

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

Reference No. WD No. 11 of 2021

BETWEEN: **Mukesh Chand** of Vitogo, Lautoka, Fitter Technician.

Applicant

AND: **Suresh Singh** of Vitogo, Lautoka, Marketing Manager.

1st Respondent

AND: **iTaukei Land Trust Board** a body corporate duly constituted under the iTaukei Land Trust Act, Cap 134 of Fiji, Lot 431, Victoria Parade, Suva.

2nd Respondent

Before: the Resident Magistrate – Mr. Jeremaia N. Lewaravu

Date of Hearing: 16th August, 2021

Date of Judgment: 1st October, 2021

Appearance

Messers Niudamu Lawyers for the Applicant

Datt Legal for the 1st Respondent

Non Appearance for 2nd Respondent

Judgment

1. There are two applications before the Tribunal. The Applicant first filed an application for Status Quo on the 20th of July, 2021. The 1st Respondent is opposing the application and has filed an Affidavit in Opposition to that effect. In turn, the 1st Respondent also filed an application for Strike Out the substantive application dated 12th August, 2021. The Applicant is opposing the application and has filed an Affidavit in Opposition.
2. The two application before the Tribunal has been consolidated and in light of the Practice Direction issued in response to the COVID 19 pandemic, the decision herein is based on the legal documents and written submission filed by the parties respectively. I must also express my disappointment at the absence of the 2nd Respondent in these proceedings given the role that it plays under the relevant iTaukei Legislation.

The Law

3. In his application for the Status Quo Order, the Applicant is relying on section 22(d),(e),(g),(j) of the Agricultural Landlord and Tenant Act, Cap 270 of Fiji (herein referred to as 'ALTA'). Whereas the 1st Respondent is relying on section 18 and section 19(1) of the Agricultural Landlord and Tenant Act, Cap 270 of Fiji inclusive of Regulation 3 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations. The 1st Respondent has also cited Order 3, Rule 8, Order 26, Rule 1 and Rule 4 of the Magistrates Court Rules including Order 18, Rule 18 of the High Court Rules of 1988.

Legal Matrix

4. At the outset, I wish to clarify two things. Firstly, the application by Applicant is for a status quo order and not an interim injunction. This Tribunal has no jurisdiction to deal with injunctions generally. As such, any submissions or reference made by the parties to the question of interim injunction herein is hereby struck out forthwith. Secondly, Counsels have a duty to the Court to properly identify and specify the relevant law that is applicable in any case that comes before the Court.
5. In the matter herein, the only relevant provision cited by the Applicant in relation to his application is section 22(j). Whereas the only relevant provision cited by the 1st Respondent in as far as his application is concern is section 19(1). Be that as it may, this Tribunal is empowered under Regulation 13 of the ALTA Tribunal Procedure Regulation to grant any order it considers necessary for doing justice between the parties regardless of whether such an order was expressly requested by either party or not .
6. I have considered the matter herein. The Annexure marked as 'SS-5' in the Affidavit in Opposition of the 1st Respondent dated 2nd August, 2021 is compelling. However, despite the grant of Probate to the 1st Respondent dated 9th April, 2020, there is no evidentiary proof that the same has been registered with the Registrar of Titles as required under the Land Transfer Act, Cap 131 of Fiji. Similarly, there is no evidentiary proof that the 2nd Respondent has carried out its administrative duties under the iTaukei Trust Act, Cap 134 of Fiji as required under the circumstances.
7. The current status of affairs is significant as without the relevant amendment to the subject lease and registration on the memorial of the subject lease, this Tribunal cannot deal with the substantive application for tenancy filed by the Applicant. The starting point for the parties is whether the title of this particular subject land has pass from the Estate of Jaswant Singh?

8. The question raised is significant as it goes to the very heart of the matter. It is also interesting to note that the Applicant lodged a Caveat on the 24th of June, 2021. While the 1st Respondent has addressed the issue of title in his written submissions dated 14th September, 2021, ideally, the matter should be raised in the proper forum.
9. It is therefore incumbent upon the parties to file a civil case in the proper forum for a determination of each respective interest and rights to the subject land. I reiterate that without such a determination, this Tribunal cannot deal with the application for tenancy filed by the Applicant herein. The other relevant question the parties failed to consider was whether Regulation 5 of the ALTA Tribunal Procedure Regulation was applicable under the circumstances. Be that as it may, I am concerned with the non-participation and non-attendance of the iTaukei Land Trust Board despite the order for joinder. There are allegations of breach of the lease conditions by the Applicant that remains unanswered by the 2nd Respondent.
10. Nevertheless, in summary, the Applicant is suing the wrong 1st Respondent (when Ved Kuari aka Betkuar is still the legally recognized sole Executrix and Trustee) and that the 1st Respondent has no locus standi to file an application for striking out (when Ved Kuari aka Betkuar is still the legally recognized sole Executrix and Trustee). In other words, at this stage of the proceedings, neither party has a cause of action against the other herein. In saying this, the status of each party will change once a determination of interests and rights is made by a superior Court of competent and relevant jurisdiction. Then and only then can the parties come back to this Tribunal for an application under the relevant legislation.
11. In exercise of powers under Regulation 33 of the ALTA Tribunal Procedure Regulation, the full orders of the Court is as follows:
 - a. The application for status quo order is denied.
 - b. The substantive application herein is hereby struck out.
 - c. Each party to bear own cost.
 - d. Appeal within 28 days.

Ordered Accordingly,



Jeremaia N. Lewaravu [Mr.]

RESIDENT MAGISTRATE

1st October, 2021