

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 58 of 2005

BETWEEN : **TITUS (SALES) AGENCY LIMITED**

PLAINTIFF

AND : **MOHAMMED AFZAL KHAN and SHAIRUL BEGUM**
KHAN

DEFENDANTS

BEFORE : **Hon. Justice Kamal Kumar**

COUNSEL : **Mr V. Maharaj for the Plaintiff**
: **Mr N. Lajendra for the Defendants**

DATE OF HEARING : **10, 11 May 2016**

DATE OF JUDGMENT : **31 August 2016**

JUDGMENT

Introduction

1. On 11 February 2005, Plaintiff by its then Solicitors filed a Writ of Summons with Statement of Claim, claiming judgment in the sum of \$43,000.00 with interest thereon at ten percent (10%) per annum from 1 of February 2005, Damages for breach of Agency Agreement and Costs arising out of an Agency Agreement between Defendants and Plaintiff dated 30 June 2004.
2. Defendants by their Solicitors Messrs. Wm Scott Graham & Associates filed Statement of Defence on 25 February 2005.
3. On 11 January 2007, (after a lapse) of almost two (2) years Plaintiff filed Reply to Defence and Summons for Directions.
4. Upon completion of Pre-Trial matters this matter was first called in this Court on 24 April 2015, when it was adjourned to 29 and 30 September 2015, for trial which trial date was vacated on Defendants application.
5. On 29 September 2015, this action was adjourned for trial on 10 and 11 May 2016.

Agreed Facts

6. The Plaintiff is a Company incorporated in Fiji and having its registered office at Suva and carries on the business of Real Estate Agent.
7. The Defendants were the registered proprietors of the property comprised in the Certificate of Title No. 28572 being Lot 1 on Deposited Plan 6012 having an area of 5.1970 hectares situated at off Donu Place, Ragg Avenue, Namadi Heights, Tamavua, Suva ("**the subject property**").
8. The Defendants gave a written authority on or about the 30th day of June, 2004 to the Plaintiff to sell the subject property on commission basis. The authority was valid for a period of three (3) months from 30 June 2004.

9. The sale price of the property net to the Vendors was in the sum of \$357,000.00 (Three Hundred and Fifty Seven Thousand Dollars) and any amount beyond this sale price was agreed to be the Plaintiff's commission.
10. The Plaintiff found a purchaser by the name of Subhash Chand to purchase the subject property at the consideration sum of \$380,000.00 and the Defendants and Mr Chand entered into a Sale & Purchase Agreement on 11 August 2004 (**"First Agreement"**).
11. That the Plaintiff's commission from the sale of the said property under the First Agreement was in the in the sum of \$23,000.00 more or less.
12. The settlement did not take effect as per the First Agreement.
13. Subsequently the Defendants and the said Subhash Chand entered into a fresh Agreement on 8 November 2004 to sell the subject property in the sum of \$350,000.00 (**"Second Agreement"**).
14. On 14 December 2004, Defendants and Subhash Chand entered into another Sale and Purchase Agreement in respect to the subject property for a sum of \$400,000.00 (**"Third Agreement"**).

Issues to be Determined

15. Whether the Defendants sold subject property to Subhash Chand in the sum of \$350,000.00.
16. Whether the Defendants sold subject property to Subhash Chand in the sum of \$400,000.00.
17. Whether the Defendants breached the agency contract with the Plaintiff? If yes, in what way?
18. Whether the Plaintiff is entitled to any commission from the sale of the said property? If so, how much?

19. Whether the Plaintiff is entitled to the Judgment in the sum of \$43,000.00 or any other sum?
20. Whether the Plaintiff is entitled to the interest on the Judgment sum? If so, at what rate?
21. Which party is entitled to any costs and if so, on what basis and what amount?

Plaintiff's Case

22. Plaintiff by its Counsel delivered its opening address.
23. Plaintiff called Mr. Titus Narayan, Director of Plaintiff Company as its only witness.
24. Mr. Narayan during examination in chief gave evidence that:
 - (i) He is a Director of the Plaintiff Company and have been operating his business for last thirty two (32) years.
 - (ii) He was approached by Firstnamed Defendant who requested him to arrange sale of the subject property on the same day he went with Firstnamed Defendant to inspect the subject property.
 - (iii) Firstnamed Defendant brought the Certificate of Title of the subject property and informed him that the subject property is being subdivided and Firstnamed Defendant will give the plan to the Purchaser.
 - (iv) Firstnamed Defendant authorised him to sell the subject property for Three Hundred Fifty Seven Thousand Dollars (\$357,000.00) and agreed to pay commission to him any amount paid in excess of that amount.

- (v) He then prepared an Agents Authority and gave to Firstnamed Defendant to take it for signing by him and his wife, the Secondnamed Defendant.
- (vi) The Authority was signed on 30 June 2004 (**Exhibit P1**) and returned to him.
- (vii) Thereafter he tried to sell without advertisement for a week or so when he was approached by the Firstnamed Defendant who asked him to arrange sale of the subject property as soon as possible as he was in financial difficulty and was in tears.
- (viii) He then advertised sale of the property in the Fiji Times of 28 June 2004 (**Exhibit P2**).
- (ix) He arranged buyer for the subject property as a result of the advertisement.
- (x) Buyer's name was Subhash Chand who was from Labasa but for a short period was staying at Ono Street, Samabula.
- (xi) The Purchase price was agreed at Three Hundred Eighty Thousand Dollars (\$380,000.00) and the buyer informed him that he will not have any problem obtaining loan and buyer was aware it was undeveloped land.
- (xii) He then rang Firstnamed Defendant and informed that he has got a buyer and for Defendants to call into his office.
- (xiii) Firstnamed Defendant went to his office following day or after two (2) days and he asked the buyer to come to his office.
- (xiv) The buyer informed him that since Sherani & Co. are in banks panel he would use Sherani & Co. for the sale transaction and he would obtain a loan from National Bank.
- (xv) The buyer was introduced during the Agency period.

- (xvi) He asked Firstnamed Defendant as to who was his Solicitors and the Firstnamed Defendant said that he would prefer to go to Sherani & Co.
- (xvii) He then rang Mr H. Nagin of Sherani & Co. for an appointment and that Firstnamed Defendant wanted appointment to be postponed to next day because Secondnamed Defendant was not present.
- (xviii) The buyer accompanied him to Sherani & Co, and gave instructions for them to prepare Sale and Purchase on the subject property for \$380,000.00 and he believed that buyer paid deposit on the same day.
- (xix) He is aware that Sale and Purchase Agreement was signed on 11 August 2004, and buyer paid \$40,000.00 deposit and a copy of the Sale and Purchase Agreement dated 11 August 2004, was given to him (**Exhibit P4**).
- (xx) Clause 13 of **Exhibit P4** stated that the sale is subject to approval of subdivision by Director of Town and Country Planning ("**DOTP**").
- (xxi) On the basis of the Agreement (**Exhibit P4**) he was expecting commission of \$23,000.00.
- (xxii) He was informed by Firstnamed Defendant that delay in approval of subdivision plan is on Suva City Council's ("**SCC**") part.
- (xxiii) Since he was former Councillor at SCC he without making any promise stated that he would find out from SCC as to reason for the delay.
- (xxiv) After few days he called and spoke to the City Planner who gave her an appointment and as result he went to City Planner's office when the engineer dealing with the case was also present.
- (xxv) He was informed that SCC is waiting for additional documents from the owner of the property.

- (xxvi) He then informed the Firstnamed Defendant accordingly and is aware that the additional documents were supplied after a while and SCC approved the subdivision plan as appears from letter dated 9 December 2004 (**Exhibit P5**).
- (xxvii) He was not aware about Sale and Purchase Agreement between the Defendants and same purchaser dated 8 November 2004 for consideration sum of \$350,000.00 (**Exhibit P6**) until the documents were exchanged by Solicitors.
- (xxviii) He thought settlement in respect to Sale and Purchase Agreement dated 11 August 2004 (**Exhibit P4**), had taken place and when he enquired with Mr Nagin he was asked to wait for settlement to take place.
- (xxix) He became aware that settlement had taken place after he received a tip off from Sherani & Co.
- (xxx) He then went to Mr Nagin and asked him as why his commission has not been paid, when Mr Nagin told him that he did not get proper instructions from the vendors and paid them whatever was due to them.
- (xxxi) He got frustrated and asked Mr Nagin, why he did not pay his commission on the basis of the Agents Authority when he did so in other cases.
- (xxxii) He asked Mr Nagin as to what price the property was sold for but Mr Nagin did not tell him.
- (xxxiii) He conducted search at Registrar of Titles Office and obtained certified true copy of Transfer dated 8 November 2004, for consideration sum of \$400,000.00 in respect to the subject property (**Exhibit P7**).
- (xxxiv) Transfer had same date as that of Sale and Purchase Agreement for \$350,000.00 (**Exhibit P6**) and was registered on 10 January 2005.

Subsequently he found out that another Sale and Purchase Agreement was signed on 14 December 2004 (**Exhibit P8**), which Agreement also contained condition which says sale is subject to approval of subdivision.

- (xxxv) Based on transfer his commission would be \$43,000.00 which he expected to receive on settlement date which was 10 January 2005.
- (xxxvi) He is claiming \$43,000.00 as commission together with interest and costs.
- (xxxvii) Agency period was for three (3) months and he found the buyer within the Agency period.
- (xxxviii) He did not discharge the Vendor from the authority and property was transferred to the same person he introduced.

25. During Cross-Examination Mr Narayan:-

- (i) Stated that settlement in respect to Sale and Purchase Agreement dated 8 August 2004, was to take place on or before 31 October 2004, and sale was subject to approval of subdivision plan by DOTP.
- (ii) Stated that he was not aware as to whether subdivision plan was approved on 31 October 2004, and stated that it was vendors responsibility to have the subdivision plan approved.
- (iii) Stated that he became aware that subdivision plan was approved by SCC on 9 December 2004, after he saw letter from SCC.
- (iv) Stated that condition for subdivision was between vendor and purchaser;
- (v) Stated that the tip off about settlement was by one of the clerks at Sherani & Co. which was in confidence and as such he cannot tell his name.

- (vi) Agreed that the purchase price in Sale & Purchase Agreement dated 8 November 2004 (**Exhibit P6**), is \$350,000.00 and purchase price in Transfer (**Exhibit P7**) is \$400,000.00, and both documents were executed on 8 November 2004.
- (vii) Stated that he did not know why there was difference in price and that it was manipulated by vendor, purchaser and Sherani & Co. and it was prepared discretely and he was kept at bay.
- (viii) Agreed that both documents were prepared by Sherani & Co.
- (ix) When asked if Mr Nagin informed him about the Agreement for \$350,000.00, he responded “No, honest to God; No.”
- (x) Stated that even the vendors did not tell him about this Agreement.
- (xi) First time he saw this Agreement was at MC Lawyers when documents were exchanged between Solicitors.
- (xii) When it was put to him that documents were exchanged when Sherani & Co. acted on his behalf he stated that he was not shown this document by Sherani & Co.
- (xiii) Stated that he saw the Sale and Purchase Agreement dated 14 December 2004 (**Exhibit P8**), when he was consulting Mr Maharaj at MC Lawyers.
- (xiv) Confirmed that on 10 December 2005, a claim was filed by Sherani & Co. on his behalf against the Defendants.
- (xv) Stated that he read the Statement of Claim when it was prepared and thought that the word “Agreement for \$400,000.00” at paragraph 7 of the Statement of Claim meant purchase price in Transfer.
- (xvi) When shown Authority dated 14 December 2004, from vendors to Sherani & Co. (**Exhibit D7**) he stated that Authority was to refund \$50,000.00 to Purchaser and that he cannot remember seeing the

Authority as a number of documents were shown some months or year ago.

- (xvii) Confirmed that Sale and Purchase Agreement (**Exhibit P8**) and the Authority (**Exhibit D7**) are dated 14 December 2004.
- (xviii) When it was put to him that refund of \$50,000.00 to Purchaser was to assist Purchaser to obtain loan of approximately \$400,000.00 he stated that he had no idea at all.
- (xix) When he was shown Tax Invoice dated 10 January 2005, of Sherani & Co. (**Exhibit D9**) he stated he thought he saw the Invoice when documents were exchanged.
- (xx) Stated that he did question Mr Nagin about the payment of \$50,000.00 because settlement had taken place there was no need.
- (xxi) When he was shown Statement of Subhash Chand dated 18 May 2005, (**Exhibit D10**) he stated that he saw that document the day before giving evidence and when asked as to whether his lawyers showed it to him he stated that he could not remember.
- (xxii) Stated that he was not aware that Mr Nagin was reported to Fiji Law but remembered that Mr Nagin was charged and convicted on this matter.
- (xxiii) When asked if this was the reason he discharged Mr Nagin from acting for him he stated that Mr Nagin informed him that he cannot act for him anymore.
- (xxiv) When he was shown letter dated 15 April 2007, from Defendants to Fiji Law Society he stated that he definitely did not see that letter before and his lawyers did not show it to him.
- (xxv) When he was referred to Judgment of Independent Legal Service Commission in respect to matter No. 002/2009 he agreed that person named is Mr Nagin and he saw part of the judgment where his

company's name was mentioned after one of the lawyers told his brother that Titus's name is mentioned in the judgment.

- (xxvi) When referred to Complaint No. 2 in the Judgment he stated that he may have read that part.
- (xxvii) In reference to paragraph 38 of the ILSC Judgment he stated that loan was approved on 4 August 2004, and not on date stated in Judgment and from his knowledge loan was approved on 4 August 2004, for some amount.
- (xxviii) In reference to paragraph 48 of the Judgment and question as to whether it was correct that Mr Nagin informed him that the sale price was \$400,000.00 he stated that when he produced transfer to Mr Nagin then he agreed.
- (xxix) Stated that Mr Nagin did not tell him about the transfer amount until he searched the transfer.
- (xxx) Stated that when he asked Mr Nagin what should he do then Mr Nagin said to "sue the bastard" and when he asked Mr Nagin if he could act for him, Mr Nagin agreed.
- (xxxi) Confirmed that above happened after he searched Transfer and stated that before he searched the Transfer Mr Nagin said nothing to him.
- (xxxii) In reference to paragraph 60 of ILSC Judgment he stated that his name was dragged in Mr Nagin's trial without any reason and he wanted to take the matter further but his lawyer advised him to leave it like that, and that the conclusion was reached on the basis of hearsay.
- (xxxiii) When asked as to whether after reading the Judgment it occurred to him that the price that he was advised to claim for commission was an artificial price he stated no and said that he relied on the consideration sum on the transfer.

- (xxxiv) Stated that the matter should have been reported to Police as Bank has been defrauded and that the Defendants were doing things without consulting him.
- (xxxv) Stated that he decided to continue with the case after he carried out search on Mr Nagin's advise that he can claim commission on \$400,000.00 and on the advise of two (2) other lawyers.
- (xxxvi) In response to sentencing Judgment by ILSC he stated that he read part of the Judgment and was advised by a lawyer.
- (xxxvii) When it was suggested that strange things happened about the transaction he stated that strange things happened about Second and Third Agreements.
- (xxxviii) Stated that consideration sum in the transfer was stated as \$400,000.00 and anyone will rely on the sum stated in the transfer and if transfer stated \$350,000.00 or \$380,000.00 then he would have left it at that.
- (xxxix) In reference to Bank Statement of Firstnamed Defendant's Company for the period 30 April 2004 to 30 December 2004 (**Exhibit D8**), he agreed that he gave evidence that Firstnamed Defendant was in financial problem and was in tears.
- (xxxx) Agreed that Statement did not reflect healthy balance.
- (xxxxi) In respect to correspondent between Defendants, and Chief of Tamavua Village, he stated that he cannot recall seeing them before and he has nothing to do with those letters as they are between the Chief and the Defendants.
- (xxxxii) Stated he has no comments to make in respect to letter dated 18 November 2004, from SCC to DOTP and letter dated 9 December 2004, from DOTP to SCC.

26. In re-examination Mr Narayan stated that:-

- (i) When First Agreement was drawn on 8 August 2004, Sherani & Co. was lawyers for the Purchaser.
- (ii) Vendor went to Sherani & Co. for faster service.
- (iii) He was not consulted by Sherani & Co., Purchaser or Vendor when all three (3) Agreements were drawn.
- (iv) He was only present when the First Agreement was drawn and other two Agreements were drawn discretely.
- (v) He was not called as a witness when Mr Nagin was charged by ILSC.

Defendants Case

- 27. Firstnamed Defendant, Mr Mohammed Afzal Khan gave evidence on behalf of the Defendants.
- 28. During evidence in chief Mr Khan gave evidence as follows:-
 - (i) He confirmed that he and his wife Shairul Begum Khan were owners of property situated at Tamavua which property he was interested to sell in 2004 and as a result approached Titus Real Estate as Agent and on 30 June 2004 signed Agency Agreement.
 - (ii) The purchase price he wanted was \$357,000.00 and any amount paid above that was Agent's commission.
 - (iii) The Agency period was for three (3) months and the Agent Titus found buyer for the subject property and his name was Subhash Chand.
 - (iv) Purchase price was agreed at \$380,000.00. Sale and Purchase Agreement was drawn up by Sherani & Co.
 - (v) He ended up giving instructions to Mr Nagin after Mr Narayan informed him that Purchaser has engaged Sherani & Co.

- (vi) Confirmed that when First Agreement (Exhibit P4) was signed the Purchaser paid a deposit of \$40,000.00 into Trust Account of Sherani & Co. and settlement was to take place on 31 October 2004.
- (vii) In reference to condition in Clause 13 of the First Agreement he stated that before he met Mr Narayan he lodged application for subdivision with SCC which he could not do due to financial problem and as such he decided to sell the subject property and he disclosed this to Mr Chand and Mr Narayan and it was Mr Chand who wanted the condition to be incorporated in the Agreement.
- (viii) Mr Narayan informed him that since he was former Councilor and subdivision plan is with SCC he will help him out in getting plan approved before due date.
- (ix) He (Firstnamed Defendant) was unable to secure approval of subdivision plan by 31 October 2004, and he made efforts to get plan approved.
- (x) In reference to letter dated 7 October 2004 (**Exhibit D1**) from Firstnamed Defendant to Chief of Tamavua Village he stated that he wrote to the Chief because time was coming close and he was advised by City Planner that they need one meter land for footpath and when he approached the Chief of Tamavua Village, the Chief asked him to put request in writing.
- (xi) Yavusa Matanikutu by letter dated 14 October 2004 (**Exhibit D2**) agreed to the request on following condition:-
 - (a) For Defendants to give \$10,000.00 to complete church project held up because of finance;
 - (b) Yavusa be given first chance to purchase or rent lots;
 - (c) Access road be open to use by others residing in the area.

- (xii) Handwritten note on letter (**Exhibit D2**) says that he paid \$20,000.00 to the Chief to act as his consultant to deal with SCC and DOTP to get his plans approved.
- (xiii) He agreed to the condition stated by Yavusa Matanikutu by letter dated 15 October 2004 (**Exhibit D3**).
- (xiv) Agreed that by letters dated 18 November 2004, and 9 December 2004, (**Exhibit D5** and **D6**) SCC and DOTP approved the subdivision plan.
- (xv) Confirmed that communication subject to Exhibits D2 to D6 started on 7 November 2004, seven (7) days after expiry of the Agency Agreement.
- (xvi) Once he got the approval he approached Subhash Chand and informed him about the approval and as a result Subhash Chand was interested in buying the property and they negotiated the purchase price at \$350,000.00.
- (xvii) After that he approached Mr Nagin with Subhash Chand and asked Mr Nagin to prepare Sale & Purchase Agreement.
- (xviii) On 8 November 2004, Sale & Purchase Agreement for \$350,000.00 was signed.
- (xix) He agreed to reduction in purchase price because he was in need of money and Subhash Chand was interested in buying the property and he had to pay the mortgage and did not want to lose the customer.
- (xx) \$20,000.00 from \$40,000.00 deposit held by Sherani & Co. from 8 August 2004, was released to him immediately as he was to pay \$10,000.00 towards construction of the church and \$10,000.00 to Mr Kalokalo, the Consultant.

- (xxi) Agreed that clause 5 of Second Agreement states settlement date as 15 December 2004, and clause 13 states the condition for approval of plan which is identical to First Agreement.
- (xxii) On 14 December 2004, Defendants signed another Sale & Purchase Agreement over same property with same buyer for \$400,000.00 (**Exhibit P6**).
- (xxiii) Him and his wife were called by Mr Nagin to his office and when they went there they found Mr S. Chand and Mr Nagin in Sherani & Co. conference room, and Mr Nagin advised them to sign a Supplementary Sale & Purchase Agreement for \$400,000.00 to help Mr Subhash Chand to get extra \$50,000.00 for his personal use.
- (xxiv) He then questioned Mr Nagin as to whether his income will be affected and Mr Nagin told him very clearly that Mr Nagin will give him a tax invoice stating that he received \$350,000.00 as per Agreement dated 18 November 2004.
- (xxv) Mr Nagin then requested him if he could help Mr Subhash Chand and they took into consideration that when they needed \$40,000.00 deposit they requested Mr Nagin to ask Mr Subhash Chand if he could release the \$40,000.00 to which Mr Subhash Chand agreed and authorised Mr Nagin to release \$40,000.00.
- (xxvi) On humanitarian grounds it became his duty to help Mr Subhash Chand when he was looking for additional \$50,000.00 in the form of loan.
- (xxvii) Him and his wife agreed on the condition told to them by Nagin in that him and his wife will sign an authority authorizing Mr Nagin to give \$50,000.00 to Mr Subhash Chand and balance \$350,000.00 to them.
- (xxviii) Confirmed that Irrevocable Authority ("**IA**") to Sherani & Co. dated 14 December 2004, was signed by him and his wife and witnessed by

Mr Nagin and that the Authority was signed to give \$50,000.00 to Subhash Chand (**Exhibit D7**).

(xxix) In reference to Westpac Banking Corporation Bank Statements of Afzals Real Estate Development (**Exhibit D8**) he states that he owned the business but later closed.

(xxx) In relation to various entries in the Bank Statements (**Exhibit D8**) he stated as follows:-

(a) First entry shows account in debit by \$1,765.53 because he did not have any source of income;

(b) Fourth entry being credit of \$20,000.00 was part of deposit paid by Sherani & Co. as requested;

(c) The opening balance on second page (Statement dated 30 December 2004) is \$7,160.36 DR;

(d) Third transaction of \$10,000.00 credit was from deposit held by Sherani & Co.;

(e) The \$10,000.00 credit on 15 December 2004 which is one day after the 14 December 2004 being the date of Third Sale & Purchase Agreement and Irrevocable Authority were signed was balance of deposit held by Sherani & Co.;

(f) Closing balance in December shows \$11,161.43 DR even after receiving \$40,000.00 deposit was because he paid \$10,000.00 towards church contribution; \$20,000.00 to Mr Kalokalo and \$10,000.00 was taken against the debits.

(xxxix) In respect to the Transfer he agreed that he signed the Transfer in respect to the subject property which had consideration sum of \$400,000.00 and he signed it because his lawyer told him to sign.

- (xxxii) Agreed that Transfer dated 8 November 2004 which is same date as Second Agreement and that the purchase price in the Agreement was \$350,000.00 whereas in the Transfer it is \$400,000.00.
- (xxxiii) When asked if he did not feel odd signing the documents with different amounts he said he signed Transfer and date must have been inserted by the lawyer after their signature.
- (xxxiv) He signed the Transfer after the Third Sale & Purchase Agreement.
- (xxxv) Confirmed transaction listed in Sherani & Co. Tax Invoice dated 10 November 2004 (**Exhibit D9**).
- (xxxvi) When asked if he asked Mr Nagin as what the deduction was for he stated that he was aware because they signed the authority.
- (xxxvii) In respect to Statement of Subhash Chand dated 10 January 2005 (**Exhibit D10**), he stated that when he went and saw Mr Michael Arjun about demand on commission he asked him as to how much he sold the property for.
- (xxxviii) To confirm his statement Mr Michael Arjun called Mr Subhash Chand into his office and took statement from him that he bought the property for \$350,000.00.
- (xxxix) Subhash Chand's signature to the Statement was witnessed by Mr Michael Shalendra Arjun of Scott & Co.
- (xl) Last time he spoke to Subhash Chand was in relation to matter regarding city rates which was definitely some years ago and he does not have any contact for Subhash Chand.
- (xli) One day he went to the subject property and saw big notice saying "No Entry" and so he went back.

- (xlii) Confirmed that on 15 April 2007, he wrote to Fiji Law Society (“**FLS**”) complaining against Mr Nagin and was told that FLS has written to Mr Nagin and since then that matter was not pursued by FLS.
- (xliii) He then went to the Ombudsman who informed him that since he engaged a Defense lawyer they cannot do anything at that stage.
- (xliv) He then went to Attorney-General’s Office and was asked to submit all documents which he did but did not get any reply from Attorney-General’s Office.
- (xlv) He then wrote to Prime Minister’s Office and after few months he was called by Chief Registrar who met him and informed him that this matter will be reported to ILSC.
- (xlvi) After ILSC Judgment was delivered on 7 May 2010 (**Exhibits DW12/D13**) he went to see Chief Registrar about this case and was told by her that this action will proceed and he has to appear.

29. During cross-examination Mr Khan:-

- (i) Stated that in January 2005, he retired after closing his business of land sale and purchase.
- (ii) Stated that he was a land developer for a very short time and before that he was in agriculture business at Koronivia.
- (iii) Stated that he bought the subject property in 1996 for Fifty Nine Thousand Dollars (\$59,000.00) and the subject property was the only land that he bought and sold.
- (iv) When asked if he opened Bank Account in business name for the subject property he stated that in fact, he developed his own land in Koronivia (Original land) by subdividing it into twenty-six (26) lots and of which he sold twenty-three (23) lots at Thirteen Thousand Dollars (\$13,000.00) each.

- (v) Stated that he was getting paid in installments for lots sold in Koronivia and he obtained 100% loan from ANZ Bank to purchase the subject property.
- (vi) Stated that he knew about real estate business for a short while and he did not try to sell the subject property himself before he went to Plaintiff.
- (vii) When asked why he did not market it himself he stated that his plan was to subdivide and sell and that is why he engaged Pro-Survis, who drafted the survey plan and he lodged it with SCC in the year 2004.
- (viii) Stated that he lodged the survey plan before he came to Titus and at that time the plan was not approved.
- (ix) Stated that he did not pay any city rates on the subject property and he cannot remember if city rates was discussed when Agency Agreement was signed.
- (x) He stated that following signing of the Agency, Agent Titus found buyer for him namely, Subhash Chand.
- (xi) Stated that him and Subhash Chand had common lawyer and they both paid their part of the lawyers fee to the lawyer.
- (xii) Stated that Sale & Purchase Agreement dated 11 August 2004 (**Exhibit P4**) was prepared by Sherani & Co. and the settlement date was 31 October 2004, which was one month after the expiry of Titus Agency Agreement.
- (xiii) Agreed that after Titus introduced the buyer, Titus was not in control and after that it was between him and the buyer.
- (xiv) Stated that subdivision plan was not approved by 31 October 2004, and no notice in writing was given by the Purchaser to cancel the Agreement.

- (xv) Agreed that before expiry of the settlement date he engaged in correspondence with Chief of Tamavua and first letter was written to the Chief on 7 October 2004, and on that day he had site meeting with the Chief and Ajay Narayan who was a businessman.
- (xvi) When asked as to why he did not extend the settlement date he stated that Agreement between him and Titus was for three (3) months from 30 June 2004 to 30 September 2004, and he went into negotiations with Tamavua landowners after expiry of the Agency Agreement and that meant that the Agency Agreement between Titus and them was null and void.
- (xvii) Stated that when he entered into Second Agreement at Sherani & Co., Titus was not there because when he asked Mr Nagin, who advised him that Titus is no longer the Agent and he does not have to be there.
- (xviii) Confirmed that when he entered into Second Agreement he negotiated with Subhash Chand.
- (xix) Stated Subhash Chand agreed on Second approach to buy the subject property subject to approved plan.
- (xx) When asked as to how could he enter into Second Agreement when plan was not approved he stated that Subhash Chand said he would buy the subject property once plan was approved.
- (xxi) When asked as to how he agreed to the purchase price at \$350,000.00 he stated that his first figure was \$357,000.00 and since he did not want to lose the customer, he agreed at \$350,000.00.
- (xxii) When it was put to him that he agreed to the price to exclude Titus from getting the commission and he colluded with Subhash Chand to not to pay commission he stated that it was not the idea and was not in his mind.

- (xxiii) Stated that at the time he negotiated the Sale & Purchase Agreement dated 8 November 2004, he did not consider Titus as his Agent and Agency expired on 30 September 2004.
- (xxiv) Stated that he did not receive any notice from the Purchaser to cancel the Second Agreement.
- (xxv) Stated that he received the deposit before the settlement date at his request but could not remember the date he received it and that dates are stated in the Bank Statements.
- (xxvi) There was nothing in the Second Agreement saying that First Agreement was discharged and there was nothing in the Third Agreement to say the Second Agreement was discharged.
- (xxvii) Agreed that him and the Purchaser were in good relations by purchaser giving him the deposit and him signing the Irrevocable Authority.
- (xxviii) He signed the Third Agreement on the advise of the lawyer.
- (xxix) He was given copy of IA and when he signed the IA he was worried about his taxes.
- (xxx) Stated that he did not feel anything or it did not cross his mind when he signed the IA.
- (xxxi) Stated that he did not have any reservations when he signed Transfer document for \$400,000.00.
- (xxxii) Stated that he did not realize at that time that any member of the public can obtain copy of Transfer registered at Registrar of Titles office but he knows now.
- (xxxiii) It did not occur to him to take legal advise to see if what Mr Nagin was saying was correct and it would not have crossed his mind that

Titus was allowed to search and find out purchase price and claim \$43,000.00.

- (xxxiv) He stated that he should not have done what he did but did so on the advise of his lawyer and it did not occur to him that the IA could later be found to be fraud and he could be at risk.
- (xxxv) Stated that he did not know if \$50,000.00 was paid to the Purchaser and he had no evidence that it was actually paid.
- (xxxvi) Stated that he does not have any evidence for payment of \$20,000.00 to Mr Kalokalo because he paid him on cash basis.
- (xxxvii) Stated the signature in Statement (**Exhibit D10**) is Subhash Chand's signature.
- (xxxviii) Agreed that the Statement annexed to Affidavit sworn by him on 6 May 2009, does not have the rubber stamp of Mr Michael Arjun but the one he produced in court has Mr Michael Arjun's stamp and stated that he did not notice it when he signed the Affidavit and just noticed it.
- (xxxix) Stated that he was given copy of the Statement with the Stamp.
- (xli) Agreed that it was another example of his lawyer doing something he was not aware of.
- (xli) Stated that he is not aware about complaint lodged by Subhash Chand at Labasa Police Statetion that signature on the Statement dated 18 May 2004, is not his and is a forgery.
- (xlii) Agreed that he was sued by Subhash Chand in Magistrate Court for outstanding city rates for round figure of Ninety Thousand Dollars (\$90,000.00) and stated that the case was never called.
- (xliii) Stated that Mr Nagin served him the Summons and this was brought to the attention of ILSC and Mr Nagin informed Mr Subhash Chand

that he can no longer act for him, and to his knowledge Mr Subhash Chand engaged Mr Rajendra Chaudhry who stopped practice and left for overseas. Also stated that he engaged Mr Ram Chand as his lawyers who also closed his practice years later and that the case is still pending.

- (xliv) Stated that at the time of settlement he informed Mr Nagin that no rates are payable to SCC and this issue was never discussed between Subhash Chand and him at the time of settlement.
- (xlv) Stated that Mr Nagin also got his clerk Rohit or someone to check with SCC when they were told that there is no rates owing on the subject property.
- (xlvi) Stated that he did give evidence at ILSC hearing and no one else on his behalf gave the evidence.
- (xlvii) Stated that he gave all the documents to Chief Registrar's Office.
- (xlviii) Stated that Mr Nagin gave evidence and no one else gave evidence on Mr Nagin's behalf.
- (xlix) Stated that Mr Titus Narayan was not present at the ILSC hearing.

30. In re-examination Mr Khan:-

- (i) Stated that he told Mr Nagin that no rates is owing on the subject property and that Mr Nagin did not tell him that his clerk has checked with SCC at the time of settlement.
- (ii) In reference to paragraphs 44 and 45 of ILSC Judgment he stated that he did not question Mr Nagin about searches he had done at the time of settlement.
- (iii) Stated that he did not consult Mr Nagin about the rates when received the Summons, because he personally went to SCC and was told that

there was no rates owing on the subject property and he was convinced that no rates was owing on the property.

- (iv) When asked if he asked Mr Nagin the reason he filed the recovery action he stated that he did not approach Mr Nagin in rates and commission matters and referred the matter to his lawyers.

Legal Submissions

- 31. At close of Defendants case the Counsel for Defendants made Submissions followed by Plaintiff's Counsel.
- 32. Defendant's Counsel submitted that the principal issue to be determined is the sale price between Defendants and Subhash Chand.
- 33. Defendant's Counsel further submitted that:-
 - (i) It is a condition precedent for any commission to be payable to Plaintiff, the consideration sum had to be above \$357,000.00 and relied on Exhibit P1.
 - (ii) There is strong and compelling evidence that sale price for the subject property was \$350,000.00 and relied on Exhibits P6 (Second Agreement dated 8 November 2004), Exhibit P7 (IA from Defendants to Sherani & Co.), Exhibit D9 (Tax Invoice of Sherani & Co.), Exhibit D10 (Statement of Subhash Chand) and paragraph 60 and 61 of ILSC Judgment delivered on 7 May 2010 (Exhibit 12) which provides as follows:-

“60. Whilst it is not relevant to the proceedings before this Commission the conduct of the agent in claiming commission on what can be best described as an artificial purchase price is reprehensible.

61. I am satisfied on the basis of the evidence before the Commission, including the loan approvable to Mr Chand,

that the purchase price was increased to \$400,000.00 for the benefit of the purchaser and that the possible consequences including the potential for a claim by the agent for commission were not raised with the Complainant accordingly I find the allegation established.”

- (iv) Finding of the Commission is that the purchase price was \$350,000.00 and the sum of \$400,000.00 was artificial price.
- (v) Sale price of \$400,000.00 cannot be relied upon by the Plaintiff.
- (vi) Condition precedent not having been met Plaintiff has no right to claim commission.

34. Plaintiff's Counsel submitted that:-

- (i) The question is when is the Real Estate Agent entitled to commission? Is it after Agent introduces buyer and vendor and purchaser enter into a binding contract?
- (ii) Real Estate Agent is entitled to commission out of sale price.
- (iii) The facts are very similar to facts in **Ashok Kumar Singh v. Shao Ping Zeng** (2010) Suva High Court Civil Action No. 476 of 2005 (19 August 2010).
- (iv) When giving weight to the Statement of Subhash Chand Court should look at the interest and purpose of the documents which is to defraud the Bank, the Registrar of Titles and the Tax Department.
- (v) Very least the Plaintiff is entitled to commission on the First Agreement.
- (vi) If this Court invalidates the First Agreement then it goes out.
- (vii) If Transfer is relied on then Plaintiff is entitled to \$43,000.00 as commission.

- (viii) In **Ashok Kumar Singh** (Supra) the Court found that default notice was not properly given by the Defendant and the Defendant in that action sold the property to the same person introduced by the Agent and at the same price.
- (ix) Defendants are bound by the pleadings. When they said in their Statement of Defense that Titus was still their agent and no attempt had been made to amend the pleadings.
- (x) If the Court holds that commission is payable on the consideration sum then Plaintiff is entitled to \$43,000.00.

35. In Reply Defendant's Counsel submitted that:-

- (i) Defendants do not challenge the case authority of **Ashok Kumar Singh** (Supra) but distinguished that case on following grounds:-
 - (a) Sale Price in **Ashok Kumar Singh** case was \$370,000.00 and the Agency was authorised to sell property at \$350,000.00 with any price paid in excess of \$320,000.00 was to be his commission.
 - (b) After the Agency Agreement came to an end another Agreement was made for \$370,000.00 between same parties.
- (ii) The facts of this case is quite peculiar.
- (iii) If it is acknowledged that action of Defendant, Mr Subhash Chand and Mr Nagin were not appropriate, none of the action can demonstrate that it was intended to defraud the Agent.
- (iv) No evidence exists to prove that it was done to defeat Agent's commission.
- (v) Plaintiff claims commission on \$400,000.00 and must prove to Court that the sale happened for \$400,000.00.

- (vi) Accepts Plaintiff's Counsel's Submission that parties are bound by their pleadings and as such Plaintiff has not made a claim for quantum meruit because he surely knew anything below \$357,000.00 will not entitle it to commission.

Court's Finding and Analysis

- 36. Before I proceed any further I am of the view that I deal with the hearsay evidence of Subhash Chand and comments made by the ILSC at paragraph 60 in its Judgment delivered on 7 May 2010.
- 37. After hearing Submissions of Counsel, I admitted the Statement of Subhash Chand signed on 18 May 2005 (**Exhibit D10**), when he was not called to give evidence.
- 38. Even though I allowed Subhash Chand's statement to be admitted I have no hesitation in stating that I have not given any weight to the said Statement on following grounds:-
 - (i) Except for stating that he had no contact with Mr Subhash Chand and that he did not know his whereabouts the Firstnamed Defendant in his evidence did not state as what attempts have been made to locate Mr Subhash Chand to give evidence in this matter when Mr Subhash Chand's evidence would have been quite crucial.
 - (ii) The statement was obtained after this action was filed.
 - (iii) It appears that this Statement was not independent as it was made to collaborate Defendants Defense and was prepared and witnessed by Defendants Solicitor at that point in time.
- 39. I have not taken into consideration the comments made by the Commission in the ILSC Judgment delivered on 7 May 2010, on the grounds that:-

- (i) As rightly stated by the then Commissioner that it was not relevant to the proceedings before the ILSC; and
 - (ii) It was extremely wrongful for the Commissioner to comment in such a manner on a matter that is pending in a Court of law.
40. The law/principle governing the relationship between an Agent and his/her Principal in respect to sale of real estate property was stated very clearly by Lord Denning in **Dennis Reed Ltd v. Goody & Anor.** [1950] 2 K.B. 277 at pages 284 and 285 as follows:-

“When a house owner puts his house into the hands of an estate agent, the ordinary understanding is that the agent is only to receive a commission if he succeeds in effecting a sale; but if not, he is entitled to nothing. That has been well understood for the last 100 years or more: see Simpson v. Lamb (10, per Jervis C.J., and Prickett v. Badger (2), per Williams J. The agent in practice takes what is a business risk: he takes on himself the expense of preparing particulars and advertising the property in return for the substantial remuneration - reckoned by a percentage of the price - which he will receive if he succeeds in finding a purchaser : see Luxor (Eastbourne) Ld. v. Cooper (3).”

“The agent in practice takes what is a business risk: he takes on himself the expense of preparing particulars and advertising the property in return for the substantial remuneration - reckoned by a percentage of the price - which he will receive if he succeeds in finding a purchaser.

No particular words are needed to create the relationship. All the familiar expressions “please find a purchaser”, “find someone to buy my house”, “sell my house for me” and so on, mean the same thing: they mean that the agent is employed on the usual terms; but none of them gives any precise guide as to what is the event on which the agent is to be paid. The common understanding of men

is, however, that the agent's commission is payable out of the purchaser price."

*"The services rendered by the agent may be merely an introduction. He is entitled to commission if his introduction is the efficient cause in bringing about the sale ... But that does not mean that the commission is payable at the moment of the introduction: it is only payable on completion of the sale. The house owner wants to find a man who will actually buy his house and pay for it. He does not want a man who will only make an offer or sign a contract. He wants a purchaser "able to purchase and able to complete as well"... Some confusion has arisen because of the undoubted fact that, once there is a binding contract for sale, the vendor cannot withdraw from it except at the risk of having to pay the agent his commission. This has led some people to suppose that commission is payable as soon as a contract is signed and I said so myself in *McCallum v Hicks* [1950] 2 K B 271.*

But this is not correct. The reason why the vendor is liable in such a case is because, once he repudiates the contract, the purchaser is no longer bound to do anymore towards completion: and the vendor cannot rely on his own non-completion in order to avoid payment of commission, for it is due to his own fault ... But if the vendor could show that the purchaser would not in any event have been able or willing to complete, he would not be liable for commission ... When it is not the vendor, but the purchaser, who withdraws, the case is entirely different; for, even though a binding contract has been made, nevertheless, if the purchaser is unable or unwilling to complete, the agent is not entitled to his commission The vendor is not bound to bring an action for specific performance or for damages simply to enable the agent to get commission; but if he does get his money, he will probably be liable to pay the commission out of it."

41. The above principle has been quoted with approval by his Lordship Justice Calanchini (President, Fiji Court of Appeal) in **Ashok Kumar Singh's** case (Supra).
42. I agree with Defendants Counsels' submission that even though the principles stated and adopted in **Ashok Kumar Singh's** case (Supra) is the principle to be applied here that facts of that case are not very similar to this case.

Court's Finding

43. The Defendants were the registered proprietors of the subject property which they intended to subdivide and sell the lots.
44. Defendants engaged Pros Survis, Surveyors to prepare subdivision plan which Pro Survis did and the Subdivision Plan was lodged by Firstnamed Defendant at SCC for approval.
45. On or about June 2004, Defendants decided to sell the subject property and engaged the Plaintiff as its Agent to sell the subject property and on 30 June 2004, signed Agency Authority in following terms:-

- “1. That, you are permitted to take photographs of the said property and advertise the sale thereof at your discretion and authorized to take any person or persons upon the said property for inspection thereof at any reasonable time during day light hours.***
- 2. That, this authority is irrevocable and shall remain in force until the expiration of THREE (3) months from the date hereof.***
- 3. That, we will not negotiate either directly or indirectly with any person or persons the sale of the said property during the period of this agency.”***

46. The commission to be paid to Plaintiff was on completion of sale and not within the three months agency period simply because in terms of the First Agreement, the Defendants as Vendors agreed for the settlement to take place on or before 31 October 2004, which date is one (1) month after the expiry of the Agency Agreement.
47. The Defendants in particular Firstnamed Defendant did not take any active step in having the subdivision plan approved by SCC and DOTP until after the Agency period had expired as is evident from Exhibits D1 to D5 where he liaised with SCC and Chief of Tamavua Village.
48. The Defendants having subdivided their Koronivia land was fully conversant or ought to have been fully conversant with procedures for obtaining approval for subdivision plan.
49. Mr Titus Narayan of Plaintiff company only tried to assist the Defendants by checking with SCC as to status of the application for subdivision by Defendants when he was informed that SCC is waiting for Defendants as owners to supply some documents.
50. It was the Defendants who were responsible for getting the subdivision plan approved prior to settlement date and they failed to take any steps to have the plan approved prior to expiry of the Agency Agreement.
51. Defendants and Subhash Chand after the First Agreement appeared to be working very closely.
52. The First Agreement was never cancelled by Subhash Chand the Purchaser due to non-compliance of the conditions in clause 13 of the Agreement which provides as follows:-

“13. This Sale is subject to the approval by Director for Town and Country Planning of the Vendor’s application for subdivision of the property.”

53. The above condition is not condition precedent to the Agreement being in force but a condition subsequent.
54. Once the subdivision plan was not approved the Purchaser Subhash Chand should have given notice of cancellation/termination which of course he did not do.
55. When Defendants and Subhash Chand entered into the Second Sale and Purchase Agreement on 8 November 2004, the Plaintiff had no idea about the Agreement.
56. The Purchaser Subhash Chand as at 8 November 2004 was still a client of Plaintiff as is stated by Defendant at paragraph 15 of the Statement of Defence.
57. The Defendants entered into the Second Agreement to defeat the Plaintiff from getting the commission in collusion with the Purchaser.
58. The only reason Defendant signed the Second Agreement was to obtain release of \$40,000.00 deposit or part of it which was paid to Sherani & Co.'s Trust Account when First Agreement was signed.
59. **The question that has not been put into evidence is if the First Agreement was cancelled by Purchaser for non-compliance with clause 13 of the First Agreement then why the deposit held in Trust Account of Sherani & Co. and paid pursuant to First Agreement was not released to the Purchaser.**
60. The Defendants and Subhash Chand obviously continued with same dealing as in the First Agreement because the Second Agreement and Third Agreement had same conditions as in First Agreement including the condition that sale is subject to approval of subdivision plan. Also when Second Agreement was signed subdivision plan was still not approved.
61. I accept ILSC's finding that consideration sum of \$400,000.00 stated in the Third Agreement and the Transfer was artificial sum which was to defraud Subhash Chand's bank directly.

62. The Defendants were part of the fraud committed by Mr Nagin of Sherani & Co. and the Purchaser Subhash Chand.
63. I reject Firstnamed Defendant's evidence that he signed the Third Agreement and Transfer on "humanitarian grounds" for the reason that a person acts on humanitarian grounds to promote social welfare for benefit of other human beings and not to commit fraud on others.
64. Even though the fraud committed by Mr Nagin, the Purchaser Subhash Chand and the Defendants directly affected the National Bank of Fiji trading as Colonial National Bank they indirectly committed fraud on the Registrar of Titles (ROT), the Public and Fiji Revenue and Customs Authority (FRCA) for following reasons:-
- (i) ROT:- Registrar accepted and registered a transfer for \$400,000.00 when actual consideration sum was \$350,000.00;
 - (ii) Public:- Any person wanting to purchase the subject property if the Purchaser intends to sell, can be easily convinced that the Purchaser Subhash Chand bought the subject property for \$400,000.00 when he actually bought it for \$350,000.00;
 - (iii) FRCA:- If Purchaser Subhash Chand ever sells the subject property, cost of the subject property will be \$50,000.00 more than what it should be which means his capital gain tax will always be \$5,000.00 less than what he should actually be liable to pay.
65. The Defendants did agree to be part of the fraudulent transaction together with Mr Nagin and the Purchaser, Mr Subhash Chand and they did so for their own benefit which was to obtain release of the deposit paid by the Purchaser pursuant to the First Agreement and held in Sherani & Co.'s Trust Account.
66. Therefore, after analyzing the evidence and on basis of what I stated at paragraph 43 to 65 of this Judgment I find that Defendants and the Purchaser, Mr Subhash Chand with the assistance of Mr Nagin colluded to defraud the

Plaintiff from obtaining his commission of \$23,000.00 as per the Agency Agreement.

67. I must state very clearly having accepted the ILSC's finding that \$400,000.00 was artificial price the Plaintiff is not entitled to commission on this amount.
68. I also state that Plaintiff was not a party to any fraudulent conduct and I find Mr Titus Narayan's evidence as credible.
69. Before I make final orders I wish to comment on following statements of Lord Denning in **Reeds case** (Supra):-

“But if the vendor could show that the purchaser would not in any event have been able or willing to complete, he would not be liable for commission ... When it is not the vendor, but the purchaser, who withdraws, the case is entirely different; for, even though a binding contract has been made, nevertheless, if the purchaser is unable or unwilling to complete, the agent is not entitled to his commission The vendor is not bound to bring an action for specific performance or for damages simply to enable the agent to get commission; but if he does get his money, he will probably be liable to pay the commission out of it.”

70. Whilst I accept when dealing with claim for commission by an Agent the fact that the Agent would not be entitled to commission if the Vendor cancels the Agreement, if default is made by the Purchaser, I state that this should not be the exhaustive factor or evidence that Court should rely on if the subsequent sale is to the same Purchaser, his/her family member/relative or his/her related company.
71. For instance, where:-
 - (i) A entered into Agency Agreement to sell his/her property for say \$500,000.00 and agrees to pay Agent commission in excess of \$500,000.00;

- (ii) The Agent then arranges for B to purchase the property for \$600,000.00 and A and B enters a Sale and Purchase Agreement for \$600,000.00;
- (iii) There is a possibility that A and B can collude whereby B defaults on the Sale and Purchase Agreement and then A terminates the Sale and Purchase Agreement because of B's default ;
- (iv) Upon expiry of the Agency Agreement A and B enters into another Sale and Purchase Agreement for \$550,000.00, and as a result A gets \$50,000.00 more and B saves \$50,000.00.

72. If the termination of Agreement by Vendor upon Purchasers default disentitles the Agent, his/her commission on ground that Vendor cancelled the First Sale and Purchase Agreement because of Purchaser's default then Agent in the above instance will not be entitled to Agent's commission.

73. However on the basis of what is stated at paragraph 70 of this Judgment the Court should look at all the circumstances of a particular case to determine whether Agent is entitled to commission or not.

Conclusion

74. I hold that because of the action of the Defendants, Mr Nagin and Mr Subhash Chand, Plaintiff has lost it's commission in the sum of \$23,000.00 which he was entitled to recover from the Defendants.

Costs

75. I have taken into consideration that trial lasted for two (2) days and the Counsel for both parties cooperated with each other during the course of the trial.

Interest


76. In assessing interest rate I have taken into consideration the fact that Plaintiff commenced this action on 11 February 2005 but failed to prosecute it diligently to bring this matter to finalization.

Order

77. I make following Orders:

- (i) Defendants do pay Plaintiff the sum of \$23,000.00;
- (ii) Defendants do pay Plaintiff interest on same sum of \$23,000.00 at the rate of four percent (4%) per annum from 10 July 2005, to date of this Judgment;
- (iii) Defendants do pay Plaintiff's costs of this action assessed in the sum of \$3,000.00.




.....
K. Kumar
JUDGE

At Suva

31 August 2016

MC Lawyers for the Plaintiff

Lajendra Law for the Defendants