

IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 02 of 2019

BETWEEN: **LUKE SOKIVETA GONEROGO** of Lot 19, Sukanaivalu Road,
Suva, Driver

PLAINTIFF

AND: **JOHN RILEY GREGORY KETECA YALOVIGAU** of Nabua, suva,
Unemployed; **KAMELI ALAN NIUBALAVU YALOGIVAU** of Lot 20
Sukanaivalu road, Nabua, Suva and **APISALOME SIK Aidoka**
SERU YALOGIVAU of England, British Army Officer – all being the
representatives in the Estate of the late **MARIKA SERU** formerly
of Lot 20 Sukanaivalu Road, Nabua, Suva, Military Officer for the
purpose of this proceeding where no personal representative has
been appointed.

DEFENDANTS

AND: **NATIONAL FIRE AUTHORITY** a body corporate established under
the National Fire Authority Act 1994 and having its registered office
at Argo Street, Walu Bay, Suva.

THIRD PARTY

For the Plaintiff : **Mr. Buakula J.**

For the Defendants : **Not Present**

For Third Party : **Ms Muir M.**

Date of Trial : **2 June 2025**

Before : **Waqainabete-Levaci, S.L.T.T, Puisne Judge**

Date of Judgement : **13 March 2026**

J U D G E M E N T

(CLAIM FOR FIRE DESTRUCTION)

PART A - BACKGROUND

1. On 25 January 2017 a fire started at the residential dwelling of the Defendant caused by an alleged unattended fire from the kitchen Together with combustible items in the house, this enabled the fire to engulfed the Defendant's house and spread to the Plaintiff's property engulfing parts of the premises and causing damage to his belongings.
2. As a result, the premises was uninhabitable and the Plaintiff had to build a tin shack to reside in.
3. The Plaintiff now claims for damages to household items, damages to the dwelling house and expenses incurred in the claim amounting to \$83,036.40 with interest as special damages.
4. At the commencement of the proceedings, the Defendant denied the allegations alleging that the fire was accidental and that the delay in attending to the fire in his property coupled with inadequate water supply in the neighbourhood and the Plaintiff's retaining wall made of tyres as a slow heat combustible substance which enabled the spreading of fire to the Plaintiffs premises quickly.
5. The Defendant thereafter filed a third party notice a Claim against the third party for breach of statutory duty to respond effectively and quickly to the fire, to properly gather information on the existence of fire hydrants in that area and to quickly put the fire out and sort to indemnify themselves of the Plaintiffs claim.
6. The Third party filed their Statement of Defence seeking to rely upon statutory immunity under section 26 of the National Fire Services Act 1994 (referred to as the 'NFA Act') as amended that the extinction of fires was in accordance with the standards approved by the Authority in accordance with the NFA Act.
7. The Counsel for the Defendants had already withdrawn after failing to obtain proper instructions the late Marika Seru had passed.

8. Thereafter the children of the late Marika Seru appeared in Court in Person and agreed to be named as parties to the proceedings being beneficiaries and impending Administrators to the Estate of Marika Seru.
9. On the day of Trial, the Defendant's intending beneficiaries failed to appear nor to instruct another counsel and hence their Statement of Defence and Statement of Claim against the Third Party was struck off.
10. The Plaintiff was then called forward to submit his evidence at Trial on an undefended basis.

PART B – EVIDENCE AT TRIAL

11. Plaintiff called three witnesses. The first was the Plaintiff, who confirmed 25 January 2017 he was residing Lot 19 Sukanaivalu Road, Nabua and was aware of Mr. Marika Seru the Defendant residing next to him. He had left his workplace in Samabula and was travelling towards Nabua when his wife contacted him that something had happened at home. At Sukanaivalu Road he noticed the National Fire Authority (referred to as 'NFA') already there. He parked his vehicle and on reaching his home his wife and the defendant was standing outside. By this time the Defendants home was already burnt out. His house was a 2-bedroom wooden house and so as the Defendant's home. He admitted the two houses were 6 meters apart and both sat on Housing Authority leases. He admitted he owned the property and built the house in 2003 for \$22,000 and later extended the property for \$10,000. He could not recall what the items were in the house, there was a TV, a fridge and a gas stove and their clothes. There were two beds in the two bedrooms, which was more than \$10,000. When he reached his house the NFA was trying to put out the fire in the neighbor's home. He had paid off his home without insurance and asked the Defendant to loan him monies to pay for the destruction to the house and belongings. He informed him that Housing Authority had indicated that it could not make any payments from his insurance. He then sought assistance from the Lawyers who served a notice of demand on the Defendants. He admitted he lost his house and belongings valued at \$50,000 to \$60,000. He approached the NFA and paid for a Fire Report. Tendered was his receipt of the Fire Report from NFA. A fire report and pictures taken of the Destruction to the house was made. He identified the Defendant's house. When he arrived during the fire at his house and his neighbor did not tell me how the fire started until he read the Fire Report which stated it started from Marika Seru's house and spread to his house. He confirmed it was the negligence and recklessness of Marika Seru. He then built one lean beside the boundary worth around \$7000 to \$8000. He requests court to replace him with losses he sustained.

12. PW-2 was Mr. Nadrogoro a station officer at National Fire Authority (referred to as 'NFA') who can confirm that he was the investigation officer in 2017 and compiled an investigation report about the house in Sukanaivalu Road, Nabua owned by the Defendant. The report he compiled explained that the fire occurred on 25 January 2017 and the NFA received the call for fire services at 1453. At 1454 they attended the scene at that time. The estimated damage he opines is roughly valued at \$60,000 to Plaintiffs house and he was present on the scene. The fire fighters managed to extinguish the fire with two deliveries of two lengths of firefighting hose from the tank supply. The point of origin for the fire was where the fire started. The area of origin was at the kitchen because it sustained the greatest damage with the greatest loss, there was deep charring on the fire wall as it was exposed to heat, there was orange and reddish discoloration formed on the corrugated iron wall showing oxidation as it was exposed to the greatest heat and fourthly a charring of pollen within the structure indicating mass loss for the purlin area. Lastly, deep Charing in the wooden post as the post was more exposed to where the heat was coming from. He suspected it was from unattended cooking. The source of ignition was suspected to be the kerosene stove as there were deposits of the stove found on the site and take part of photo No 2.

13. PW-3 was Jimmy Choy who confirmed he was a fire officer in 2017 working for NFA and recalled the incident and was one of the officers that received a call for the NFA to attend at Nabua. Whilst travelling to the place of fire they saw thick smoke and on reaching the area the fire was fully engulfed. On reaching the scene, one of the two houses was already engulfed butane o was partly burnt. They attempted to save one that was party burnt. The house from where the fire originated was engulfed totally. He could not confirm who owned the house where the fire originated from, but he thinks it was Marika Seru's house. When they arrived at the scene they delivered three hoses to extinguish the fire. The wind direction contributed to the fire spreading to the Plaintiff's premises.

14. The following Exhibits were tendered by the Plaintiff:
 - (i) Lease No 514286 - Exhibit 1.
 - (ii) Letter of Demand to Defendants - Exhibit 2.
 - (iii) Fire Report Receipt - Exhibit 3.
 - (iv) Demand Notice - Exhibit 4.
 - (v) Fire Investigation Report with Photos - Exhibit 5.

LAW AND ANALYSIS

15. Having heard the parties and their evidence, the Court thereafter considered their submissions.
16. The Plaintiff argued that the three witnesses that gave evidence confirmed that the Plaintiff owned the property at Lot 19 Sukanaivalu Road in Nabu which caught fire from the Defendants' home. The Plaintiff gave evidence that he spent \$22,000 to build the house and \$10,000 for extensions. The NFA witness and investigating officer gave evidence that he compiled the Fire Report confirming that the fire originated from the Defendants premises, from a kerosene stove. The Plaintiff referred to the case of Caparo that the duty of care was owed by the Defendant, and the claimant must prove that harm was reasonably foreseeable. In Blyth -v- Birmingham they argued that negligence was the omission to do something a reasonable man would have conducted himself to do as a prudent reasonable man. The Plaintiff argued that there should have been someone in charge of the cooking as it involved hazardous fire. The Fire Report confirmed that the fire was caused by unattended cooking which the Defendant should have foreseen.
17. The Law on negligence caused from an escape of a matter which affected a neighboring property arose from common law in the case of Rylands -v- Fletcher (1866) LR 1 Ex Ch 265, 279/280 where Blackburn J stated:

'We think that the true rule of law is, that the person who for his own purposes brings onto his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by shewing that the escape was owing to the plaintiff's default; or perhaps that the escape was the consequence of vis major or the act of God; but as nothing of this sort is here, it is unnecessary to enquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is beaten down by the escaping cattle of his neighbor, or whose mine is flooded by the water from his neighbor's reservoir, or whose cellar is invaded by the filth of his neighbor's privy, or whose habitation is made unhealthy by the fumes and noise some vapors of his neighbor's alkali works, is damnified without any default of his own; but it seems reasonable and just that the neighbor, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbor's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing, it there no mischief

could have been accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences. And upon authority, this we think is established to be the law whether the things so brought be beasts, water or filth, or stench'

18. The law therefore is that there must be a duty of care for which there is proximity in relationship. That duty of care is to have been breached, and that breach of duty of care has brought about damages. This was expounded in the case of Balfour -v- Barty-King and Another Hyder & Sons (Building) Limited (1957) WLR 84 where an independent contractor of the Defendant was invited to thaw frozen pipes in her loft which contained combustible material, was held to be liable for the fire that originated from her premises and spread to his neighbors premises. They said:

"The precise meaning to be attached to 'accidental' has not been determined but it is clear from these last cited cases (Musgrove -v- Pandelis [1919] 2 K.B 43; 35 T.L.R 299 and Filliter -v- Phippard (1847) 11 ABD 347,354) that where the fire is caused by negligence it is not to be regarded as accidental. Although there is a difference of opinion among eminent text book writers whether at common law the liability was absolute or depended on negligence, at the present day it can safely be said that a person in whose house a fire is caused by negligence is liable if it spreads to that of his neighbor, and this is true, whether the negligence is his own....."

19. When considering the case principles in this matter, the Court turns to the case before it.

Duty of Care

20. The Plaintiff has submitted that the Defendant had a duty of care given the proximity of its property to that of the Plaintiff to ensure that nothing would escape from his property to the Defendants. According to the Fire Report which was tendered and accepted as evidence, the Report confirmed that the fire originated in the kitchen from a burning kerosene stove for a period of time and engulfing in flames thereby causing other materials in the kitchen to catch fire, as per the charring found in the kitchen walls which finally burned the house down.
21. The Plaintiff gave evidence that the Defendants premises is adjacent to his and that they are neighbors. He also admits that on the day in question, he was contacted by his wife and on arriving at his premises, saw the Defendants' premises totally damaged by the flames and his being engulfed with fire.

22. He alleges that the proximity of his premises to that of the Defendant rendered him a neighbor for which the Defendant failed to maintain a duty of care when the fire escaped from his home and burned his premises.
23. The Court finds that there was a duty of care and hence a proximity in the relationship between the Plaintiff and the Defendant as they were neighbors, residing adjacent to one another.

Breach of Duty of care and Liability

24. Having considered the Fire Report, the evidence from the Plaintiff, the report confirmed that the fire originated from the Defendants' premises, which he was occupying at the time of the fire. He does not contest his family relative residing with him was on the premises cooking when the fire engulfed his kitchen including the house and spread to the Plaintiffs house.
25. The Witnesses admitted that when they arrived at the scene, the fire was engulfing the Plaintiffs home. On investigation it was confirmed that it originated from the Defendants' premises.
26. As the owner of the property and occupier, the Defendant was liable for the actions of those who were within his household.

Claim for Damages

27. The Plaintiff claimed that he lost his entire home valued at \$22,000 and extensions worth \$10,000 because of the Defendants negligence. The Plaintiff relied on his testimony, recalling the belongings in the home and the cost of building his tin shack two-bedroom home. using his FNPF savings. Altogether the Plaintiff claimed a total sum of \$89,000 for the losses sustained.
28. In order to claim for damages, the Plaintiff must show that the actions of the Defendant was reasonably foreseeable to cause damages. (1) Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound) (No. 1) [1961] UKPC 1; 1961 AC 388, 426 (2) Overseas Tankship (UK) Ltd v Miller Steamship Co Pty (The Wagon Mound) (No-2) [1966] UKPC 1; (1967) AC 617, 636.)
29. The Fire Report confirmed that the fire had spread to the Plaintiffs premises caused by the strong fire and the uncontrolled force of nature, the winds. These damages were foreseeable where the fire had escaped. The Plaintiffs premises and his belongings were damaged as result of the fire.


30. The Plaintiff alleged the losses sustained to his residential premises amounted to \$50,000 to \$60,000 and belongings calculated at \$15,036.
31. However, the sum admitted in evidence at trial was around \$10,000 for extensions and \$22,000 in total for the loss of the house and the belongings. \$3000 was claimed as his expenses however he could forward only a receipt of \$100 for his application for a fire report.
32. The court will award a total of \$40,000 for both the loss of the residential premises and belongings.
33. The court will also award a sum of \$150 for his expenses.
34. Given that this trial was for a day, however given the documents that were filed, the Court will award fees to the Solicitors for the sum of \$2000.

PART D: ORDERS

35. **The Court Orders as follows:**

- (a) That the Defendants were held to be negligent and therefore are liable;***
- (b) Special damages is awarded to the Plaintiff for the loss of the residential premises and its extensions for a sum of \$40,000;***
- (c) Expenses arising to the sum of \$150;***
- (d) Interest to the sum of 4% post judgement;***
- (e) Costs awarded to the Plaintiff for the sum of \$2500.00.***




Ms. Seriteba LTT Waqainabete-Levaci
Puisne Judge