

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 238 of 2006

BETWEEN: SULTAN MOHAMMED KHAN

PLAINTIFF

AND: THE OFFICIAL RECIEVER

1st DEFENDANT

AND: FIJI ISLANDS MARITIME SAFETY ADMINISTRATION

2nd DEFENDANT

Appearances:

Plaintiff - Mr. D. Sharma & Mr. W. Mohammed (R Patel Lawyers)

1st Defendant - Ms V. O. Solimailagi & Ms. A. Harikishan (Office of AG)

2nd Defendant - Mr T. Kilakila (MSAF)

Date of Hearing: 5th June 2025

Judgment

Assessment of Damages

A. Introduction

[1] On 31st October 2024 on the issue of liability of the Plaintiff's vessel and its sale under a vesting order, I found as follows:

- “(a) The Official Receiver was at fault in applying for a Vesting Order over Sultan Mohammed Khan's Vessel.*
- (b) The Official Receiver is liable to pay Sultan Mohammed Khan damages. The quantum is to be assessed.*
- (c) FIMSA was at fault in respect of the delay in registering the change in ownership to KSC then to Sultan Mohammed Khan.*
- (d) FIMSA is liable to pay Sultan Mohammed Khan damages. The quantum is to be assessed.*
- (e) Each Defendant is to pay Sultan Mohammed Khan \$2000.00, which is summarily assessed, within 21 days.”*

[2] The parties were heard on damages. The plaintiff gave evidence. The Defendants called George Atalifo.

B. Submissions

[3] Following the hearing the submission were filed. I have perused and considered them.

D. Determination

[4] The term damages are defined by Lord Hailsham L.C in **Cassell & Co Ltd v Broome and another, [1972] 1 All ER 801** as that *“of all the various remedies available at common law, damages are the remedy of most general application at the present day, and they remain the prime remedy in actions for breach of contract and tort. They have been defined as 'the pecuniary compensation, obtainable by success in an action, for a wrong which is either a tort or a breach of contract'. They must normally be expressed in a single sum to take account of all the factors applicable to each cause of action and must of course be, expressed in English currency”*.

[5] The plaintiff has through its amended statement of claim filed on 18th September 2006 sought; special damages (as pleaded under paragraph 40), general damages, interest and costs.

[6] The plaintiff claims he lost the vessel worth \$285,000.00. The vessel was repaired and upgraded after it was bought for \$20,000.00. In 2006 the vessel was 38 years old. To-date it would be 58 years old. According to the Plaintiff the vessel would have lasted for another 20 years with proper maintenance. The evidence of Mr. Atalifo, a Marine Surveyor by contrast was that vessel would be way above 20 to 30 years of life expectancy of vessel in 2025. He further elaborated that as vessels get old they require more maintenance.

[7] The vessel was worth \$285,000.00 in 2006. It was worth \$65,000.00 in 2000 according to the Billet Wright Report. The plaintiff having succeeded is entitled to the cost of replacement of the vessel. The type of vessel he lost no longer operate in Fiji. The estimated cost of replacement of the vessel now would range between \$800,000.00 to \$1,000,000.00. The **plaintiff is awarded \$800,000.00 for the replacement cost** of the vessel.

[8] Loss of income over the years, shipping franchise was conditional on the Plaintiff securing insurance cover for the hull, machinery and equipment for the vessel, protection and indemnity for passenger and cargo risks for the vessel and workers compensation for Allied Shipping Company. According to the Plaintiff the vessel was seized before he could pay for the insurance. On the evidence before me I note that the plaintiff was never offered a full franchise contract. Parties were in talks. Certain conditions needed to be fulfilled. No losses can be added for incomplete contracts and unfulfilled conditions. It would be speculation on my part if I added such as a loss to the plaintiff.

- [9] The plaintiff gave evidence that charters of the vessel which fluctuated. He could earn up to \$15,000.00 per month. A charter per day would be \$3500.00. According to him the vessel was seized from him on the eve of sail to Lomaiviti. The vessel was seized with passengers and cargo. This evidence is not refuted.
- [10] On the average income of \$15,000 per month. The overhead and other related costs being 35%. The profit of the plaintiff would have been \$9,750.00 per month. Which comes to \$117,000.00 per annum. The time period being May 2006 to June 2025. Total period taken as 19 years. $19 \times \$117,000 = \$2,223,000.00$. **Loss of income is \$2,223,000.00.**
- [11] Plaintiff claimed for loss of house. The house was in Ragg Avenue. It was jointly owned. It was a family home. According to the plaintiff it was bought in 2003. He stated that due to loss of income he could not meet repayments. It was sold under a mortgagee sale. I have perused the statement of claim (amended) of 18th September 2006. None of these are pleaded. The plaintiff is bound by his pleadings. The plaintiff should have given the defendants access to facts which would make calculations on those possible. Not particularizing them in the statement of claim denied the defendants that opportunity. For these reasons, it is refused.
- [12] The plaintiff's business was taking off, not at its peak as is being submitted for the plaintiff. It had the potential for growth. That growth depended on a number of factors. I would not speculate on future losses as the plaintiff is being awarded loss of vessel to its current value and loss of income to current year. Interest and costs are also awarded.
- [13] The object of an award of damages is to give the plaintiff compensation for the damage suffered. The heads or elements of damage recognizes it as divisible into 2 main groups: pecuniary and non-pecuniary loss. The former comprises all financial and material loss incurred, such as loss of business profit. The latter comprises all losses which do not represent an inroad upon a person's financial or materials assets.
- [14] The plaintiff is awarded interest on the sum awarded at a rate of **3.5 per cent per annum**. Furthermore, summarily assessed costs in the sum of \$10,000.00 are awarded.

E. Court Orders

The Defendants are to pay the Plaintiff as follows:

- (a) **\$800,000 as replacement cost of vessel.**
- (b) **\$2,223,000.00 as loss of income.**
- (c) **Interest at a rate of 3.5% per annum on the loss of income.**
- (d) **Costs in the sum of \$10,000.00.**

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Chaitanya S. C. A. Lakshman

Puisne Judge
22nd August 2025

