

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Case No HBC 159 of 2023**

**BETWEEN** : **SAMSHUR BEGG** of Naulu Road, Nakasi in the Republic  
of Fiji.

**PLAINTIFF**

**AND** : **KAMPTA PRASAD** of Lot 25 Bautikina, Tailevu in the  
Republic of Fiji

**1<sup>st</sup> DEFENDANT**

**AND** : **LUISA NAGASAU** of Lot 25 Bautikina, Tailevu in the  
Republic of Fiji

**2<sup>nd</sup> DEFENDANT**

**Coram** : Banuve,J

**Counsels** : Khan &Co, Barristers & Solicitors for the Plaintiff  
Legal Aid Commission for the 2<sup>nd</sup> Defendant

**Date of Hearing** : 25 March 2025

**Date of Ruling** : 28 November 2025

# RULING

## A. Introduction

1. A Writ of Summons with a Statement of Claim indorsed was filed by the Plaintiff on 26 May 2023 setting out;
  - (i) The Plaintiff had entered into an agreement to sub-lease land from the Defendants pursuant to an agreement dated 24 August 2022, to farm and cultivate crops on the land for a term of 40 (forty) years from 24 August 2022, the terms and conditions as implied under the *Property Law Act* [Cap 130].
  - (ii) That the Plaintiff made substantial investment and improvements on the leased land, pursuant to the agreement, with the total value/costs amounting to over \$75,000.00 (Seventy Five Thousand Dollars)
  - (iii) That crops were ready for harvesting from early 2023 and would, if harvested and sold, fetch the Plaintiff and ideal market value of \$375,000.00 (Three Hundred and Seventy Five Thousand Dollars)
2. That in breach of the sub-lease agreement the actions of the First and Second Defendants have caused loss and damage to the Plaintiff particularized as;
  - (i) The estimated value and cost of the losses and damages incurred to be about \$190,000.00 (One Hundred and Ninety Thousand Dollars);
  - (ii) The projected loss of profits at the rate of \$75,000.00 (Seventy Five Thousand Dollars) per year for the duration of the lease period estimated at \$3,000,000.00 (Three Million Dollars).
3. Specifically, the breach is caused by the First Defendant refusing to allow the Plaintiff to enter and farm the land and the interference continues, despite demands made of the First Defendant to desist from doing so.
4. The Plaintiff seeks orders against the Defendants jointly and severally:-

- (a) Injunction restraining the Defendants from interfering with the Plaintiff's occupation and use of the land;
  - (b) Specific Performance of the Agreement;
  - (c) Special Damages in the sum of \$180,000.00 (One Hundred and Eighty Thousand Dollars);
  - (d) General Damages;
  - (e) Costs on an indemnity basis.
5. The Defendants, who were married when this matter was initiated have since separated, with the First Defendant indicating in a letter to the Court dated 2 July 2023, that he supports the Plaintiff continuing to farm the Bautikina land, pursuant to the sub-leasing agreement of 24 August 2022, and rather, it is the Second Defendant, his estranged wife, who continues to obstruct the Plaintiff from using the subject leased land.
  6. Neither of the Defendants have filed a Defence.
  7. The Second Defendant was served with the copy of the Writ of Summons on 2 June 2023 together with a Motion seeking an Interim Injunction against the Defendants from entering the subject land.
  8. An Interim Injunction was granted by the Court on 22 May 2024, against the Defendants preventing them from obstructing the Plaintiff from exercising his rights under the Sub-Leasing Agreement dated 24 August 2022.
  9. The Plaintiff, filed a Notice of Motion on 3 October 2024, seeking an order that Default judgement be entered against the Defendants pursuant to the grounds set out in the Affidavit in Support deposed by the Plaintiff
  10. On 21 February 2025 the Second Defendant filed a Summons [Seeking leave for an extended time to file and serve the Acknowledgment of Service and Statement of Claim].

11. The Court has decided to deal with both applications to save time.

**Notice of Motion; Default Judgment 3 October 2024**

12. The grounds upon which default judgment are premised, include;

- (i) From 16 June 2023 when the matter was first called in Court, the Defendants have neither filed, nor served a Notice of Intention to Defend or a Statement of Defence.
- (ii) Subsequent to the grant of an Interim Injunction on 22 May 2024, the Plaintiff re-entered the subject leased land under the Agreement dated 24 August 2024, only to find that all the crops had been harvested or destroyed.
- (iii) That the total value of the crops lost amounted to a value of \$375,0000 (Three Hundred and Seventy Five Thousand Dollars)
- (iv) In the interest of justice, default judgement is sought against the Defendants.

13. The Second Defendant filed an Affidavit in Opposition on 21 February 2025 in which she states that she did not file a Defence because;

- (i) As a lay person, she was unaware of the procedure for filing legal documents , nor aware that she needed a solicitor to represent her.
- (ii) An application by the Second Defendant, for the grant of legal aid assistance was only approved on 26 March 2024.
- (iii) On 16 May, 2024 the Second Defendant's solicitors had written to the Plaintiff's solicitors seeking their consent to file an Acknowledgement of Service and Defence, out of time, but have not had a response,
- (iv) Denies destroying the crops cultivated by the Plaintiff and said that the interim injunctive order protected the interest pf the Plaintiff.

**Summons {Seeking leave for an extended time to file and serve the Acknowledgment of Service and the Statement of Defence}**

14. A Summons was filed by the Second Defendant on 21 February 2025 seeking leave to file and serve an Acknowledgment of Service and Statement of Defence out of time, upon the same grounds outlined in sub-paragraphs 13(1)-(iv) here with one additional ground;
- (i) The agreement to sub-lease the subject land was done without the prior consent of ILTB and therefore null and void.

**B. Analysis**

15. The Application by way of motion for default judgement filed on 3 October 2024 must succeed against the First Defendant , because he did not file an Acknowledgment of Service of the Writ of Summons, or file a Statement of Defence, and the Court therefore enters default judgement against him
16. The entry of judgment against the First Defendant has ramification for the Second Defendant, because the specific allegation of wrongdoing are pleaded against the First Defendant. These are borne out under the following paragraphs (relevant parts underlined);

Particulars of Loss of Crop

6. *THAT the following crops were ready since from early this year and if allowed to be harvested in time, then the said crops when sold would have fetched the Plaintiff an ideal market value:-*
- (i) *3 acres of ginger at the rate of 30 tons per acre amounting to 90 tons which equates to 180,000 kg of ginger which has a sale price of \$2 per kg*
- (ii) *500 kg of cucumber at the rate of \$20 per kg which equates to \$10,000.00.*
- (iii) *Other cash crops valued at \$5,000.00*
- (iv) *The total value of the crops amount to the um of \$375,000.00*

(v) THAT the First Defendant unlawfully and illegally stopped the Plaintiff from entering the land to harvest the crops.

(vi) *THAT the act and actions of the First Defendant and the Second Defendants are in breach of the said Agreement and the Plaintiff has suffered loss and damages.*

17. In reviewing the pleadings set out in sub-paragraphs 6 (v) and (vi) of the Statement of Claim, the Court finds that the primary Defendant<sup>1</sup> identified by the Plaintiff, as responsible for unlawfully and illegally stopping the Plaintiff from entering the land and harvesting crops, is the First Defendant. The Court finds that the Second Defendant is named in sub-paragraph (vi), only because she is a party to the sub-leasing agreement, which has been breached by the unlawful actions of the First Defendant.
18. Given the nature of the case pleaded by the Plaintiff against the First Defendant, it is futile for the Second Defendant to seek to file a Defence late, when the primary Defendant, the First Defendant has conceded liability and the Court has entered default judgement against him, on that basis.
19. The Court does not find the opposition filed by the Second Defendant as credible. The Second Defendant does not seek to explain in any coherent sense why she has not filed a Defence, despite being served with the Writ of Summons, more than 2 years ago. Moreover, the plaintiff that she was not aware that she needed a solicitor to represent her rings hollow, given an interim injunction was granted against the Defendants on 22 May 2024, and according to the First Defendant has not been heeded by the Second Defendant.
20. There is little merit in relying on a case like *Rukshana Bibi v Mohammed Shaheed*- Civil Action No HBC 213 of 2015. It is distinguishable from the current matter where the Motion seeking default judgement has been filed pursuant to Order 19, rule 2 of the *High Court Rules 1988*, as the claim against the Defendants are for a liquidated demand.

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<sup>1</sup> See also **Particulars of Loss and Damages**- paragraph 6(viii) *THAT the First Defendant refuses to allow the Plaintiff to enter and farm the said land and this illegal interference and stoppage continues to date despite demands being made to the First Defendant from doing so.*

21. The Second Defendant has also filed a *Summons (Seeking leave for an extended time to file and serve the Acknowledgment of Service and the Statement of Defence)*, on 21 February 2025 wherein she raises the same issues deposed in the Affidavit in Opposition against the Motion for Default Judgment, with the additional ground that the Agreement to Sub-Lease dated 24 August 2022 was done without the prior consent of ILTB, and therefore null and void.

22. Section 12(1) of the *I-Taukei Land Trust Board Act [Cap 134]* states;

*“Except as may be otherwise provided by regulations made hereunder, it shall not be lawful for any lessee under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sub-lease or in any other manner whatsoever without the consent of the Board as lessor or head lessor first had and obtained. The granting and holding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void”*

23. The Sub-Leasing Agreement dated 24 August 2022 were drawn up by the parties, and is not clear in parts, however it is laid out (note underlining)

**SUB LEASE OF PART OF LOT 25 AT BAUTIKINA, TAILEVU FOR FARMING ONLY  
ON 3 ACRE LAND**

*Agreement is made on 24 August 2022 between Mr Kampta Prasad/Luisa Nagasau as leaseholders of Lot 25 at Bautikina, Tailevu and Mr Shamshur Begg f/n Jahur Begg of Naulu Road, Nakasi on the following condition.*

**Condition**

1) Tenant (Mr Shamshur Begg) DL 691238 will pay Kampta Prasad and Luisa Nagasau a sum of \$3000 as total payment valid for 40 years. If Kampta Prasad and Luisa Nagasau decided to sell this land to different parties they will be liable to pay investment damages to Shamsur Begg (Three Thousand Dollars) as upfront good will which will be paid as follows:

A) \$1000.00 (One Thousand Dollars) to be paid on first inspection and balance of \$2000.00 after 7 months when the goods will be collected and sold.

- B) There after Mr Shamsur Begg will pay \$500 (Five Hundred Dollars) yearly rent in instalments of \$250 every six months (Two Hundred and Fifty Dollars) will be paid after 6 months commencing from the day the land will be utilized
- C) Above agreement will be valid for 40 years and Mr Shamshur Begg will pay the lease and use the land till he wants and Mr Shamshur Begg can withdraw this agreement anytime he wishes

**Is the Agreement a ‘dealing’ that contravenes section 12 (1) of the ILTB Act [Cap 134]?**

24. The Supreme Court<sup>2</sup> recently re-iterated that the attitude to be taken in viewing transactions not sanctioned under provisions such as section 12 of the Act, are that parties “*should be presumed to contemplate a legal course of proceeding rather than an illegal one,*” as articulated by the Privy Council in *Kulamma v Manadan* –Privy Council Appeal No.7 of 1966, and the Court finds the dicta of the Privy Council as apposite to the construction of the terms of the Sub Leasing Agreement, of 24 August 2022 currently before the Court; (note underlining)

*“ The parties should be presumed to contemplate a legal course of proceeding rather than an illegal. Apart from this clause there is nothing in the Agreement to lead to the conclusion that [Sabhapati] was disposing of his interest, or of half of his interest in the land, he remained the lessee and as between himself and the lessors remained responsible for the rent and for complying with the terms of the tenancy; the fact that contractually the respondent assumed responsibility for payment of or provision for the rent (the Agreement is not clear precisely how the rent was to be paid) and that the terms of the tenancy are fully compatible with a purely contractual agreement under which Sabhapati remained the owner of the tenancy”<sup>3</sup>*

25. The Court construes the terms of the **Sub-Leasing Agreement** of 24 August 2022 together with another Agreement, the **Instrument of Tenancy (ILTB No: 4/14/1184**, between ILTB and Luisa Nagasau/Kampta Prasad registered on 11 December 2012<sup>4</sup>, and conclude along the lines reached by the Privy Council in *Kulamma v Manadan* that;

<sup>2</sup> *Inspired Destinations ((Inc) Ltd v Grand & Others* –Civil Petition No CBV 0003 of 2020 per Keith JA

<sup>3</sup> *Kulamma v Manadan* –Privy Council Appeal No 7 of 1966 at p 3, per Wilberforce, LJ

<sup>4</sup> Annexure LN 1-Affidavit in Opposition of Luisa Nagasau dated 16 May 2024

- (i) the **Sub-Lease** is not a 'dealing' under section 12(1) of the Act but a 'purely contractual agreement,' enabling the Plaintiff to farm the subject land only,<sup>5</sup> and the monies payable by the Plaintiff under the Agreement to the Defendants is for the use of the land, for cultivation purposes.
- (ii) The primary registered **Instrument of Tenancy** of 11 December 2012, remains between ILTB and the Defendants (Prasad/Nagasau), who continue to be responsible for rental and other conditions of the Tenancy.
- (iii) Should the Defendants wish to sell the Tenancy they would be liable to pay investment damages to the Plaintiff

26. Given this finding, the Court finds little merit disclosed by the Second Defendant in any of the grounds she relies on to justify the extraordinary delay taken to file either an Acknowledgment of Service or a Statement of Defence and it is therefore refused and judgment in default affirmed against her also.

**FINDINGS:**

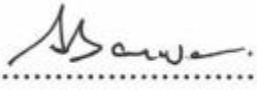
1. **Summons (Seeking leave for an extended time to file and serve the Acknowledgment of Service and the Statement of Defence) filed on 21 February 2025 by the Second Defendant is refused and dismissed.**
2. **Default Judgment entered against the Defendants on the terms set out in the Notice of Motion filed on 3 October 2024;**
3. **Injunction restraining the Defendants from interfering with the Plaintiff's peaceful occupation and use of land in issue;**
4. **Specific Performance of the said Agreement;**
5. **Special Damages in the sum of \$180,000.00 One Hundred and Eighty Thousand Dollars)**

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<sup>5</sup> Note the title of the Sub-lease-

6. General Damages to be assessed
7. Costs summarily assessed at \$1,500.00 (One Thousand Five Hundred Dollars) to be paid by the Defendants to the Plaintiff to be paid with 14 days of this Ruling.



  
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Savenaca Banuve  
Judge

Dated at Suva this 28<sup>th</sup> day of November, 2025.