IN THE CENTRAL AGRICULTURAL TRIBUNAL AT SUVA

IN THE MATTER of an appeal from the decision of the Agricultural Tribunal in Lautoka.

Central Agricultural Tribunal No. 02 of 2017

Agricultural Tribunal Ref. No. 08 of 2013

BETWEEN

JAI NARAYAN and **GYAN WATI** both of Kabisi, Sigatoka.

APPELLANTS

AND

RAJ KUMARI of 11-33 Luke Street, Otahuhu, Auckland.

FIRST RESPONDENT

AND

DIRECTOR OF LANDS of Tavewa Avenue, Lautoka.

SECOND RESPONDENT

Counsel	:	Ms. J. Naidu for the Appellant
		Mr. J. Sharma for the First Respondent
		Ms. M. Faktaufon for the Second Respondent
Date of Hearing	:	17th May, 2018
Date of Judgment	:	13th June, 2018

JUDGMENT

[1] The appellants made an application to the Agricultural Tribunal in Form 6 seeking a declaration that he is the tenant of the agricultural holding. After hearing the parties the learned Tribunal dismissed the application of the appellants. This appeal is from the said dismissal.

[2] The learned Tribunal delivered its judgment on 05th October, 2017 and being aggrieved by the findings of the learned Tribunal the appellants preferred this appeal to the Central Agricultural Tribunal on the following grounds of appeal:

(1) The Tribunal erred in law and in fact in failing to hold that the Applicant/appellant is a tenant as per section 4 and 5 of the Agricultural Land Lord and Tenant Act.

(2) The Tribunal erred in law and in fact in finding that it cannot grant the relief sought by the Applicant/appellant by way of declaration of tenancy on the subject land under sections 4 and 5 of the Agricultural Land Lord and Tenant Act.

[3] The appellants came before the Agricultural Tribunal on the basis that he entered upon the Agricultural holding pursuant to a sale and purchase agreement entered into between him and Kissun Lal (now deceased) who was the husband of the 1st

respondent and the father-in-law and the father of the 1st and 2nd named appellants respectively. The 1st respondent is the sole executor of the estate of her deceased husband.

[4] Section 4(1) and section 5(1) of the Agricultural Landlord and Tenant Act 1966 (the Act) provide as follows:

> **Section 4(1)** - Where a person is in occupation of, and is cultivating, an agricultural holding and such occupation and cultivation has continued before or after 29 December 1967 for a period of not less than 3 years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent and, if the landlord fails to satisfy such onus of proof, tenancy shall be presumed to exist under the provisions of this Act:
>
> Provided that any such steps taken between the 20 June 1966 and 29 December 1967, shall be no bar to the operation of this subsection.
>
> **Section 5(1)** - A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration, the tenancy shall be deemed to have commenced when the tenant first occupied the land:
>
> Provided that rent shall only be recoverable where the tribunal is satisfied that it is just and reasonable so to order.

[5] Sections 4 and 5 of the Act deal with two different categories of occupants of agricultural holdings.

[6] Any person who has been in occupation while cultivating it for three years or more can make an application under section 4 of the Act to the Agricultural Tribunal to have him or her declared as the tenant of that holding if the landlord does not take steps to evict him. In such a situation the tenancy is presumed and the burden is on the landlord to establish that the occupation is without his consent.

[7] Under section 5(1) a person who maintains that he is the tenant of a particular agricultural holding can make an application to the Agricultural Tribunal if the landlord refuses to accept him as the tenant. Under section 5(1) there is no presumption in favour of the person who claims to be the tenant. He has to establish before the Agricultural tribunal that he is a tenant.

[8] On a careful consideration of the application made by the appellants to the Agricultural Tribunal it appears that, as correctly held by the learned Tribunal, they have come to the Tribunal under section 5 of the Act and not under section 4. In his application he has very clearly stated that his tenancy is evidenced by sale and purchase agreement. The learned counsel for the appellant in her written submissions has stated that the sale and purchase agreement entered between the parties was merely evidence to establish the requirement under section 4 of the Agricultural Landlord and Tenant Act. There is no such requirement in section 4. As I already discussed all what the occupant of an agricultural holding must establish is that he is in occupation of and is cultivating the holding.

[9] The learned counsel for the 1st respondent drew the attention of the court to the evidence of the appellants and their witness and this leads to only one conclusion that is that they have been in occupation of the Agricultural Holding in question as owners pursuant to a sale and purchase agreement. Therefore, they cannot take up a different position in appeal and say that they were in occupation as tenants.

[10] There was no possibility for the Tribunal to consider the application under section 4 of the Act for the reason that appellants have very clearly stated in their evidence that the agricultural holding in question was not cultivated by the first named appellant after 2010. This application was made to the Agricultural Tribunal in 2013.

[11] For the reasons set out above I hold that the learned Tribunal has arrived at the correct finding after a careful consideration of the evidence adduced before him.

[12] At the hearing of the appeal the learned counsel for the first respondent submitted that the appellant's appeal has been filed out of time and therefore liable to be rejected.

[13] Section 48(2) of the Act provides:

> Within twenty-one days after the slaking of any final award, order or certificate, the appellant shall-
>
> (a) pay such fee as may be prescribed to the secretary of the tribunal;
> (b) lodge with the tribunal written notice of the appeal, with a receipt for the fee paid under the provisions of paragraph (a);
> (c) serve a copy of the written notice of appeal upon the opposite party.

[14] The judgment of the learned Tribunal was delivered on 05th October, 2017 and the notice of appeal was filed on 26th October, 2017. Section 48(2) of the Act requires the appellant to file and serve the notice of appeal on the opposite party within twenty one days after the decision of the Tribunal. The notice and grounds of appeal have been filed on the 21st day from the date of the judgment. There is no endorsement on record as to the date on which the notice of appeal was served on the respondents. The learned counsel for the first respondent submitted that it was served on the first respondent on 22nd November, 2017. The learned counsel for the appellant did not counter this position in her reply at the hearing of the appeal or in the written submissions.

[15] For the reasons aforementioned the Tribunal makes the following orders:

1. The appeal of the appellants is dismissed.
2. The appellant are order to pay $1000.00 to the respondents as costs of this appeal.

CENTRAL AGRICULTURAL TRIBUNAL
SUVA

Lyone Seneviratne

Central Agricultural Tribunal

13th June 2018