

extended until further order of the Court or determination of the substantive action. The Plaintiff filed an Affidavit in Support of the said application.

2. Section 110 (3) of the LTA provides as follows:

“(3) The caveator may either before or after receiving notice from the Registrar apply by summons to the court for an order to extend the time beyond the 21 days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the court, upon proof that the caveatee has been duly served and upon such evidence as the court may require, may make such order in the premises either ex parte or otherwise as the court thinks fit.”

3. An interim Order was granted on 29 August 2023 for the *status quo* to be maintained until further orders of the Court.
4. The 1st Defendant opposed the Summons and filed an Affidavit in Opposition.
5. The 2nd, 3rd and 4th Defendants also filed respective Affidavits in Response of Senior Lands Officer namely Kavita Prasad and Registrar of Titles namely Torika Goneca.
6. The Plaintiff and the 1st Defendant are biological brothers, and the dispute arises from a previous court action where the current Plaintiff was the defendant, and the 1st Defendant herein was the plaintiff. The said court action was Civil Action No. 165 of 1992.
7. In Civil Action No. 165 of 1992, a Terms of Settlement (**TOS**) was reached between the parties and the same were made Orders of the Court which is attached to the Plaintiff's Affidavit in Support marked as “CL1”. The said Order dated 3rd December 1993 read as follows:

“1. That the Plaintiff is allowed to proceed to complete the subdivision of crown lease Number 11285 pursuant to the plan of Subdivision lodged with the Divisional Surveyor Western subject to the change in boundary from the Moto Road

2. That all the costs of the subdivision and extraction of separate lease is to be borne by the Plaintiff.

3. That the Defendant will execute all necessary documents and perform all such acts as may be necessary to complete the

subdivision in order to extract a separate lease for the Plaintiff and all costs in respect thereof to be borne by the Plaintiff.

4. That the Plaintiff do grant a first option to the Defendant and his sons to purchase the said lot being extracted in the subdivision in the event that the Plaintiff shall desire to sell the same at the price to be fixed by valuation by valuers to be appointed by each of the parties and/or as may be agreed. In the event of refusal by the Defendant and his sons the same shall be offered to any person at market price obtainable at the time.

5. That the access road shown by the parallel broken lines on the proposed plan submitted shall form the boundary of the lot on the right hand side. The side access road shall be a reserve for the benefit of the Defendant and his family and one Baktawar Singh, deceased. The Plaintiff shall be entitled to use the said access during his ownership of the extracted lot. Should the Plaintiff sell the said extracted lot he shall construct his own access from the Moto Road within the boundary of his extracted lot.

6. That the Plaintiff will not obstruct the Defendants water pipes running through and under the Plaintiffs lot and in the event of a sale of the lot the Plaintiff will secure such covenant with such purchaser or shall at the Plaintiffs cost remove the pipes...referred to in 5 herein."

8. This Court notes that the copy of the TOS provided to this Court has a few words missing from clause 6 most likely due to improper photocopying of the said TOS. Neither of the parties were able to provide the Court with a clearer copy of the TOS.

9. As per the TOS, the subdivided lot is now State Lease No. 19149 being Lot 1 on SO 3614 (**Lease**) and is issued to the 1st Defendant. The Plaintiff registered the Caveat on the Lease on 28 June 2022. When the 3rd Defendant issued the Plaintiff with a Notice of removal of caveat, the Plaintiff then filed a Writ of Summons and Statement of Claim (**SOC**) on 23 August 2023 together with the Summons for extension of the Caveat.

10. The Plaintiff seeks the following reliefs in his SOC:

- 1. "An order that Caveat no. 920167 remain registered on the property comprised in Crown Lease No. 19149, Lot 1 SO 3614 having an area of 889sqm until sale is effected pursuant to*

clause 4 of the Order dated 14th December 1993 made in Civil Action No. 165 of 1992.

- 2. A declaration that the Plaintiff has a beneficial and or equitable interest in the subject lot comprised in Crown Lease No. 19149, Lot 1 SO 3614 having an area of 889sqm.*
 - 3. That pursuant to Court Order dated 3rd December 1993, a declaration that the property comprised in Crown Lease No. 19149, Lot 1 SO 3614 having an area of 889sqm be held in trust to allow the Plaintiff and/or his sons the first right to purchase the subject lot in any event of sale.*
 - 4. An order that the 1st Defendant and or his agents and servants refrain from denying and or stopping and or obstructing the Plaintiff and his servants and agents from usage of the access road.*
 - 5. An order that the 1st Defendant pay damages (to be assessed by the Court) to the Plaintiff for unlawfully obstructing and or stopping the Plaintiff from using the access road.*
 - 6. An order that the 1st Defendant pay costs to the Plaintiff on a solicitor/client indemnity basis for unnecessary filing for removal of caveat no. 921067.*
 - 7. Any other orders that this court deems just."*
11. Furthermore, the Plaintiff avers as follows in his Affidavit in Support of the Summons:
- a) The Plaintiff and his sons have the first right of purchase as per the TOS and are ready to purchase the Lease from the 1st Defendant.
 - b) The 1st Defendant intends to sell the Lease to his tenant defaulting on clause 4 of the TOS.
 - c) The Plaintiff has registered the Caveat on the Lease due to the 1st Defendant's default of the TOS.
 - d) The 1st Defendant has applied to remove the Caveat instead of engaging with the Plaintiff on the purchase of the Lease.
 - e) The 1st Defendant's act of applying for removal of the Caveat shows that the 1st Defendant wishes to sell the Lease to a 3rd party.
 - f) In breach of clause 5 of the TOS, the 1st Defendant is blocking the Plaintiff and others from using the access road which is Lot 3 on SO 3614. The 1st Defendant has also extended the dwelling house on the Lease to encroach on the said access road.
12. During the hearing of the Application, the counsel for the Plaintiff informed this Court that the Plaintiff was no longer interested in purchasing the Lease but was concerned about clauses 5 and 6 of the TOS. In this regard the Plaintiff has filed an application for leave to amend his SOC which is

pending before this Court. The Plaintiff's counsel in his written submissions contends that the Caveat should be extended at least until the application to amend the SOC is heard and determined.

13. The 1st Defendant's counsel referred to the Plaintiff's application for Caveat which is marked as "CL4" in the Plaintiff's Affidavit in Support which states: "*Chabi Lal aka Chablal of Moto, Ba, Farmer claiming an estate or interest as prospective purchaser being granted first option to purchase the land pursuant to clause 4 of the Court Order entered on 3rd December, 1993 in Civil Action No. 165 of 1992 (copy of order attached) in the land described as follows...*"
14. The counsel for the 1st Defendant submitted that if clause 4 of the TOS was no longer an issue and the Plaintiff was no longer interested in purchasing the Lease then the Plaintiff no longer had any caveatable interest over the Lease.
15. Master Amaratunga (as His Lordship then was) in ***Carpenters Properties Ltd v Te Arawa Ltd*** [2011] FJHC 728; HBC178.2011 (14 November 2011) discussed the general principles regarding lodgment and extension of caveats, and referred to certain cases as below:

" 25. The general principle is that a person seeking to lodge and maintain a caveat must have an interest in land, ***Holt –v– Anchorage Management Ltd*** [1987] NZCA 5; [1987] NZLR 108 at 117 per Somers J. It is for this reason caveat must state with sufficient certainty the nature of interest or estate claimed by the caveator; ***NZ Mortgage Guarantee Co Ltd –v– Pye*** [1979] 2NZLR 188. Vautier J at page 195 of the report after referring to and following from the Australian cases stated the following:-

"...a caveator who fails to comply fully with the statutory requirements and fails to state accurately the nature of interest claimed which he claims by caveat will not succeed in securing assistance of the Court to maintain such a caveat."

26. His Lordship referred to the decision of the High Court of Australia in ***Leros Pty Ltd –v– Terava Pty Ltd*** [1992] HCA 22; [1992] 174 CLR 407 at 422 – 423 per Mason CJ, Dawson and McHugh JJ.

27. This statutory requirement is also mandatory under S107 of our ***Land Transfer Act*** (Cap 131). It states:-

"Every caveat shall state the name, address and description of the person by who or on whose behalf the same is lodged and, except in the case of a caveat lodged by order of the court or by the Registrar,

*shall be signed by the caveator or his agent and attested by a qualified witness and **shall state with sufficient certainty the nature of the estate or interest claimed and how such estate or interest is derived.***"

It is a mandatory provision and the interest in the estate has to be described in the caveat with certainty.

28. The interest described in the caveat form by the Plaintiff is as follows:

"...claiming an interest by virtue of the Sale and Purchase Agreement dated 26th March, 2010 and Deposit paid thereunder"

It is to be noted that proper description of the caveatable interest in the caveat is necessary and in Francis –v– Taradale West End Ltd [1998] 3 NZ Conv. C 1921762 stated as follows:

'If the basis for claiming the caveat is changed then it complies neither with the Statute nor the Regulation and therefore should not be extended Ball v Fawcett [1997] 1 NZLR 743.'"

16. In the present case, the Plaintiff's caveatable interest as per the Plaintiff's own Caveat application was based solely on clause 4 of the TOS. Furthermore, the Plaintiff's grievance as per the Affidavit in Support was that the Plaintiff and his sons had not been given the first opportunity to purchase the Lease. Applying the above principles from **Carpenters** [supra], since the Plaintiff does not wish to purchase the Lease anymore, the basis for claiming the Caveat has changed and it should not be extended. Therefore, the caveatable interest as per the Plaintiff's Caveat application becomes non-viable and can no longer be sustained.
17. For the sake of completeness, this Court will now address the remaining issues raised by the Plaintiff, notwithstanding the above finding that the caveatable interest asserted in the Plaintiff's Caveat application is no longer viable.

The issue of the 1st Defendant having a separate driveway and encroachment

18. In his SOC, one of the reliefs sought by the Plaintiff is for the 1st Defendant to be refrained from encroaching and blocking the access way leading to the Plaintiff's lease. The Plaintiff's counsel relied on clause 5 of the TOS to support this argument.

19. Clause 5 of the TOS provides that the 1st Defendant is entitled to use the access during his ownership and if he sells the Lease, he will have to construct his own access way/driveway.
20. In response, the 1st Defendant's counsel submitted that the 1st Defendant has not blocked the access road and, in any event, no caveatable interest arises from the requirement for the 1st Defendant to have a separate driveway. Counsel also submitted that the issue of a separate access way has been sorted out by virtue of an access road which has been allotted as Lot 3 on SO 3614 and as such a dedicated lot is registered.
21. The Court notes from the survey plan attached to Kavita Prasad's Affidavit in Response marked as "KP4" that the said access road is surveyed as a separate lot on SO 3614, being Lot 3. It is also noted that the Plaintiff has not provided any evidence to show that the 1st Defendant is either blocking the access or encroaching on it.
22. It is evident that the access road identified on Survey Plan SO 3614 corresponds to Lot 3, which is a distinct and separate parcel of land. Lot 3 SO 3614 does not form part of the Lease in question. Consequently, any matters pertaining to the access road are irrelevant to the current Caveat application filed by the Plaintiff, which pertains solely to Lot 1 SO 3614. In any event, allegations regarding the 1st Defendant's potential encroachment onto Lot 3 SO 3614 and the construction of an alternative access are matters reserved for determination at the substantive trial.

The issue of the Plaintiff's water pipes

23. The final issue that needs consideration arises from clause 6 of the TOS. Clause 6 provides that the 1st Defendant will not obstruct the Plaintiff's water pipes running through and under the 1st Defendant's Lease. Clause 6 further provides that in the event the Lease is sold, the 1st Defendant will either secure a covenant for the water pipes with the new purchaser or pay the cost of removing the pipes.
24. The counsel for the Plaintiff at the hearing submitted that the 1st Defendant should register a covenant before transferring the Lease to secure the Plaintiff's interest.
25. In his written submissions, counsel for the Plaintiff also stated that the application for leave to amend the Plaintiff's SOC was to include issues pertaining to the water pipes.

26. In response to this, the 1st Defendant's counsel referred to the Affidavit in Opposition filed on 15 May 2025 by the 1st Defendant opposing the Plaintiff's application for leave to amend his SOC. Annexed and marked as "C" is a letter of 20 September 2024 from the 1st Defendant's counsel to the Plaintiff's counsel wherein at paragraph 3 (b) the said letter states as follows:

"Our client undertakes to secure a covenant with the incoming purchaser that the incoming purchaser shall not obstruct your client's water pipes running through and under our client's property."

27. Accordingly, the counsel for the 1st Defendant submitted that the 1st Defendant has already given an undertaking for securing the required covenant and as such this complies with the requirements of clause 6 of the TOS. Counsel further submitted that making an application for leave to amend the Plaintiff's SOC was delaying the determination of the current Summons by this Court.

28. The 1st Defendant's counsel relied on **Cambridge Credit (Fiji) Limited v W.F.G Limited** [1975] 21 FLR 182 (26 November 1975) to advance submissions that none of the grounds submitted by the Plaintiff creates a caveatable interest in the 1st Defendant's Lease.

29. The Court of Appeal in **Cambridge** [supra] stated as follows:

"Section 106 of the Fiji Act is designed to protect unregistered instruments in land. For instance an agreement for sale and purchase, an unregistered mortgage, an agreement to give a mortgage or an option to purchase land are just a few examples of unregistered instruments which are capable of being protected by the lodging of a caveat."

30. Applying **Cambridge** [supra], the 1st Defendant's counsel submitted that none of the circumstances capable in law of creating a caveatable interest arise in this case.

31. This Court notes that Clause 6 of the TOS is unambiguous and does not impose any obligation on the 1st Defendant to register a covenant concerning the water pipes on the Lease prior to its transfer to a new purchaser.

32. Moreover, the 1st Defendant has undertaken to secure such a covenant relating to the water pipes with any incoming purchaser at the time of transferring the Lease. Should the 1st Defendant fail to obtain such a covenant, then as per clause 6, the 1st Defendant shall bear the cost for

removal of the water pipes. If the 1st Defendant breaches clause 6 then the Plaintiff is at liberty to take action against the 1st Defendant.

33. Irrespective of whether or not the Plaintiff's application for leave to amend his SOC is successful or not, the provision in clause 6 of the TOS is not a valid reason for the Caveat to be extended until the final determination of this action.

34. Therefore, this Court finds that any alleged breach of clauses 5 and/or 6 of the TOS does not create an interest in the land. Instead, any such breach by the 1st Defendant is a matter to be resolved at the substantive trial. Should the Court find in favour of the Plaintiff, he can be compensated by an award of damages.

35. This Court thus finds that the Plaintiff has no further caveatable interest in so far as the Lease is concerned as the Plaintiff is no longer interested in the purchase of the Lease. Moreover, the Caveat was lodged over the Lease which is issued over Lot 1 of SO 3614 and not on Lot 3 being the access road. Furthermore, the argument that the 1st Defendant has not secured a covenant protecting the Plaintiff's water pipes is without merit because neither has the sale of the Lease transpired nor was there a requirement in clause 6 of the TOS that the 1st Defendant shall secure such a covenant prior to the sale of the Lease.

36. Accordingly, I make the following orders:

- (a) The Plaintiff's Summons filed on 23 August 2023 for an extension of the Caveat is hereby refused and the Summons dismissed; and
- (b) Costs summarily assessed at \$2,000.00 to be paid by the Plaintiff to the 1st Defendant within 28 days.



P. Prasad
Master of the High Court

At Lautoka
24 October 2025

Solicitors: *Nands Law for Plaintiff*
 Lajendra Lawyers for 1st Defendant
 Solicitor-General's Office for 2nd, 3rd and 4th Defendants