

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA, FIJI
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 138 OF 2017

BETWEEN : **HARISH CHAND** t/a iTaukei Food industries Ltd of Lot 9, Carreras Road, Votualevu, Nadi
PLAINTIFF

AND : **GLOBAL FOOD EXPORT & IMPORT (FIJI)** having its registered office at 193 Victoria Parade, Suva.
1st DEFENDANT

AND : **VIMAL KRISHNA NAIDU** of 193 Victoria Parade, Suva, and Director
2nd DEFENDANT

BEFORE : A. M. Mohamed Mackie-J.

COUNSEL : Plaintiff absent and no appearance for him.
Ms. Naidu J. with Ms. Reddy S. for the 1st & 2nd Defendants.

DATE OF TRIAL : 5th June 2025.

DATE OF JUDGMENT : 26th September 2025.

JUDGMENT

A. INTRODUCTION:

1. This is an action commenced by the Plaintiff by filing his Writ of Summons and the Statement of Claim on 11th July 2017 seeking the following reliefs against the both the Defendants.
 - i. *\$110,000.00 (One hundred ten thousand dollars) for losses resulting from the Defendants' interfering the Plaintiff's business by issuing the Distress Rent Notice.*
 - ii. *An injunction against the Defendant from interfering with the Plaintiff's business;*
 - iii. *Damages in the sum of \$5,000,000.00 (Five Million Dollars) ; and*
 - iv. *Any other relief this court may deem just.*
2. The Defendants filed their joint Statement of Defence, together with a counterclaim, wherein, having admitted the averments 1 to 7 in the Plaintiff's Statement of Claim and denied the rest of the averments therein, moved for the following reliefs on their counterclaim against the Plaintiff.

- a. *Judgment for the First Defendant in the sum of \$200, 000, 00 (Two Hundred Thousand Dollars) for loss of rental from November 2016 to August 2017.*
 - b. *The plaintiff to give the Defendants possession of the property known as Crown Lease no- 11532 on SO 14 18 known as Tavanasaiasi & Muasara , in the land of Viti Levu and in the District of Sigatoka having an area of 4.0474 hectares.*
 - c. *General Damages for illegal occupation of the property known as Crown Lease no- 11532 on SO 14 18 known as Tavanasaiasi & Muasara , in the land of Viti Levu and in the District of Sigatoka having an area of 4.0474 hectares.*
 - d. *Interest at 10% percent per annum on the sum of \$32,251.44 from the 1st day of May ,2007 to the date of judgment under the Law Reform (Death & Interest) (Miscellaneous) Clauses) Act*
 - e. *Costs on a Solicitor / Client indemnity basis.*
3. The plaintiff in turn filed his Reply to Defence and the Defence to Counterclaim on 26th October 2017 denying the counterclaim and moved for the dismissal of the same.
 4. After completion of all pre-trial formalities, when the matter came up for trial before me on 5th June 2025, as the Plaintiff was absent and unrepresented, for the reasons given in the minutes, the plaintiff's action was dismissed. Subsequently, the Court proceeded for trial on the Counterclaim preferred by the Defendants, wherein the 2nd Defendant, being the Director of the 1st Defendant Company gave evidence by marking annexures from "Dex-1" to "Dex-5", particulars of which are as follows.
 - a. **Dex-1-** Copy of the Lease No-09754 on which the subject land is owned by the 1st Defendant.
 - b. **Dex-2-** Copy of the Mortgage by the Defendants to the Bank of Baroda.
 - c. **Dex-3-** copy of the COMMERCIAL LEASE & EQUIPMENT AGREEMENT between the Plaintiff and the Defendants.
 - d. **Dex-4-** Copy of the DEMAND NOTICE sent by the Bank of Baroda unto the 2nd Defendant seeking the repayment of Mortgage arrears.
 - e. **Dex-5-** Copy of the letter sent by the 1st Defendant unto the Plaintiff demanding the payment of the arrears Lease Rental and the vacant possession.

B. BACKGROUND:

5. The 1st Defendant, being a Company (as the Landlord) and the 2nd Defendant, being a Director thereof entered into the Commercial Lease & Equipment Agreement with the plaintiff (as tenant) on 16th November 2016, for the plaintiff to take on Lease the subject property for two years, along with the SAWMILL therein for the plaintiff to operate the Sawmill . The Plaintiff had the liberty to renew the same for further period and to purchase the same subsequently.

6. The payment of Lease Rental by the Plaintiff payable to the Defendants on account of the Lease agreement, including for the usage of the equipment at the Sawmill, was to be at the rate of \$50.00 for the first 300 cubic meter of sawn timber, and for every other additional cubic meter of sawn timber a sum of \$105, 00.
7. The Plaintiff (Tenant) was to advise the 2nd Defendant, the Director of the 1st Defendant, the details (quantity) of the sawn timber by utilizing the 1st Defendant's (Company's) equipment (Machineries) fixed there , which details the Defendants will not dispute, and upon which the 2nd Defendant will raise and dispatch the invoices to the plaintiff -tenant for the payment.
8. The Defendants on or about 10th May 2017, allegedly, in breach of the Agreement, issued the plaintiff with a Distress for Rent Notice claiming an unpaid rent in a sum of \$140,700, Pursuant which the Defendant's agents entered the lease and stopped the Plaintiff's saw milling operations for about 11 days.
9. As a result, the Plaintiff claimed for damages in a sum of \$110,000.00 from the Defendants as losses on account of interfering with his business, and damages in a sum of \$5,000.000.00 (Fifty Million Dollars). Conversely, the Defendants claimed \$200,000.00 for loss of rental from November 2016 to August 2017, damages for illegal occupation of the property, together with 10% interest per annum on the sum of \$ 32,251.44.

C. ANALYSIS:

10. The Plaintiff's action has already been dismissed due to non-prosecution. What is left for consideration before me is the Defendants' counterclaim. The materials before this Court for the adjudication of the Defendants' counter claim against the plaintiff are the Defendants' Pleadings, the 2nd Defendant's Short Oral and Documentary evidence confined to the aforesaid 5 annexures described in paragraph 4 above.
11. There is no tangible evidence from the 2nd Defendant as to how the alleged Rental arrears was arrived at. When he was questioned to the effect how much rental income was supposed to be received during the time material, his answer was very vague. He replied to the effect "**About two Hundred something.....** (vide page 4 of the transcript)
12. When he was questioned further as to how they decided on the Rental amount without any particulars of Sawn Timber, his answer was "**Like other Saw Mills was... rental, so I just based on that we took out the figures.** (Vide page 5 of the transcript). Apart from this unconvincing evidence, there is no any other evidence to show exactly that the Rental had fallen arrears up to such an amount and it was well and truly due as claimed by the Defendant.
13. The property was given on rental as per the agreement on the basis that the rental would be paid according to the volume of production (Sawn Timber) and not for just occupation. Thus, it is the onus of the Defendant- claimant that the Timber Sawing had actually taken place during the time material for around two years. If the Plaintiff was not

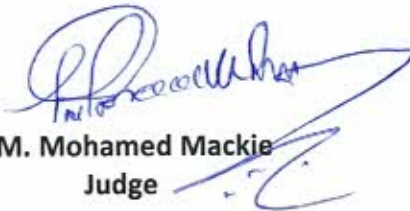
providing or divulging the volume of the Timber sawn during the time material, the Defendant could have moved before the Court to require the Plaintiff to submit the particulars needed for the calculation of the Rental. But the Defendant failed to take such a move.

14. As per the 2nd Defendant's evidence, the Plaintiff said to have operated from the year 2015. But, the Agreement was entered on 16th November 2016. However, if the Plaintiff had operated from 2015 (month is not mentioned), the Defendant should have had in its possession some evidence on the volume of Sawing and payments of Rental on a previous instance or instances. The Defendant appears to be taking a stance that payments were not made at all. But, the Demand letter marked as "Dex-5" has been sent only on 28th March 2017 without mentioning the amount of any arrears. At least, the Defendant could have produced in evidence the Distress notice, which would have shown the alleged amount in arrears.
15. Thus, the Court cannot decide the amount due on mere assumptions. It is the duty of the Defendant to satisfy the Court with necessary and convincing evidence to decide on the Rental, which is allegedly due from the Plaintiff. The rest of the evidence adduced by the 2nd Defendant was on the Mortgage facility that the 1st Defendant had obtained, from the Bank of Baroda, about falling of arrears on it and receipt of the demand letter from the said Bank. This evidence does not assist the Court in determining the alleged arrears of rental.
16. The next relief sought by the Defendants is the possession of the property in question. The 2nd Defendant in his evidence has admitted that the possession of the property is now with them, as the Plaintiff has already left the property. Another relief sought was General damages, which I am not inclined to grant considering the absence of evidence on it.
17. However, the Defendants in paragraph 6 of their Counterclaim have admitted that the plaintiff had paid \$37,000.00 to Messrs. Neel Shivam Lawyers to be paid to the 1st Defendant's previous tenants on account of the investment done in the property. This shows that the Plaintiff has indirectly contributed for the improvement of the Defendants' property.
18. Further, as per the paragraph 13 of the Counterclaim, the lease is said to be a protected one and the consent of the head lessor was to be obtained before the Agreement (Dex-3) comes in to effect. In paragraphs 14 and 15 of the Counterclaim, the Defendants admit that the consent by the head Lessor was not granted as there was arrears of rental to the Head- Lessor, and as such the occupation of the plaintiff was illegal. It was the duty of the Defendants to clear the arrears in order to obtain the consent.
19. When the Defendants have taken up a position in their Pleadings that the occupation of the plaintiff was illegal due to want of consent, on the same breath they cannot demand rental or damages on account of the occupation by the Plaintiff.

20. In view of the above discussions, the issues Nos 40 to 43 raised in relation to the counterclaim made by the Defendants cannot be answered in favor of the Defendants.
21. For the reasons discussed above, I decide that the Defendant have not proved their counterclaim against the Plaintiff. Thus, I decide to dismiss the Counterclaim, however with no costs.

D. FINAL ORDERS:

- a. The Defendants' Counterclaim against the plaintiff fails.
- b. The Defendants' counterclaim filed on 13th September 2017 is dismissed.
- c. No orders for costs.


A.M. Mohamed Mackie
Judge



At the High Court of Lautoka on this 26th day of September 2025.

SOLICITORS:

For the Plaintiff:

Messrs. Nacolawa & Co., Barristers & Solicitors

For the Defendant:

Messrs. Jyoti Legal, Barristers & Solicitors