

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CIVIL JURISDICTION**

*Civil Action No. 162 of 2015*

**BETWEEN** : **JAGDISHWAR KUMAR**

**PLAINTIFF**

**AND** : **PITA KOROI**

**DEFENDANT**

Appearance : **Mr Sharma. S** for the plaintiff  
**Defendant** in person

Judgment : **6 March 2019**

**JUDGMENT**

1. The Plaintiff filed a writ of summon with a statement of claim on 15 September 2015. He filed his reply to statement of defence on 8 March 2016.
2. The Defendant filed his statement of defence on 12 October 2015.
3. The case was heard on 23 January 2017. The Plaintiff and another were the witnesses for the Plaintiff's case. The Defendant is the only witness for his case.
4. The burden of proof is on the Plaintiff to prove his claim on the balance probabilities.

### ***Claim***

5. The Plaintiff pleaded that on or about January 2004, he entered into a share farming agreement with the Defendant. On 30 March 2010, the Defendant agreed to purchase the tractor registration number E.0960 under the Defendant's name on behalf of the Plaintiff. The cost of the tractor is \$17,000.00 and he paid \$3,000.00 deposit. He has been driving the tractor from the date they purchase the tractor. He has requested the Defendant to transfer the tractor to him but the Defendant failed to sign the transfer documents.
6. The Plaintiff institute this proceeding and sought for specific performance for the Defendant to sign the transfer documents for the tractor registration number E. 0960 in favour of the Plaintiff or alternatively the Defendant to pay the sum of \$27, 00.00 to the Plaintiff. The Plaintiff also claims for general and punitive damages, interest, and costs on indemnity basis.
7. The Defendant pleaded that he employed the Plaintiff as his labourer to drive and manage his farm. He admitted that the price of the tractor is \$17,000.00 and the Plaintiff paid \$3000.00 deposit. He is the owner of the tractor as it is under his name and he still making the payment.

### ***Plaintiff's evidence***

8. The Plaintiff stated in his evidence that the Defendant was their labour. In 2004, they entered into a share farming agreement with the Defendant and he worked on the Defendant's land on a fifty percent partnership. They bought a tractor and there is no agreement on the tractor because he trusted the Defendant. The price of the tractor is \$17,000.00, he paid \$3,000.00 deposit and the balance of \$14,000.00 to be repaid from his 50% share. He sold his pair of bullock to pay for the deposit.
9. The registration number of the tractor is AA 776 and under the name of the Defendant. He paid for all the third party and the tractor is with him as he drives the tractor. He completed the payment of the tractor from his 50 percent share from the farm. The share farming was for 11 years. The

Defendant vacated him from his land when he asked the Defendant to transfer the tractor to him. He fully paid the tractor in 2013. If the Defendant does not want to transfer the tractor to him then he can pay him \$27,000.00.

10. Chandar Deo is the second witness for the Plaintiff. He stated that he is not aware of any dealing between the Plaintiff and the Defendant. The Plaintiff has been driving the tractor AA 770. He repaired the tractor and all the parts and costs of repair were paid by the Plaintiff. He is not sure as to who is the owner of the tractor as he is not sure of the tractor is under whose name.

#### ***Defendant's Evidence***

11. The Defendant stated in his evidence that he agreed on the purchase of the tractor. The tractor was paid from the 50 percent share from the farm and the other 50 percent he shared with the Plaintiff. The land and the tractor are under his name.

#### ***Analysis and determination***

12. The Plaintiff stated in his statement of claim that they agreed for the Defendant to purchase the tractor registration number E .0960 on behalf of the Plaintiff. The Defendant denies that and stated in his statement of defence that he employed the Plaintiff as his labour to drive and manage his farm. There was no agreement tendered by the Plaintiff to show and prove that they entered into the agreement on the purchase of the tractor. The Plaintiff's evidence on oath that there is no agreement when they bought the tractor as he trusted the Defendant established and confirmed that there was no agreement. As such, the Plaintiff's claim is baseless and without substance.
13. In the statement of claim, the Plaintiff stated that they agreed for the purchase of the tractor registration number E.0960. In his evidence on oath, he stated that they purchase the tractor registration number AA 770. What has been pleaded is not supported by the evidence adduce.

14. The shared farming was on the Defendant's iTaukei Land Trust Board lease under Instrument of Tenancy No. 7012. There is no evidence from the Plaintiff that the iTaukei Land Trust Board has consented to their share farming agreement as required under *section 12* of the *iTaukei Land Trust Act* as it amount to a dealing on the land. Accordingly, the share farming agreement was null and void as it was illegal from the beginning. Accordingly, the Plaintiff cannot claim for any relief arises from illegal activity.
15. On the balance of probabilities, I accepted the Plaintiff's pleading and evidence that Plaintiff was his labour and there was no agreement for the tractor to be purchased under his name on behalf of the Plaintiff. The Plaintiff's pleading was not supported by what he stated in his evidence in relation to the agreement for the purchase of the tractor and the tractor pleaded is not the same tractor stated on the evidence on oath. The tractor as admitted by the Plaintiff is under the Defendant's name and was paid from the cane proceed from the Defendant's lease land.
16. I have considered the pleadings filed by the parties and their respective evidence. I also take note of the applicable laws and authorities in this judgment.
17. In this judgment, I dismiss the Plaintiff's claim on reasons discussed above. I make an order for the Plaintiff to hand over the tractor AA 770 to the Defendant within 7 days from today. I ordered the Plaintiff to pay the cost of \$500.00 to the Defendant within 31 days from the date of this judgment.

**28 days to appeal.**



C. M. Tuberi  
RESIDENT MAGISTRATE