

BETWEEN: VILIAME BATIRATU PLAINTIFF

A N D : NATIONAL BANK OF FIJI DEFENDANT

BEFORE SYED MUKHTAR SHAH ESQ
RESIDENT MAGISTRATE

J U D G M E N T

The plaintiff, Viliame Batiratu, in June 1991 purchased a motor vehicle registration number BF612, Engine No. 4K6340192, Chassis No. KM20V-016684 from one Pauliasi Mateboto. Part of the purchase price for the vehicle was financed by ANZ Banking Group Limited.

The plaintiff's solicitors Messrs Lateef & Lateef were instructed by ANZ Banking Group Limited to prepare a Bill of Sale over the said vehicle. Messrs Lateef & Lateef conducted searches at the Transport Control Board and at the Deeds Office and ascertained that there were no encumbrances over the said vehicle. Consequently the plaintiff executed the Bill of Sale, monies were advanced to him by the ANZ Bank, the Bill of Sale was duly registered at the Deeds Office and the vehicle in issue was transferred to him.

vehicle took an unpleasant twist when he received from a bailiff a demand, issued by solicitors Messrs Sherani & Co on behalf of National Bank of Fiji (hereinafter referred to as "NBF") demanding the sum of \$1,904.80 under a Bill of Sale dated 20 July 1988 for monies owed by one Pauliasi Mate. The plaintiff then found out that NBF had a Bill of Sale over the same vehicle given by Pauliasi Mate.

An interim injunction was granted on 9 March 1992 restraining the Defendant (NBF), its servants or agents from repossessing the vehicle. This injunction was extended until 31 August 1992 when an application to dissolve the injunction was made by the defendant. After hearing this application, I further extended the injunction until such time the dispute and discrepancies could be sorted out in a substantive action on 18 September 1992.

J3 At the hearing, Mr Lateef on behalf of the plaintiff submitted that the plaintiff was an innocent and bonafide purchaser for value without notice. He also stated that the NBF Bill of Sale is bad in that it is uncertain especially on the issue of name. He also referred to the Fiji Court of Appeal decision in Mohammed Ali v. Mohammed Tasheem, Waigale Sawmill Ltd. and Aziz Begg, Civil Appeal No. 42 of 1991, which held that a bonafide purchaser without notice obtains title. In that case, the Court of Appeal held that a purported sale could only confer a title on a purchaser if it was bought by the purchaser in good faith and without notice of the Bill of Sale.

J4 The defendant's counsel at the hearing, Mr Kapadia, called six witnesses. He submitted that the defendant in 1988 took a Bill of Sale from Pauliasi Mate on the vehicle in issue and that the name used on the application for loan to NBF was Pauliasi Mate. Mr Kapadia called evidence with the view of showing that Pauliasi Matebote used many names, such as

Pauliasi Mate or Pauliasi Mate Qoroya but submitted that there was overwhelming evidence in favour of NBF to show that these persons were actually one and same person. (NBF)

Mr Kapadia also led evidence to show that the plaintiff on one occasion called into the office of the defendant's solicitors and made arrangements to pay off the balance under the Bill of Sale with NBF but did not honour the arrangement. However, in his evidence-in-chief the plaintiff said that he went to the solicitors of the defendant and said that he was willing to pay Pauliasi Mateboto's debt, if there was any, only because he was his cousin. He said that when he purchased the vehicle he did not know that at that time there was another Bill of Sale over the vehicle.

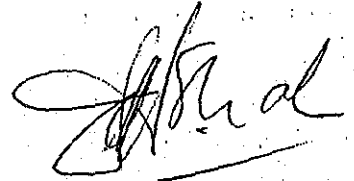
J5 Be that as it may, when Messers Lateef & Lateef were instructed by ANZ Bank to prepare a Bill of Sale over the vehicle BF612 they conducted searches as would ordinarily be done at the Deeds Office and found that there were no encumbrances under the name of Pauliasi Mateboto. A similar search was done at the Transport Control Board with a similar result. What more could the plaintiff's solicitors do? In my view they did all that was required of them. The suggestion that Pauliasi Mate used various other names (as referred to above) is another matter. How were the solicitors for the plaintiff to know of these various names? In my view, Messrs Lateef & Lateef as well as the plaintiff were concerned with Pauliasi Mateboto. On facts and evidence before me, I find that all necessary checks were done pertaining to Pauliasi Mateboto and a valid Bill of Sale was executed by the plaintiff in favour of ANZ Bank. Accordingly the plaintiff succeeds in his action.

J6

I now grant a permanent injunction restraining the Defendant from

repossessing the plaintiff's vehicle number BF612.

I will reserve my decision on the question of cost until I have heard the parties, if required.



(sgd) S M Shah
RESIDENT MAGISTRARE