

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 250 of 2020

BETWEEN: **CHELLAMMAL** aka **CHALLAMMA** of Lawaqa, Sigatoka, Domestic Duties as the sole Executrix and Trustee of the **ESTATE** of **VENKAT NAIDU** aka **VENKAT SAMI NAIDU** of Lawaqa Sigatoka, Retired, Testate, pursuant to Probate No, 69005.

PLAINTIFF

AND: **SIGATOKA TOWN COUNCIL** a body corporate duly constituted under the Local Government Act, Cap 125 having its registered office at Main Street, Sigatoka.

1ST DEFENDANT

AND: **FIJI SPORTS COUNCIL** a body corporate duly constituted under the Local Government Act, Cap 125 having its registered office the National Gymnasium, Laucala Bay Road, Suva.

2ND DEFENDANT

AND: **ITAUKEI LAND TRUST BOARD** established under the iTaukei Land Trust Board Act (as amended) whose registered office is at 431 Victoria Parade, Suva.

3RD DEFENDANT

AND: **THE REGISTRAR OF TITLES** established under the Land Transfer Act, Cap 131, and having its office at Level 1, Civic Tower Building, Victoria Parade, Suva.

4TH DEFENDANT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Naidu R.** for the Plaintiff
Mr. Singh J. for the 1st Defendant
Ms. Dutt for the 2nd Defendant
Mr. Cati J. for the 3rd Defendant
Mr. Chauhan V. for the 4th Defendant

Date of Judgment: **21st August, 2025**

JUDGMENT

[Breach of Agreement, Fraud, Loss, Damages and Declaration]

Introduction

1. The Plaintiff filed a Writ of Summons coupled with a Statement of Claim on 12th May 2023 and sought for the following orders:
 - (1) A Declaration that, by virtue of clause 4 of the aforesaid agreement dated 17 April 1984 and made between the plaintiff and the first defendant, the plaintiff is entitled to one residential lot.
 - (2) A Declaration that the transfer number 430054 registered on 08 September 1997 is a fraud and it be set aside.
 - (3) A Declaration that the plaintiff is entitled to permanently occupy the said land (one lot) comprised in iTaukei Lease No. 23401 which he currently occupies with his family.
 - (4) A Declaration that the second defendants hold iTaukei Lease No. 23401 in trust for the plaintiff until such time one lot is transferred to the plaintiff.
 - (5) A Declaration that the second defendant is not entitled to possession of the lot/land occupied by plaintiff and his family on iTaukei Lease No. 23401.
 - (6) An Order (or a Declaration) that the notice to vacate issued by the second defendant against the plaintiff is invalid, illegal and unenforceable.
 - (7) An Order that the second defendant be restrained whether by itself or by its servants or agents or otherwise howsoever from interfering with the plaintiff's quiet enjoyment and occupation of the land comprising the plaintiff's residential dwelling, comprised in iTaukei Lease No. 23401 being lots 1 and 2 on Plan SO no. 001553 situated at Lawaqa, Sigatoka.
 - (8) An injunction restraining the second defendant whether by itself or by its servants or agents or howsoever from transferring, selling, dealing or attempting to deal with in any way whatsoever with the land and property comprised in iTaukei Lease No. 23401 being lots 1 and 2 on Plan SO no. 001553 situated at Lawaqa, Sigatoka.
 - (9) An order that the first and/or second defendant jointly and/or severally be ordered to transfer a lot to the plaintiff pursuant to the agreement dated 17 April 1984.
 - (10) All necessary and consequential directions for the transfer of the lot to

the plaintiff.

- (11) General damages for breach of contract against the first defendant.
 - (12) General damages against the first, second and third defendants jointly and/or severally for fraud.
 - (13) General damages against the first and second defendant jointly and/or severally for embarrassment, injury to feeling, stress, inconvenience, harassment.
 - (14) Interest on any award of damages.
 - (15) Costs on an indemnity basis.
2. The First Defendant did not file any Statement of Defence.
 3. The Second Defendant filed its Statement of Defence and Counterclaim.
 4. The Third and Fourth Defendants file their Statement of Defence.
 5. Subsequently, the Plaintiff filed his reply to Second Defendant's Statement of Defence.

The Brief Facts

6. Before Court is a substantive claim in contract and fraud. The salient facts are set out hereunder. The essential facts are substantially undisputed and simple.
7. The deceased Venkat Naidu is the victim of a fraud. In 1997 he was wrongly deprived of the legal ownership of his own property. The case centres on the land formerly described as Lot 1, Rakirakilevu L 1708 under approval notice 4/11/1794 dated 1st March 1964 situated in Lawaqa, Sigatoka containing approximately 7 acres 16 perches. Venkat Naidu was the original owner (lessee) of the subject land and had been living on the subject land together with his family since January 1981.
8. Sigatoka Town Council was interested in purchasing Venkat Naidu's land for the development of Lawaqa Park. Sigatoka Town Council wanted to build a sports arena on the subject land. Under an agreement in writing between Venkat Naidu and Sigatoka Town Council dated 17 April 1984, Venkat Naidu sold the land comprised in Lot 1 Rakirakilevu L 1708 under approval Notice 4/11/1794 to Fiji Sports Council. The purchase price was \$22,150.00. The agreement was conditional. One condition was the obtaining of a development lease over the said land from Native Land Trust Board by Sigatoka Town Council. The other condition concerned the occupation by Venkat Naidu of his residence. The agreement provided in clause 4 that Venkat Naidu shall be given one residential lot free when Sigatoka Town Council carries out development on the said land. The common understanding is Venkat Naidu kept for himself half acre of the land as his residential lot

and he was to be issued with a residential lease over the house block occupied by him for residential purposes having an area of some 2288 square meters (hereinafter referred to as "the residential lot"). After becoming the registered lessee of the said land, Sigatoka Town Council determined the boundaries of the land dividing it into two sections. Sigatoka Town Council made a fence by placing tins on two sides of the residential lot to separate Venkat Naidu's residential dwelling and yard. Sigatoka Town Council occupied and took possession of the remainder of the land where Lawaqa Park is currently situated. Venkat Naidu continued to remain on and occupy the residential lot with his family awaiting for Sigatoka Town Council to transfer the residential lot to him when Sigatoka Town Council carries out development on the land.

9. Native Land Trust Board gave its consent and issued Sigatoka Town Council with a 99 year recreational lease for development purposes. The lease is dated 24 August 1994 but the commencement date is 1 January 1986. Having obtained the recreational lease, curiously and unbeknown to Venkat Naidu, Sigatoka Town Council transferred whole 7 acres 16 perches land to Fiji Sports Council in July 1997 in consideration of the sum of one dollar, without giving Venkat Naidu the residential lot. Fiji Sports Council then became the registered proprietor of the full 7 acres 16 perches.
10. On 27 March 2020 Fiji Sports Council issued eviction proceedings against Venkat Naidu in the High Court at Suva being Civil Action No. HBC 102 of 2020 seeking an order for vacant possession which proceedings Venkat Naidu defended, and was later dismissed. Venkat Naidu filed this action on 20 August 2020 claiming he has a right to the residential lot occupied by him and his family. Venkat Naidu claims he has an interest in the land by virtue of the agreement of 17 April 1984. Venkat Naidu claims Sigatoka Town Council fraudulently transferred the whole 7 acres 16 perches to Fiji Sports Council and that Fiji Sports Council is a party to the fraud. Venkat Naidu is challenging the transfer by Sigatoka Town Council of the whole 7 acres 16 perches land to Fiji Sports Council on the ground of fraud against Fiji Sports Council, Sigatoka Town Council and ITLTB. Amongst other reliefs Venkat Naidu is seeking an order for specific performance in that the residential lot occupied by the Venkat Naidu be transferred to him. Meanwhile, Venkat Naidu died testate on 20 October 2021 and on 6 April 2022 a grant of probate in his estate was made to Chellammal aka Challamma, the wife of Venkat Naidu. Chellammal aka Challamma was substituted as the Plaintiff by an order of this court made on 17 June 2022. Chellammal aka Challamma has a life interest in the estate of Venkat Naidu and upon her death his two sons share the estate equally.
11. The parties to the proceedings furnished Court with simultaneous written submissions and all submissions have been taken into consideration whilst arriving at my Judgment accordingly.

Evidence

12. Four (4) witnesses testified for the Plaintiff.

[PW1] - Mohammed Shaheen Gani

13. He was an independent witness and worked in his capacity as a Surveying Technician and Senior Land Manager for Landmark Surveying Consultants.

His evidence went unchallenged by other parties to the proceedings. Land Surveying Consultants was engaged to carry out survey of the land occupied by Venkat Naidu on the instructions of the Sigatoka Town Council. Landmark Surveying Consultants also did some field work to separate the residential lot occupied by Venkat Naidu from the main lease but was not provided with the Lease Agreement which they needed. Therefore, they stopped the work.

[PW2] - Tulsi Ram

14. He was the Chief Executive Officer of Sigatoka Town Council from December 2014 to December 2019. He became aware that in 1984 Sigatoka Town Council [First Defendant] bought Venkat Naidu's [Plaintiff's] property located beside Lawaqa Park on 17th May 1984. He saw this agreement which was entered into. The land sold was 7 acres and was unaware now whether the whole land has been transferred to Sigatoka Town Council. He was shown Tab 4 of the Plaintiff's Bundle of Documents which had an application for consent assigned from Venkat Naidu to Sigatoka Town Council dated 7th March 1985. Tab 25 was the transfer of this Native Land from Venkat Sami to Sigatoka Town Council dated 7th June 1988. All that piece of land area shown 7 acres and 16 perches. One condition of the Sales and Purchase Agreement was to subdivide the land and a portion of the land will go to the Plaintiff Venkat Naidu as his residential home. This was the responsibility of Sigatoka Town Council and was not done by Sigatoka Town Council [First Defendant].

In 1997, Sigatoka Town Council [First Defendant] transferred the lease to the Fiji Sports Council [Second Defendant] however, unaware if it is under the Fiji Sports Council. The witness was shown Tab 11 of the Plaintiff's Bundle of Documents which had a transfer of lease from Sigatoka Town Council [First Defendant] to Fiji Sports Council [Second Defendant].

He was questioned if Sigatoka Town Council [First Defendant] had deprived the Plaintiff, Venkat Naidu of the residential lots?

The answer was - area remains same, no land taken away and given to Venkat Naidu. Sigatoka Town Council deprived Plaintiff of his lot that he was entitled to and breached the Agreement and Sigatoka Town Council benefited a lot. He was aware that Plaintiff, Venkat Naidu had an interest in the lot in the land. He was unaware if Fiji Sports Council filed a Section 169 vacant possession application in Court against the Plaintiff, Venkat Naidu. He was shown Tab 22 of Plaintiff's Bundle of Documents - wrote to Chief Executive Officer Fiji Sports Council [Second Defendant] to give back the lot to the Plaintiff, Venkat Naidu occupied by him. Then gave instructions to Surveyor Landmark Surveying Consultants to separate the lots for the Plaintiff, Venkat Naidu. However,

Venkat Naidu was then deceased, his lease should be issued to the Estate and agreed that his family should occupy and stay on that residential lot.

[PW3] - Challamma [Plaintiff]

15. Ms Challamma is the wife of the late Venkat Naidu. She is the executrix and trustee of the Deceased's Estate of Venkat Naidu. She has been living on the subject land with her family and continues to reside on it. Her house is built on this land. She told court that Venkat Naidu was worried a lot when he got served with the eviction notice and papers. Husband Venkat Naidu's health deteriorated and was very sad. However, Venkat Naidu passed away. She asked court to make an order that residential lot she lives on to be transferred to the Deceased's Estate of Venkat Naidu. She does not want Fiji Sports Council [Second Defendant] to take her land and do not want anyone to interfere with the piece of land she is entitled to. She wants to be compensated for the cost of the proceedings either by Sigatoka Town Council [First Defendant] and Fiji Sports Council [Second Defendant]. Ms Naidu wants the Court to make an order that the lot occupied by Venkat Naidu and her to be transferred to her.

[PW4] - Kam Raj Naidu

16. He is the son of Venkat Naidu and [PW3] Ms Challamma. He moved to New Zealand, however, had knowledge of the sale of the land by Venkat Naidu to Sigatoka Town Council [First Defendant]. His father told him about the sale of the land by Sigatoka Town Council [First Defendant] to Fiji Sports Council [Second Defendant]. He told Court that Venkat Naidu was very disappointed that the Sigatoka Town Council had betrayed the trust as per the Agreement. Witness said there were a lot of emotions attached to land coupled with the fact that it had sentimental value. Mr. Naidu said his father Venkat Naidu was traumatized and was determined to get back the land as per his entitlement. Mr Naidu said that he was always optimistic. Let justice take its toll and there was every possibility that Dad [Venkat Naidu] would have lost his property but believed in karma, Lord will help.
17. The First Defendant, Sigatoka Town Council did not call any witness(s) during trial.
18. **[DW1] - Praneel Prakash Ram** gave evidence on behalf of the [Second Defendant] - Fiji Sports Council. He gave evidence in his capacity as the Manager for properties and held this position since September 2018; five years three months to the current. Prior Manager informed him that the Plaintiff Venkat Naidu was owner of the Lease and sold lease to Fiji Sports Council [Second Defendant]. He was made aware of this sale in 2018 when he took over. Mr Ram told Court that he does not know when Fiji Sports Council [Second Defendant] became aware of Venkat Naidu's occupation of the land.

In cross-examination Mr Ram agreed that 'in 1997, Fiji Sports Council [Second Defendant] knew about Venkat Naidu's occupation and they allowed Mr Venkat Naidu to reside on the said land. When cross-examined by Counsel for iTaukei Land Trust Board, Mr Ram agreed "it would be proper for the Fiji Sports Council to allow Venkat Naidu a residential lease.

The best thing to do would have been to issue a residential lease to Venkat Naidu for that lot.”

He agreed to the question whether he possessed any knowledge of terms and conditions on which the [First Defendant] Sigatoka Town Council transferred this land to the [Second Defendant] Fiji Sports Council?

He answered in affirmative. However, Fiji Sports Council does not have any record except the board had records that in 1997 of transfer for Sigatoka Town Council to Fiji Sports Council. The Fiji Sports Council did not know about the Plaintiff's interest in the residential lot. Fiji Sports Council allowed Venkat Naidu to remain on the property and allowed lifetime occupation.

He agreed that Fiji Sports Council was aware of Venkat Naidu's interest in the land. Sigatoka Town Council wrote to the Fiji Sports Council to tell them it was an obligation to give the Plaintiff Venkat Naidu his interest in the land in Lot 1.

19. The Third Defendant, iTaukei Land Trust Board did not call any witness(s).
20. The Fourth Defendant, Register of Titles did not call any witness(s) and did not participate in the trial.
21. All evidence in this proceedings during trial has been recorded on the Court file and the Audio Recording system respectively.

Agreed Facts and Triable Issues.

22. Most of these material facts were agreed to by both parties to the proceedings and went into evidence by consent as set out in the pre-trial conference minutes (PTC) of 17 April 2023.
23. The Agreed facts are set out in Part A of paragraph 1 - 27 inclusive of the PTC minutes filed herein.
24. The triable issues that were to be determined by this Court were identified by the parties and filed within the PTC minutes of 17 April 2023. It also appears at page 36 of the Plaintiff's copy pleadings.
25. It will be noted that most of these issues to be tried overlap each other and therefore will be addressed under separate headings.

Analysis and Determination.

- (i) **A - Absence of Defence by Sigatoka Town Council [First Defendant].**

26. The Plaintiff's substantive claim is in contract and fraud and was served on all the Defendants.
27. The First Defendant, Sigatoka Town Council did not file any Notice of Intention to defend and Statement of Defence. By virtue of Order 18 Rule 12(c) of the High Court Rules 1988, the failure and absence of any Statement of Defence by the First Defendant, Sigatoka Town Council, it eventuates that the allegations of facts made by the Plaintiff in their Statement of Claim against Sigatoka Town Council are deemed to have been admitted by the Sigatoka Town Council.
28. Since the claim for damages in the current proceedings are by Declarations, transfer of land and injunctions are outside Order 13 of the High Court Rules 1988, it is not possible to enter a judgment in default against the First Defendant, Sigatoka Town Council.
29. Further the First Defendant, Sigatoka Town Council made no appearances until the date of the trial date of 6th February 2024 and applied for vacation and adjournment of the trial, but it was refused by this Court.

(ii) **B - Breach of Agreement by Sigatoka Town Council.**

30. However, the issue that needs determination is "**whether Sigatoka Town Council breached the agreement entered into with Venkat Naidu on 17th April 1984?**"
31. In April 1984 Sigatoka Town Council entered into an agreement in writing on 17th April 1984 with Venkat Naidu to sell his interest in all that piece of land described as Lot 1 Rakirakilevu L 1708 under approval notice 4/11/1794 of 1st March 1964 to Sigatoka Town Council on the condition that Sigatoka Town Council will give to Venkat Naidu one (1) residential lot when Sigatoka Town Council carries out development on the land [Exhibit no. 3] without any knowledge of Venkat Naidu Sigatoka Town Council transferred the whole 7 acres 16 perches land to the Second Defendant, Fiji Sports Council on 18th July 1997 in the consideration sum of \$1.00. The transfer was registered on 8th September 1997 [Exhibit 11].
32. [PW2] Tulsi Ram who gave evidence in his then capacity as the Chief Executive Officer for Sigatoka Town Council, told Court that:
 - He agreed it was the responsibility of Sigatoka Town Council to give one lot to Venkat Naidu,
 - He agreed that the transferring the whole land to Fiji Sports Council, Sigatoka Town Council [First Defendant] deprived Venkat Naidu of his interest and entitlement in the lot.
 - He agreed with Plaintiffs questioning that Sigatoka Town Council breached the Agreement it head with Venkat Naidu.
 - Again, he agreed that Sigatoka Town Council was legally bound to give and transfer the land to Venkat Naidu that he continued to occupy under the Sale and Purchase Agreement;

- He agreed further that Venkat Naidu has a right to remain on the subject land that he continued to occupy,
- He also agreed that a lease should be issued to Venkat Naidu's Estate over that piece of land.

(iii) (c) - Fraud by Sigatoka Town Council

33. Venkat Naidu was the owner [Lessee] of the land from 1981 on which he lived with his wife Chellammal and two(2) sons at Lawaqa, Sigatoka.
34. He sold his 7 acres 16 perches land to Sigatoka Town Council in 1984 and he was entitled to one(1) residential lot free after development was carried out by Sigatoka Town Council.
35. Venkat Naidu and his family have been in occupation of the residential lot since 1981, even after the sale to Sigatoka Town Council until 24th February 2020 when the Second Defendant, Fiji Sports Council issued an eviction proceedings against Venkat Naidu seeking delivery of the vacant possession of that lot. Venkat Naidu took demise in 2021, his wife Chellammal continues to reside on the said lot in Lawaqa, Sigatoka.
36. The question that then comes to mind is **"whether the transfer of the land, in particular Venkat Naidu's share of the residential lot still continued to be occupied by wife Chellammal by Sigatoka Town Council to Fiji Sports Council should be set aside as fraudulent?"**
37. At paragraph 23 of the Plaintiff's Statement of Claim, the Plaintiff alleges that the transfer of the said land by the First Defendant, Sigatoka Town Council to the Second Defendant, Fiji Sports Council is a fraud. The particulars of the fraud against the First and Second Defendants are particularized at paragraph 23(1) to (4) at pages 4 and 5 inclusive of the Plaintiff's Statement of Claim.
38. Notably, the First Defendant, Sigatoka Town Council did not defend the Plaintiff's allegation and particulars of fraud as set out at paragraph 23(1) - (4) of the Plaintiff's Statement of Claim.
39. It is well established that fraud means actual fraud or some Act of dishonesty. In **Wamiha Saw Milling Co Ltd v Waione Timber Co Ltd [1926] AC 101** at page 106, it was held that **'fraud implies some act of dishonesty. In Assets Co v. Mere Roihi (1905) AC 176. It was held that 'fraud in actions seeking to affect a registered title means actual fraud, dishonesty of some sort not what is called Constructive fraud.'**
40. Applying the above principles to the facts of the current case before this court, the evidence clearly reveals that actual fraud had been committed by the First Defendant, Sigatoka Town Council and no doubt the same has been proven by the Plaintiff on a Balance of Probabilities.

(iv) (D) - Fraud by Fiji Sports Council [Second Defendant].

41. It cannot be disputed and is evident that the Second Defendant, Fiji Sports Council is the last registered proprietor of the land in question in this proceedings. It was the First

Defendant, Sigatoka Town Council after purchasing the same land from the Plaintiff in 1984, that it transferred the land to the Second Defendant, Fiji Sports Council on 18th July 1997 [Exhibit 11] refers.

42. Now, the central and essential issue is:

"Whether the Deceased's Estate of Venkat Naidu is entitled to the residential lot on which the wife of Venkat Naidu continues to reside on and/or the house block which Venkat Naidu originally owned in terms of clause 4 of the Sale and Purchase Agreement dated 17th April 1984 between Venkat Naidu and Sigatoka Town Council."

43. The Plaintiff, Venkat Naidu has alleged Sigatoka Town Council and Fiji Sports Council have both committed fraud within the meaning of Section 39 of the Land Transfer Act. Fraud is an Exception to the indefeasibility of title which means 'a core principle of the Torrens title system meaning that the registered owner's title to land is protected and cannot be easily challenged and/or overturned by unregistered interests or past errors.' However, it is not absolute and has certain exceptions such as fraud or specific statutory provisions.

44. The principles of indefeasibility of title is well explained by Edwards J. in **Fels v Knowles** (1906) 26 NZLR 604 (at 620):

"The cardinal principle of the statute is that the register is everything, and that, except in cases of actual fraud on the part of person dealing with the registered proprietor, such person upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."

45. In order to prove alleged fraud in civil cases, the onus is on the balance of probabilities but on a higher scale of probability.

46. The Land Transfer Act does not define fraud for the purpose of Torrens legislation. There are some guided judgments, however, the principles provide guidance in determining whether there has been fraud committed on its own facts and circumstances.

I had earlier on in my Judgments herein at paragraph 39 dealt with case which define fraud and authority for the doctrine of indefeasibility of title as hereunder.

47. The Privy Council decision in **Assets Co Ltd. v. Mere Roihi** (1905) AC 176.

48. The Second Defendant, Fiji Sports Council, has denied taking part in the alleged fraud when stating at paragraph 9(1) of its Statement of Defence that it is a Bona fide Purchaser and acquired an infeasible title to the property.

49. A bona fide purchaser does all that is reasonably possible and necessary in his or her powers to find out about all material facts pertaining to the property before he could commit himself to purchase the same. To be a bona fide purchaser one must have done due diligence and exercised caution before entering into a transaction of the nature that would ultimately be binding upon him.

50. However, the protection offered to a bona fide purchaser for value without notice does not apply where the title to the property was obtained either irregularly or illegally or fraudulently. The bona fide purchaser is one who exchange value for the property without any reason to support irregularities in the transaction.
51. The burden of establishing plea of the bona fide purchaser [the onus to prove the defence] lies on the person who sets it up.
52. The question that now comes to mind is **"whether the Second Defendant, Fiji Sports Council, had notice of Venkat Naidu's rights to and interest in the residential lot?"**
53. The general rule is that lack of notice must be established at the time of the transfer of the legal estate. The question of the notice must be determined at the time when the legal estate passes i.e. the date of purchase and/or acquisition.
54. I find that there is ample evidence in the current case proving that knowledge of the fraud was brought home to the Second Defendant, Fiji Sports Council. The case and the evidence demonstrates a deliberate and dishonest attempt by Fiji Sports Council to deprive Venkat Naidu of his claim, interest and entitlement of the residential lot which he continuously occupied.
55. The Second Defendant, Fiji Sports Council, had knowledge of Venkat Naidu's interest in the residential lot when the said property was transferred to the Second Defendant, Fiji Sports Council, by the First Defendant, Sigatoka Town Council.
56. The evidence herein discloses fraud on part of the Fiji Sports Council.
 - Fiji Sports Council purchased the said land with full notice and knowledge of Venkat Naidu's rights on the land.
 - Venkat Naidu had been continuously living on the land at the time of purchase in 1997.
 - The residential lot was continuously occupied by Venkat Naidu and his family at the time Fiji Sports Council purchased the land in 1997, which would have aroused suspicion,
 - Residential dwelling was constructed on the land and the residential lot had a fenced boundary when the Second Defendant, Fiji Sports Council, acquired the said land and therefore, its existence must have been obvious to Fiji Sports Council.
57. Having knowledge of all above, the Second Defendant, Fiji Sports Council, obtained a transfer of the land without giving the residential lot to Venkat Naidu to which he had interest on.
58. Therefore, the conduct of the First Defendant, Sigatoka Town Council, and Second Defendant, Fiji Sports Council, was fraudulent. Fiji Sports Council had prior knowledge of all the material facts surrounding the property being purchased from Sigatoka Town Council and of Venkat Naidu's right to possession and interest in the residential lot.
59. Fiji Sports Council, were aware that Venkat Naidu and his family were continuously staying on the residential lot and that no matter what, this lot was had to be given to Venkat

Naidu, however, it went ahead to buy the same from Sigatoka Town Council and refused to give the vacant lot to Venkat Naidu, despite Sigatoka Town Council taking steps to separate the residential lot from the main lease. Therefore, Fiji Sports Council has dishonestly benefited from purchase and taking the residential lot, to which Venkat Naidu had interest and entitlement to.

60. [DW1] - Praneel Prakash Ram, who gave evidence on behalf of Second Defendant, Sigatoka Town Council, told Court that:

'The Second Defendant, Fiji Sports Council, knew of Venkat Naidu's possession of the property when Fiji Sports Council occupied the property in 1997. Fiji Sports Council might have known of Venkat Naidu's possession in 1997, knew about Venkat Naidu's occupation and they allowed him to stay on it for a lifetime. Fiji Sports Council-

- could have had knowledge about Venkat Naidu's interest in the land when Fiji Sports Council agreed to allow Venkat Naidu to reside on the land.
- would have been aware of Venkat Naidu's interest in the land at the time of transfer of land by the First Defendant Sigatoka Town Council to Fiji Sports Council, and
- there is a correspondence from Sigatoka Town Council to Fiji Sports Council seeking to regularise that promise.

61. I also make reference to this disposal matter, HBC 102 of 2020 [Exhibit No. 29] of [DW1] Praneel Prakash Ram at paragraphs 3, 4 and 5 which are relevant and is taken consideration of-

"3. At the time of obtaining the property in 1997, the said defendant was permitted by the Plaintiff to reside on the property subject to further determination in the future.

4. Since 2019, the Plaintiff has been engaged in discussions with the Defendant for him to allow him to reside on the property for his lifetime subject to him relocating to another part of the land however the Defendant has refused this offer.

5. The Plaintiff no longer permits and does not allow the Defendant to remain on its property as the same is required for further development purposes by the Council."

62. Therefore, it is clear "that at the time of obtaining the property in 1997," Fiji Sports Council permitted Venkat Naidu to continue to reside on the property subject to further determination in the future.

63. Further, with above knowledge by Fiji Sports Council of Venkat Naidu's interest in the residential lot at the time of purchase from the First Defendant Sigatoka Town Council in 1997, Fiji Sports Council cannot be a bona fide purchaser for value without notice.
64. Fiji Sports Council, therefore, with imputed knowledge of the fraud committed by the First Defendant, Sigatoka Town Council, through, its lawyers, cannot enjoy the status of the bona fide purchaser as it knew about the interest Venkat Naidu had in the residential lot. Hence, no valid title passes to Fiji Sports Council, in particular concerning the residential lot, which means that the title held by Fiji Sports Council over that residential lot is null and void *ab-inito*.
65. Now, the burden lies with the Fiji Sports Council to establish that it was a bona fide purchaser for value without notice.
66. In order for the Fiji Sports Council to satisfy the defence of being a bona fide purchaser to value without notice, it has to satisfy the following-
 - The purchaser has a valid title from a person registered as proprietor.
 - The purchaser must have acted in good faith at the time of the purchase.
 - The purchaser must have acted in good faith at the time of the purchase, and
 - The purchaser must have transacted without notice of any fraud, whether actual or constructive.
67. The Second Defendant, Fiji Sports Council, did not run the defence of a bona fide purchaser nor did it adduce any relevant evidence on this issue.
68. Taking into consideration all above coupled with the principles cited in cases cited within the Plaintiff's written submission - **Loke Yew v Port Swettenham Rubber Company** (1913) AC 491 the facts which is similar to the present case, and the **Megarry's Manual of the Law of Real Property 6th Edn at p.69** the actual fraud has been by the Plaintiff against Sigatoka Town Council and Fiji Sports Council beyond a balance of probabilities.

Defence of Limitation

69. The first defendants, Sigatoka Town Council did not file a Statement of Defence and therefore cannot rely on the Defence of Limitation.
70. The Second Defendant, Fiji Sports Council at paragraph 17 of its Statement of Defence pleads "*that the claim by the Plaintiff is time barred under the Limitation Act.*" It has failed to identify the relevant provisions of the Limitation Act pursuant to any particular Limitation Defence would have arisen.

71. Therefore, the Second Defendant Fiji Sports Council has failed to properly plead the defence of Limitation that it had intended to do so. If I may add that the defence of Limitation based on the provisions of the Section 4(1) (a) of the Limitation Act is not available to the Second Defendant, Fiji Sports Council since the claim against the Fiji Sports Council is not for breach of the contract, rather in fraud pleaded at paragraph 23 of the Plaintiff's Statement of Claim.
72. On the face of it, the breach did not occur until the First Defendant, Sigatoka Town Council transferred the land to the Second Defendant, Fiji Sports Council without giving one (1) residential lot to Venkat Naidu. Since the instrument of transfer between Sigatoka Town Council and Fiji Sports Council is dated 18th July 1997, and registered on 8th September 1997 [Exhibit 11], it can be inferred that the breach occurred on 18th July 1997. Hence, Cause of Action arose on 18th July 1997 and six(06) years from 18th July 1997.
73. Section 4(1) of the Limitation Act limits actions on contracts to a period of six (06) years from the date on which the cause of actions accrued.
74. A cause of action based on a claim for specific performance or for any equitable relief does not have a finite limitation period of virtue of Section 4 subsection (7) of the Limitation Act. Case of **Vinita Raj v Sumitra Court** of Appeal, Civil Appeal No. 0043 of 1996 (12 February 1998) refers.
75. Further, Section 4(1) of the Limitation Act does not apply to any claim for specific performance.
76. In terms of Fraud - Section 15 of the Limitation Act refers and states '**when an action is based on the fraud of a Defendant, the limitation period does not begin to run until the Plaintiff has discovered or could with reasonable diligence have discovered the Fraud.**'
77. In the current case, the Court is rather concerned with an action based upon fraud of the Second Defendant, Fiji Sports Council within Section 15 of the Limitation Act.
78. If the Plaintiff claim of fraud against the Second Defendant, Fiji Sports Council is put in the context of Section 15 of the Limitation Act, the period of Limitation provided by Section 15 does not apply.
79. The Second Defendant, Fiji Sports Council committed two (2) separate and distinct frauds;

(1) **First Fraud**, when the Fiji Sports Council purchased the said land from the Sigatoka Town Council with knowledge of Venkat Naidu's interest in the land. After the transfer of land to Fiji Sports Council, Sigatoka Town Council was actively involved in having the survey for the residential lot completed in order to give the residential lot to Venkat Naidu.

There is no evidence to reveal or substantiate that Fiji Sports Council refused and/or objected to give the residential lots to Venkat Naidu, until Fiji Sports Council issued the eviction notice to Venkat Naidu on 24th February 2020.

(2) **Second Fraud**, was committed on or about 2nd October 2019 when Fiji Sports Council refused to give the residential lot to Venkat Naidu and refused to recognize Venkat Naidu's interest in the vacant lot and therefore depriving Venkat Naidu of his interest in the vacant lot. This gave rise to second cause of action of fraud as at paragraph 23(1) and (2) of the Plaintiff Statement of Claim.

80. In terms of Section 9 of the Limitation Act, the Second Defendant, Fiji Sports Council is holding the residential lot in iTaukei Lease No. 23401 in constructive trust for the Plaintiff until such time the residential lot is transferred to the Plaintiff, Venkat Naidu and/or his estate.

Injunction

81. The Plaintiff's claim is also for injunctive relief. Relief 9 is in the form of mandatory injunction. Further, relief (7) and (8) are also relevant. The claimant's claim for an injunction was not subject to any Limitation period - refer to case of **P & O Nelloyd BV v Arab Metal Co (The UB Tiger)** (supra).

Specific Performance

82. Whether the Plaintiff is entitled to an order for specific performance in terms of the residential lot occupied by Chellammal's husband, Venkat Naidu to be transferred to the Estate of Venkat Naidu?
83. Specific performance is an equitable remedy granted at the discretion of this Court to compel the party in default to perform and complete the contract.
84. An agreement cannot be fulfilled in a vacuum by one party without the cooperation of the other party.
85. Venkat Naidu has both, legal equitable rights to ownership of the lot arising out of the Sale and Purchase Agreement between Venkat Naidu and the Sigatoka Town Council.
86. Venkat Naidu did not receive the benefit of the did not receive residential lot since the Second Defendant, Fiji Sports Council now wants Venkat Naidu to vacate the residential lot which he continued to occupy on the basis of 17th April 1984 Agreement with the Sigatoka Town Council. Venkat Naidu has been in possession of the lot prior to Sigatoka Town Council purchasing the land and continued to remain in possession after transfer of the to the Fiji Sports Council.

87. The Second Defendant, Fiji Sports Council recognizes that Venkat Naidu has some interest in the residential lot. Clause 4 of the Agreement is there for the benefit of Venkat Naidu which states:
- (i) Pay Venkat Naidu \$22,150; and
 - (ii) Give one residential lot free to Venkat Naidu when Sigatoka Town Council carries out development.
88. Venkat Naidu continued occupation of the said residential lot after transfer to Sigatoka Town Council and then to Fiji Sports Council without any interference or objection from July 1997 to the current is evident of the fact and thus establishes acts of part performance by Sigatoka Town Council and Fiji Sports Council and therefore, must be treated as conduct in performance of the Agreement in which they entered into.

Case of **Williams v Greatrex** (supra) [1957] 1 WLR where Denning LJ said:

'As long as the purchaser remained in the possession under a contract which entitled him to be there, he had an equity which the Courts would protect. There was no need for him to claim specific performance in order to give him the rights to be there.'

89. In the current case of Venkat Naidu there was acquiescence by the Second Defendant, Fiji Sports Council in Venkat Naidu's possession in performance of the Agreement because Fiji Sports Council took no steps to challenge his rights.
90. Further, based on the case of **Williams v Greatrex**, Venkat Naidu filing his claim for specific performance, would not tantamount to delay, because Venkat Naidu has been in possession of the residential lot equitably, regardless of whether the limitation period has lapsed as long as there is possession of the land by the Plaintiff, his action still survives. The Plaintiff's possession therefore negates the defence of limitation and laches.
91. Notably, the prejudice has been claimed to have been suffered either by Sigatoka Town Council or Fiji Sports Council.
92. In the case of **Fitzgerald v Masters** [1956] 95 CLR 420 - an order for specific performance of a contract executed more than 20 years earlier for sale of land was granted.
93. Neither the First Defendant Sigatoka Town Council nor the Second Defendant Fiji Sports Council gave evidence as to "why an order for specific performance should not be granted to Venkat Naidu." Further, there was no evidence offered to court that specific performance will cause any hardship, prejudice and/or damage to Fiji Sports Council.
94. Evidence on behalf of the Plaintiff's shows Venkat Naidu and the Plaintiff's interest in the residential lot. Not only that, the land has sentimental interest and value. Damages would not and cannot provide a complete remedy to Naidu's family. Venkat Naidu has been in possession of the residential lot on which he has been continuously living on prior to Sigatoka Town Council purchasing it and after the transfer of the land to Fiji Sports Council. The intention of Plaintiff is to seek an order for perfection of his legal rights to

the title. [PW2] Tulsi Ram in his capacity as Chief Executive Officer of Sigatoka Town Council gave evidence that according to the Sale and Purchase Agreement, it was the responsibility of the First Defendant, Sigatoka Town Council to give the lot to Venkat Naidu.

95. The Plaintiff is now seeking an order for permanent injunction prohibiting the Second Defendant, Fiji Sports Council from interfering, transferring, suing dealing or attempting to deal with the land and property comprised in iTaukei Land Lease No. 23401 being lots 1 and 2 on Plan SO No. 001553 situated in Lawaqa, Sigatoka.

Counterclaim by Fiji Sports Council

96. The Second Defendant, Fiji Sports Council filed a counterclaim. However, no evidence was adduced in support of the same.
97. The Fiji Sports Council had the onus of proving its counterclaim but failed to do so.
98. The Plaintiff has pleaded a claim for an award for damages for breach of contract at paragraph 29 of its Statement of Claim and has suffered and will continue to suffer loss and damages.
99. The Plaintiff's Counsel submitted that **"Venkat Naidu has been deprived of a title to his land since 1986. Sigatoka Town Council had a duty and obligation to give Venkat Naidu ownership of the residential lot. The Plaintiff has not only been deprived of a lease but with security of a family home for his wife and children in the absence of a proper lease."**
100. The Sales and Purchase reveals that there was a condition attached that Venkat Naidu will be given the residential lot once that First Defendant, Sigatoka Town Council carries out the development on this land.
101. However, the Plaintiff, Venkat Naidu was not given his residential lot as per the condition of the Sales and Purchase Agreement rather deprived and Sigatoka Town Council went ahead and sold the said land to Fiji Sports Council. Now the title has been transferred to the third party, Fiji Sports Council [Second Defendant]. The third party, Fiji Sports Council made an attempt to evict Venkat Naidu from the possession of the land via Section 169 eviction proceedings.
102. The Plaintiff has also pleaded and sought for interest at a higher scale in terms of Section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 27.
103. Pursuant to Section 3, the award of interest, the rate and the period of which interest is to be awarded is a discretionary matter. This fundamental principle is that **'interest is to compensate a party for having to stand out of the money to which he or she was entitled.'** However, the overriding principle is that **'interest should be awarded to the Plaintiff not as compensation for the damage done but for being kept out of money which ought to have been paid to him.'**
104. Interest is claimed by the Plaintiff against Sigatoka Town Council and Fiji Sports Council on the award of the damages from the date the land was transferred to the Fiji Sports

Council that being 18th July 1997 to the date of Judgment at the rate of 7% per annum interest.

105. The award of costs is also discretionary. The discretion must be exercised in terms of the reason and justice factors that will justify an award of increased costs that includes the urgency and complexity of the matter and the conduct of the unsuccessful party.
106. The Plaintiff seeks for a gross sum of costs in lieu of taxed costs in terms of Order 62 Rule 7(4) of the High Court (Amendment) Rules 1988.
107. The Plaintiff further sought for Declaration and Orders in terms of the Relief as reflected within his prayers in the substantive Statement of Claim.

In conclusion

108. This is a Claim by Plaintiff against the 1st, 2nd, 3rd and 4th Defendants on contract and fraud.
109. The essential facts are substantially undisputed.
110. This case centres on the land formally described as Lot 1, Rakirakilevu L 1708 under approval Notice 4/11/1794, situated in Lawaqa, Sigatoka, containing 7 acres and 16 perches.
111. Venkat Naidu was the original owner and had been living in it since January 1981.
112. First Defendant, Sigatoka Town Council and Venkat Naidu entered into a Sales and Purchase Agreement on 17th April 1984 at a purchase price of \$22,150.
113. Clause 4 of the Sales and Purchase Agreement provided that Venkat Naidu be given one residential lot free when Sigatoka Town Council carries out development to the land.
114. Sigatoka Town Council transferred the said land to Fiji Sports Council in July 1987 without giving Venkat Naidu the residential lot. Hence, Fiji Sports Council became the registered proprietor of the full 7 acres and 16 perches of the said land.
115. On 27th March 2020, Fiji Sports Council issued eviction proceedings against Venkat Naidu via HBC No. 102 of 2020 and was later dismissed by the Court.
116. Venkat Naidu claims fraud on the part of the Sigatoka Town Council when it transferred the said land to Fiji Sports Council and Fiji Sports Council is a party to this fraud.
117. Venkat Naidu is now challenging the transfer of the said land by the Sigatoka Town Council to Fiji Sports Council on the grounds of fraud.
118. Venkat Naidu is also seeking for specific performance for the said land to be transferred to him now.

119. The First Defendant, Sigatoka Town Council, has not filed any Statement of Defence and therefore cannot challenge or dispute paragraph 22 of the Plaintiff's Statement of Claim:

'that the First Defendant, Sigatoka Town Council, breached the agreement of 17th April 1984 nor did they defend the allegations made against them.'

120. Therefore, I find that actual fraud has been committed by the First Defendant, Sigatoka Town Council, which the Plaintiff has proven on a balance of probabilities. There is no doubt as to this preposition.
121. There is ample evidence in this case proving that knowledge of fraud was brought home to Fiji Sports Council. There has been a deliberate and dishonest attempt by the Second Defendant, Fiji Sports Council to deprive Venkat Naidu of his claim or interest in the said residential lot as mentioned herein. [DW1] Praneel Prakash Ram agreed whilst giving evidence that **"Fiji Sports Council knew of Venkat Naidu's possession of the property when Fiji Sports Council acquired the property in 1997, Venkat Naidu was never asked to vacate the land at the time of purchase by the Fiji Sports Council."**
122. The burden was on Fiji Sports Council to establish that it was a bona fide purchaser for value without notice. They have failed to do so.
123. The Fiji Sports Council, at paragraph 17 of its Statement of Defence pleaded that **"the claim by the Plaintiff is time barred under the Limitation Act, however, they have failed to properly plead the Defence of Limitation."**
124. The law imposes a Constructive trust requiring the Second Defendant, Fiji Sports Council, to account for the trust property obtained by fraudulent means which is in their possession now.
125. Pursuant to Section 9(1) (a) and (b), Fiji Sports Council is a constructive trustee of the residential lot of Venkat Naidu as of now.
126. Whether the Plaintiff, Venkat Naidu, is entitled to an order for specific performance?

I find that Venkat Naidu has both legal equitable rights to the ownership of the lot arising out of the agreement. Venkat Naidu did not receive the benefit of the residential lot since Fiji Sports Council now requires Venkat Naidu to vacate the residential lot that is continuously in occupation by Venkat Naidu all these time along.

127. Further, the Second Defendant, Fiji Sports Council, did not give evidence on why the order for specific performance should not be granted to Venkat Naidu.
128. Damages would not be an adequate remedy for the Plaintiff since Venkat Naidu had an interest in the residential lot and only awaiting it to be transferred to him once the First Defendant, Sigatoka Town Council, would have carried out the development. However, the land in question was sold and transferred to the Second Defendant, Fiji Sports Council instead.
129. Venkat Naidu was entitled to one residential lot as was the condition of the Sales and Purchase Agreement between the First Defendant, Sigatoka Town Council, and the Plaintiff. Therefore, before the Second Defendant purchased the said land from the

Sigatoka Town Council, the Fiji Sports Council would have become aware of the condition that was intact within the Sales and Purchase Agreement that was executed. Therefore, the Fiji Sports Council has no right to interfere with the portion of the land of one residential lot and it becomes the responsibility of the Fiji Sports Council to transfer one residential lot to Venkat Naidu and his estate as per the Sales and Purchase Agreement accordingly. It does not mean that the Fiji Sports Council can turn a blind eye on this condition within the Executed Sale and Purchase Agreement. This condition has to be fulfilled accordingly.

130. It has now become appropriate that this Court will now issue a permanent injunction prohibiting the Second Defendant, Fiji Sports Council, from interfering with the Plaintiff's quiet enjoyment and occupation of the land comprising the Plaintiff's residential dwelling currently comprised in iTaukei Lease No. 23401 being Lot 1 and 2 on Plan SO No. 001553 situated in Lawaqa, Sigatoka.
131. Further, the Second Defendant, Fiji Sports Council, is ordered to refrain from transferring, suing, dealing or attempting to deal with anyway whatsoever with the said land and property comprised in iTaukei Lease No. 23401 being Lot 1 and 2 on Plan SO No. 001553 situated in Lawaqa, Sigatoka.
132. Above orders are necessary in the circumstances in order to protect the interest of the Plaintiff and the estate and will prevent the Second Defendant, Fiji Sports Council, from transferring the land to a third party like Sigatoka Town Council did when it sold the land to the Fiji Sports Council.
133. However, the relief seeking, transferring, suing, dealing or attempting to deal with the said land may become reluctant once a residential lease is issued to the Plaintiff and/or the estate of Venkat Naidu, currently occupied by Chellammal and children comprising 2277m² accordingly.
134. The Plaintiff has pleaded a claim for an award of damages for breach of contract against the First Defendant, Sigatoka Town Council.
135. Compensatory damages are designed to compensate for the damages done by the Defendant and its purpose is to compensate the innocent party/victim for the loss or damage in order to put him back to the same position, so far as money can do it, as if the contract have been performed.
136. Refer to case of **Livingstone v Rawyards Coal Co.** (1880) 5 App Cas 25 @ 39;

In considering the basis on which damages should be assessed, the overriding rule was stated by Lord Blackburn in the aforesaid case:

"..... you should as nearly as possible get that sum of money which will put the party whose has been injured, or who has suffered in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation."

137. To consider the position and actual situation of the Plaintiff in the current case, Venkat Naidu has been deprived of the use and enjoyment of its title to his land since around

1986. He had been waiting and fighting for a Court battle for an answer. However, he took demise in 2021.
138. The First Defendant had an obligation under the agreement to transfer a lot to the Plaintiff. The First Defendant, Sigatoka Town Council failed to issue a separate title and transfer a lot to the Plaintiff - Venkat Naidu who continued to remain on an occupy with his family comprising his residential dwelling and instead transferred his land in full to the Second Defendant, Fiji Sports Council.
 139. No doubt the First Defendant did not fulfill the clause of Agreement that required the First Defendant, Sigatoka Town Council to fulfill its obligation and therefore breached the Agreement of 17th April 1984.
 140. The Plaintiff is entitled to damages for breach of contract against the First Defendant, Sigatoka Town Council in the sum adjudged at \$55,000.
 141. As per the evidence discussed hereinabove in my judgment and taking into consideration the entirety of the written submissions of the Plaintiff, the transfer of the said land of the subject matter by the First Defendant, Sigatoka Town Council to the Second Defendant, Fiji Sports Council tantamounted to fraud. This has been proved on the balance of probabilities coupled with the citation of the case authorities.
 142. It will be noted without dispute that the First Defendant, Sigatoka Town Council's foremost obligation under the agreement was to transfer a residential lot to the Plaintiff, Venkat Naidu. However, I reiterate and the evidence reveals that it did not eventuate, instead the First Defendant, Sigatoka Town Council transferred the whole land in full to the Second Defendant, Fiji Sports Council.
 143. Whilst the transfer from the First Defendant to the Second Defendant took place, the First Defendant had the actual knowledge that such refusal defeated the interest of the Plaintiff, Venkat Naidu in the said land, in particular, the residential lot, failed to give to the Plaintiff one residential lot before transferring the said land to the Second Defendant, Fiji Sports Council and dishonestly transferring the whole of the land to the Second Defendant, Fiji Sports Council with direct knowledge of the Plaintiff's entitlement to one lot of the said land, and permanently deprived the interest of the Plaintiff which interest the Plaintiff was and still to the current is entitled to under the agreement executed between the Plaintiff and the First Defendant on 17th April 1984, depriving the Plaintiff of his rights under the agreement by transferring the said land to the Second Defendant, Fiji Sports Council, and failed to legally transfer and convey one lot entitlement to the Plaintiff, Venkat Naidu by the agreement of 17th April 1984. Further, the First Defendant repudiated the agreement of 17th April 1984 by failing to give the Plaintiff one residential lot entitlement.
 144. The Third Defendant, iTaukei Land Trust Board was aware and had direct knowledge of the transaction of the land between the Plaintiff and the First Defendant and of the interest of the Plaintiff in particular, his entitlement to a residential lot when the First Defendant had carried out development of the said land. Despite having knowledge, the Third Defendant on 17th July 1997 gave its consent to the First Defendant to transfer all the land comprised in iTaukei Lease No. 23401 in full to the Second Defendant. The Third Defendant in doing so, has acted fraudulently.

145. Therefore, the Plaintiff has been deprived of his rights under the agreement and lost his entitlement to a lot and faced eviction proceedings commenced by the Second Defendant.
146. As a result of the actions of the First, Second and Third Defendants the Plaintiff and his family have suffered and continued to suffer distress, in convenience, pain and suffering and injury to feelings, discomfort, harassment and disappointment.
147. For the aforesaid reasons, the Plaintiff, Venkat Naidu and/or his estate is entitled to general damages for fraud by the First, Second and Third Defendants jointly and severally in favour of the Plaintiff, Venkat Naidu.
148. I will award and fix damages against the First, Second and Third Defendants jointly and severally for fraud fixed at \$40,000 to be paid to the Plaintiff accordingly.
149. In the like, for the aforesaid reasons, the Plaintiff is entitled to general damages against the First and Second Defendants jointly and severally for embarrassment, injury to feelings, stress, inconvenience and harassment awarded and fixed at \$50,000.
150. Interest allowable by law is fixed on the award of damages for breach, fraud and embarrassment, injury to feeling, stress, inconvenience and harassment at 5% per annum until the full payment of the damages awarded is recovered by the Plaintiff.
151. Cost on indemnity basis is fixed at \$15,000 to be paid to the Plaintiff within 28 days timeframe.
152. The Second Defendant, Fiji Sports Council, adduced no evidence before this Court and was unable to prove their counterclaim which they had filed herein. The Second Defendants Counter Claim accordingly fails and is therefore dismissed in its entirety.

Costs

153. The matter proceeded to full hearing. Witnesses were called, oral and written submissions were made. It took most of the Court's time.
154. It is just and fair that I order a summarily assessed costs of \$5,000 each against the First Defendant, Sigatoka Town Council, Second Defendant, Fiji Sports Council and Third Defendant, iTaukei Land Trust Board, a total of \$15,000 summarily assessed costs accordingly to be paid within 21 days timeframe.
155. I now proceed to grant the following declarations and orders:
 - (1) A Declaration is granted that, by virtue of clause 4 of the Sale and Purchase Agreement dated 17 April 1984 and made between the Plaintiff and the First Defendant, the Plaintiff is entitled to one residential lot comprised in iTaukei Lease No. 23401 which the Plaintiff currently continues to occupy with his family.
 - (2) A Declaration is granted that the transfer number 430054 registered on 08 September 1997 is a fraud and it is hereby set aside accordingly.
 - (3) A Declaration is granted that the Plaintiff is entitled to permanently occupy the

said land (one lot) comprised in iTaukei Lease No. 23401 which he currently continues to occupy with his family to the current date.


- (4) A Declaration is granted that the Second Defendants hold iTaukei Lease No. 23401 in trust for the Plaintiff until such time one lot is transferred to the Plaintiff as per the Order of this Court.
- (5) A Declaration is granted that the Second Defendant, Fiji Sports Council is not entitled to possession of the lot/land occupied by Plaintiff and his family on iTaukei Lease No. 23401.
- (6) An Order (or a Declaration) is granted that the notice to vacate issued by the Second Defendant against the Plaintiff is invalid, illegal and unenforceable.
- (7) An Order is granted that the Second Defendant is restrained whether by itself or by its servants or agents or otherwise howsoever from interfering with the Plaintiff's quiet enjoyment and occupation of the land comprising the Plaintiff's residential dwelling, comprised in iTaukei Lease No. 23401 being lots 1 and 2 on Plan SO No. 001553 situated at Lawaqa, Sigatoka.
- (8) An injunction is granted restraining the Second Defendant, Fiji Sports Council whether by itself or by its servants or agents or howsoever from transferring, selling, dealing or attempting to deal with in any way whatsoever with the land and property comprised in iTaukei Lease No. 23401 being lots 1 and 2 on Plan SO no. 001553 situated at Lawaqa, Sigatoka.
- (9) An Order is granted that the First and/or Second Defendant jointly and/or severally is ordered to transfer a lot to the Plaintiff pursuant to the agreement dated 17 April 1984.
- (10) An Order is granted to all necessary and consequential directions for the transfer of the said lot to the Plaintiff.
- (11) General damages for breach of contract against the First Defendant is adjudged and awarded a sum of \$55,000.
- (12) General damages against the First, Second and Third Defendants jointly and/or severally for fraud is awarded to the Plaintiff at \$40,000.
- (13) General damages against the First and Second Defendants jointly and/or severally for embarrassment, injury to feelings, stress, inconvenience, harassment is awarded to the Plaintiff in the sum of \$50,000.
- (14) Interest on award of damages for breach, fraud and embarrassment, injury to feelings, stress, inconvenience and harassment is awarded and fixed at 5% per annum until the full payment of the damages awarded herein is recovered by the

Plaintiff.

- (15) Cost on an indemnity basis is awarded and fixed at \$15,000 to be paid to the Plaintiff within 28 days timeframe.

Dated at **Suva** this **21st** day of **August** ,2025.




VISHWA DATT SHARMA
PUISNE JUDGE

Cc: *Naidu Lawyer, Suva*
Messrs. J K Singh Lawyers, Sigatoka
Nilesh Sharma Lawyers, Suva
ITLTB, Suva
Fiji Sports Council, Suva
The Registrar of Titles, Suva