration of title. Save where certain limited exceptions apply, registered title to land is indefeasible…

[20] My emphasis.

[65] One of the exceptions is fraud.[21] In *Vuki v Kalouwarai* [1994] FJHC 20 (25 February 1994) Fatiaki J explained, at pages 5 and 6, what constitutes fraud under s 40. Referring to authorities from New Zealand, Fatiaki J stated:

> *The first being the judgment of* ***Richmond J.*** *in* ***Locher v. Howlett*** *(1894) 13 N.Z.L.R. 584 in which it was held:*
>
> > *"(1) Although, under Section 189 of the Land Transfer Act, 1885 a purchaser from a registered proprietor is not affected by knowledge of the mere existence of a trust or unregistered interest, he is affected by knowledge that the trust is being broken, or that the owner of the unregistered interest is being improperly deprived of it by the transfer under which the purchaser himself is taking.*
> >
> > *(2) The purchaser's action must be judged by considering what, with the knowledge he possessed, it was reasonable that he should believe respecting the good faith of the transaction. Where the circumstances are such as should raise in his mind a strong suspicion that the transaction in which he is engaged is fraud on the right of another, he is bound to go no further in it without full enquiry. To omit such inquiry is a want of honest dealing, and he will not be entitled to shelter himself under Section 189."*
>
> *In similar vein* ***Salmond J.*** *in the* ***N.Z. Court of Appeal*** *in the case of* ***Waimiha Sawmilling Co. v. Waione Timber*** *[1923] N.Z.L.R. 1137 said at* ***p.1175:***
>
> > *"**The true test of fraud is not whether the purchaser actually knew for a certainty the existence of the adverse right, but whether he knew enough to make it his duty as an honest man to hold his hand, and either to make further enquiries before purchasing, or to abstain from the purchase, or to purchase subject to the claimant's rights rather than in defiance of them. If, knowing, as much as this, he proceeds without further inquiry or delay to purchase an unencumbered title with intent to disregard the claimant's***

[21] Section 40 of the Land Transfer Act.

rights, if they exist, he is guilty of that wilful blindness or voluntary ignorance which, according to the authorities, is equivalent to actual knowledge, and therefore amounts to fraud ..."[22]

Reference may also be made to the judgment of the ***Fiji Court of Appeal*** *in* ***Ram Nandan v. Shiu Dutt*** *Civil Appeal No. 29 of 1982 in which the court preferred the dissenting judgment of* ***Turner P.*** *in* ***Sutton v. O'Kane*** *[1973] 2 N.Z.L.R. 304 which recognised that there was not a 'cut-off' point for considering fraud solely as at the time of registration.*

[66] I am satisfied that the Fourth Defendant willfully and deliberately closed its eyes to the potential rights of the Plaintiffs when it sought to register the transfer in 2018. It sought an unencumbered title, while knowing that the Plaintiffs claimed an interest in the Navua property.

[67] Mr. Aidong Zhang was aware of the residents living on the Navua property. He was aware there was a dispute between the First Defendants and the residents as evidenced by the multiple caveats lodged on the title and the court proceedings in early 2018. It was Mr. Zhang's evidence that the $100,000 reduction by the First Defendants was made for no reason. I do not accept that. The First Defendants wished to rid themselves of the problem and considered that the figure of $100,000 was a cheap price with which to do so. They made the residents the Fourth Defendant's problem. The Fourth Defendant chose to close its eyes to the dispute hoping its lawyers could make the problem go away after the sale. The decision by the High Court in June 2018 presented an opportunity for the First and Fourth Defendants to act quickly to transfer title. They moved with haste – the letter from the Fourth Defendant's solicitor of 3 July 2018 could not be clearer as to the intention of the First and Fourth Defendants. They wished to arrange for the Fourth Defendant to obtain title to defeat the Plaintiffs potential claim. They hoped that title would solve their common problem. The Fourth Defendant should have made further inquiries regarding the Plaintiffs' interest in the Navua property. I am satisfied that the Fourth Defendant secured the registered title by fraud, knowing that the Plaintiff's claimed an interest in the property yet choosing not to enquire into the matter.

[22] My emphasis.

Orders

[68] In light of the above findings, my orders are as follows:

i. The Second Defendant's removal of the caveats on Certificate of Title No. 5079 on 10 September 2018 was unlawful and invalid.

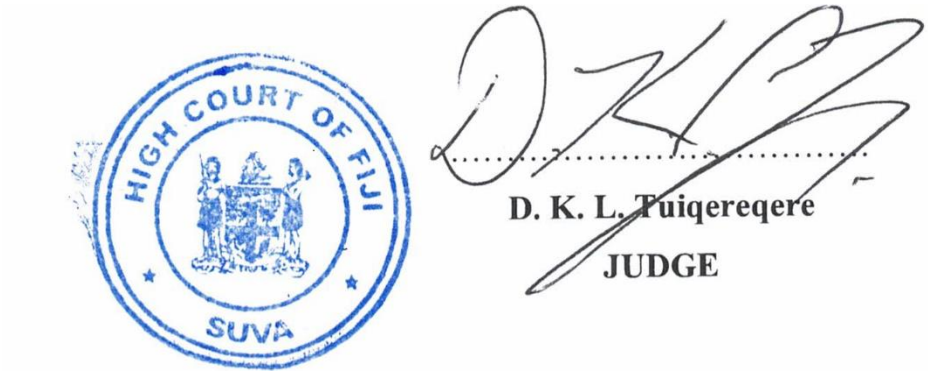
ii. The Second Defendant's registration of the transfer of ownership to the Fourth Defendant on 10 September 2018 was unlawful and invalid.

iii. The Plaintiffs, with the exception of the First Plaintiff, have an equitable interest in part of the land being Certificate of Title No. 5079 being Block 2 Deuba (part of) containing a total area of 149 acres 1 rood 11 perches. The equitable interest being an option to purchase a portion of the land – see paragraph [49] – at a fair price.

iv. The parties have leave to apply to the Court for further orders.

v. The Plaintiffs are entitled to costs summarily assessed in the amount of $7,500 payable within 1 month as follows:

- The First Defendant to pay $2,500,
- The Second and Third Defendants to pay $2,500, and
- The Fourth Defendant to pay $2,500.



Solicitors:

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