

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE AGRICULTURAL TRIBUNAL
WESTERN DIVISION AT LAUTOKA

Reference No. C&ED No. 2 of 2015

BETWEEN: **Leone Vakarusaqoli** of Lot 5, Kuku Road, Nausori.

APPLICANT

AND: **Vijendra Prasad** of 31 Mariko Street, Raiwai, Suva.

1st RESPONDENT

AND: **Director of Lands** of Government Buildings, Suva.

2nd RESPONDENT

Counsels

Nawaikula Esquire for the Applicant.

Kohli & Singh for the 1st Respondent.

Office of the Attorney General for the 2nd Respondent.

Ruling on Strike Out

1. The 2nd Respondent pursuant to a Motion filed on the 20th of April, 2016 sought to strike out the substantive application herein on the following grounds:
 - a. That it discloses no reasonable cause of action.
 - b. That it is an abuse of process of the Agricultural Tribunal.
 - c. That the reference discloses no bona fide right of intervention of the Agricultural Tribunal.
 - d. That the cost of this application be paid by the Applicant.
 - e. And any other Orders, the Tribunal may deem fit and appropriate under the circumstances.
2. The Application was supported by an Affidavit of Sanjesh Kumar. The Respondent is relying on section 3 and section 18 (2) and section 22 (K) of the Agricultural Landlord and Tenant Act, Cap 270 (herein referred to as '**ALTA**') and Regulation 33 of the Agricultural Landlord and Tenant Act (Tribunal Procedure) Regulations.
3. The Applicant has indicated orally that it is opposing the application to strike out.

The Law

4. Section 18 of ALTA provides that:

“(1) A Tribunal shall have power:-

(b) *To admit evidence whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings.*”

The Submissions

5. The central issue for the 2nd Respondent is that Crown Lease No. 12625 has a land area of 5,958m² which is essentially less than 1 hectare. This brings into question the jurisdiction of this Tribunal under Section 3 of ALTA to deal with the substantive application herein.

6. The 2nd Respondent also stated that Crown Lease No. 12625 is a State Lease classified as an agricultural lease that is protected under the provisions of the State Land Act.

7. The 1st Respondent has basically endorsed and supported the application by the 2nd Respondent to strike out the substantive application herein.

8. The Applicant in opposing the application to strike out is relying on the proviso in section 3(1) of ALTA that stipulates:

‘This Act shall apply to all agricultural land in Fiji except-

(a) agricultural holdings having an area of less than 1 hectare:

***Provided that the Minister may, on application by a tribunal or otherwise, by notice in the Gazette, specify agricultural holdings or classes of such holdings of a less area than 1 hectare to which the provisions of this Act shall apply.*”**

9. The Applicant submits that there is a presumption here that the subject land was gazetted otherwise there would be no agricultural lease of less than 1 hectare. The Crown Lease No. 12625 is one where the exception in section 3(1) of ALTA will apply.

Legal Matrix

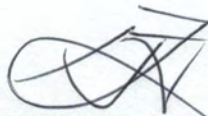
10. I have considered the submissions by all the parties in this matter.

11. I am persuaded to agree with the submissions by Applicant herein. Clause 30 of Crown Lease No. 12625 state that:

'this contract is subject to the provisions of the Agricultural Landlord and Tenant Act and may only be determined whether during the currency or at the end of its term, in accordance with such provisions. All disputes and differences whatsoever arising out of this contract for the decision of which the Act makes provisions shall be decided in accordance with such provisions'.

12. The Lease Agreement herein was signed by Albert Queet who was the Director of Lands at the relevant time. The signature of the then Director of Lands and clause 30 of the Lease Agreement is sufficient notice that Crown Lease No. 12625 is an agricultural holding of less than 1 hectare to which the provisions of ALTA will apply. I therefore hold that the exception in section 3(1) of ALTA is applicable herein. This Tribunal has the jurisdiction to deal with the substantive application herein.
13. The full orders of the Court are as follows:
 1. The application by the 2nd Respondent to strike out the substantive application is denied.
 2. Each party to bear own costs.
 3. The matter is now listed for mention to fix a hearing date.
 4. 21 days to appeal.

Ordered Accordingly,



Jeremaia N. Lewaravu [Mr.]
RESIDENT MAGISTRATE

5th June, 2017

