

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 189** of **2023**

BETWEEN: **ANDREA MARIA MAGDALENA STEGMEIR**, of Lot 25 Coast Road, Soqulu Estate, Taveuni, Domestic Duties.

PLAINTIFF

AND: **ANTON SCHEWENK** Formerly of Lot 25 Coast Road, Soqulu Estate, Taveuni, Retired but now Address unknown.

FIRST DEFENDANT

AND: **THE REGISTRAR OF TITLES.**

SECOND DEFENDANT

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

COUNSEL: **Ms. Ben S.** for the Plaintiff

Mr. Kumar S. for the First Defendant

Ms. Mangroo C for the Second Defendants

DATE OF JUDGMENT: 13th November, 2025

JUDGMENT

[Declaratory and Orders]

Introduction

1. The Plaintiff filed a substantive Originating Summons together with an affidavit in support and sought for the following declaration and orders:
 - (a) A declaration that the Plaintiff on reliance on a promised made by the First Defendant in Germany to transfer the Certificate of Title No. 37118 to the Plaintiff on arrival in Fiji, the Plaintiff left Germany to settle in Fiji.
 - (b) A declaration that the First Defendant upon near completion of the dwelling house and other building constructed on Certificate of Title No. 37118 deliberately left the property to avoid having to complete the transfer of Certificate of Title No. 37118 to the Plaintiff.
 - (c) An order for waiver of the Ministerial Consent for the transfer of the Certificate of Title No. 37118 to the Plaintiff.
 - (d) An order that the second Defendant endorse the transfer of Certificate of Title No. 37118 to the Plaintiff forthwith.
 - (e) Cost of this application.
 - (f) Such further orders and or declaration this honourable Court deems just and fair in the circumstances.
2. The Plaintiff relied on the affidavit deposed by her on 22nd June 2023.
3. Both parties to the proceedings furnished Court with written submissions and made oral submissions during the hearing.

Plaintiff's case

4. Seeking grant of, inter alia, six (06) orders as per her Originating Summons.
5. The First Defendant purchased a vacant freehold land on Soqulu Estate in the island of Taveuni 49 years ago described as Certificate of Title No. 37118 (Soqulu Estate).
6. In February 2016, the First Defendant gave her a written promissory note and verbally promised to transfer the Certificate of Title No. 37118 to her.

7. In November 2016, the First Defendant contacted another lawyer who prepared transfer documents for execution by the First Defendant, but the First Defendant reneged from his promise and did not execute the transfer documents.
8. On their return journey to Germany, the First Defendant assured her that whilst away in Germany, First Defendant will find a lawyer and transfer the land title to her. She incurred expenditure of \$17,428.57 on clearing the bush land.
9. By January 2018, the land title was still in the First Defendant's name. Instead, the First Defendant created a Will to confirm his intention.
10. The First Defendant told her on 11 April 2021 that he will not transfer the property to her by way of natural love and affection as promised.
11. The First Defendant refused to sign the promissory note on 7 June 2021.
12. A caveat was placed on the property forbidding any transaction of the property.
13. Seek for orders sought in the relief.

First Defendant's Contention

14. Filed and relied on his affidavit in answer.
15. Plaintiff and First Defendant were in a de-facto relationship from March 2016 to 02nd June 2021 and the relationship broke down.
16. The Plaintiff did not want to vacate First Defendant's property comprised in Certificate of Title No. 37118, Soqulu, Nadaqa Nakawakawadawa and lives therein forcefully.
17. The First Defendant in his affidavit in answer has responded to the Plaintiff's affidavit in support.
18. The caveat lodged on the said property are based on purchase and matrimonial property which are two (2) contradicting factors.
19. There is no transfer nor any intention to transfer the property to the Plaintiff.
20. Plead that the Plaintiff's application be dismissed.

Determination

21. The Plaintiff commenced summary proceedings against the First Defendant [Second Defendant being the nominal Defendant per se].
22. Both parties to the proceedings in their respective affidavits and submissions appraised Court of triable issues.
23. Some of the substantive issues that have been raised are as follows:
 - (a) Whether the Plaintiff and the First Defendant were in a de-facto relationship and whether their relationship subsist to the current.
 - (b) Was there any ongoing/pending Court cases with regards to the First Defendant's properties and his other assets blocked by the Court Treasury in Frank Furt, Germany on property distribution case in Fiji Family Court?
 - (c) Under whose name is the Fiji Certificate of Title No. 37118 at Soqulu Estate in Taveuni?
 - (d) Was this property Certificate of Title No. 37118 promised to be transferred by the First Defendant to the Plaintiff?
24. There are many other triable issues that come to mind when this Court had perused the affidavits of the Plaintiff and the First Defendant.
25. The issues hereinabove needs to be investigated upon and a determination made in these proceedings.
26. The only appropriate, just and fair manner in which this Court can determine the substantive impending issue of whether the First Defendant promised to transfer the Certificate of Title No. 37118 to the Plaintiff or not is to be substantiated by documentary and *viva voce* evidence.
27. Therefore, the proceedings should have been commenced by the Writ Action whereby all impending triable issues would have been challenged allowing both parties to put before court All documentary and relevant evidence to establish their respective cases and this court would proceeded to deliver its judgment in a just and fair manner.
28. Once one must bear in mind that impending cases are dealt with and determined on facts, evidence and the merits of the case before it.
29. This case cannot be dealt with and determined summarily and therefore I have no alternative but proceed to dismiss the action in its entirety.

Costs


30. the matter proceeded to full hearing and parties have filed certain documents and submissions and argued the matter orally.
31. It is only just and fair that I order the Plaintiff to pay the Defendant a sum of \$650 dollars as summarily assessed cost within 21 days time frame.

Orders

- (i) The Plaintiff's originating summons is dismissed in its entirety.
- (ii) The Plaintiff to pay the defendant a sum of \$650 dollars as summarily assessed cost within 21 days time frame.
- (iii) The file is closed.

Dated at **Suva** this **13th** day of **November** , **2025**.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Andrea, Soqulu Estate, Taveuni
Mitchell Keil Lawyers and Notary Public, Suva
The Registrar of Titles, Suva