

**IN THE STATUTORY TRIBUNAL, FIJI ISLANDS**  
**SITTING AS THE AGRICULTURAL TRIBUNAL**  
**CENTRAL DIVISION AT SUVA**

**Reference No. C & ED 1 of 2018**

**BETWEEN:**     **Edwin Prasad** of Vusuya Road, Nausori, Fish Farmer.

**Applicant**

**AND:**           **Rajesh Singh** and **Ranjani Mala** both of 125 Gray Avenue, Papatoetoe, New Zealand.

**1<sup>st</sup> 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.

**2<sup>nd</sup> Respondent**

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

**Date of Hearing:** 16<sup>th</sup> April, 2021

**Date of Decision:** 11<sup>th</sup> November, 2021

**Appearance**

Mr. Kumar of Sunil Kumar ESQ for the Applicant

Ms. Vokanavanua of iTLTB Legal Division for both Respondents

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**Judgment**

1.     The Applicant filed his original application in this Tribunal on the 6<sup>th</sup> of April, 2018 seeking a declaration of tenancy in the subject land the Applicant described as Naikakawalu No.5 SD Lot2. In this application, the Applicant failed to provide the full description of the subject land. He also failed to provide answers to questions 6, 8, 9, 10 inclusive of questions 17 and question 19. The Respondents are opposing the application.

**Background**

2.     When the matter was called on the 1<sup>st</sup> of February, 2019, the 1<sup>st</sup> Respondent was absent. The Applicant sought a formal proof date. The Tribunal then sought clarification as to the omission in questions 6, 8, 9, 10 inclusive of questions 17 and question 19 of the relevant Form 6 application. Counsel for the Applicant sought time to amend his application that was granted by the Tribunal.

3. The Amended Form 6 Application was eventually filed by the Applicant on the 20<sup>th</sup> of February, 2019. It also included several other documents that was highly irregular. In any event, the full description of the subject land in iTaukei Lease No. 13865 is described as Naikakawalu No. 5, subdivision Lot 2 in the Tikina of Namata in the Province of Tailevu having an area of 1.2231 ha owned by the Mataqali Naibili for a term of Fifty (50) years commencing on the 1<sup>st</sup> of January, 2017.

### The Law

4. Section 4(1) of the Agricultural Landlord and Tenant Act (herein referred to as 'ALTA') state that:

***'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..'***

5. Section 5(1) of ALTA further provides that:

***'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...'***

6. In addition, section 9 of ALTA is also relevant herein.

### The Hearing

7. During the Hearing, it became apparent that there was an outstanding preliminary issue requiring adjudication. The central issue was whether the Applicant was entitled to seek protection under ALTA in respect of iTaukei Lease No. 13865? A hearing under Regulation 33 of ALTA ensued.
8. The Applicant said that he is entitled as ALTA deals with disputes between landlords and tenants lease and not a leasee with implied lease or sublease as stated in section 2 of ALTA. The Applicant submitted that the preliminary issue raised is of no concern to the Applicant given that he has no control over the administrative functions of the iTaukei Land Trust Board and that it should not be held against him or deprive him of his rights under ALTA. The Applicant further submitted that the Tribunal should rule on the evidence before the Court and not to conduct its own inquiry into the issuance of the relevant lease as the Applicant is unaware of the administrative duties of the 2<sup>nd</sup> Respondent.
9. The Applicant submits that he has been cultivating and occupying the subject land since July, 2012. He has maintained and renovated the Family House at his own cost. He has applied twice

for the subject lease and was surprised that the same was issued to the 1<sup>st</sup> Respondent who is a non-resident and currently lives in New Zealand. The Applicant further submits that he has been paying the land rent since 2012. The Applicant has cited and relied on a number of case authorities.

10. On the other hand, the 1<sup>st</sup> Respondent(s) said that they became the registered proprietors of the original iTaukei Lease No. 2510 on the 2<sup>nd</sup> of November, 1999 vide the registered Transfer No. 21952 upon consideration of \$5,000.00. This subject lease expired on its legal termination date on 1<sup>st</sup> July, 2017. Before the expiry, the 1<sup>st</sup> Respondent(s) lodged an application to extend the lease on the 11<sup>th</sup> of November, 2016. The application to extend the lease was successful as the 1<sup>st</sup> Respondent(s) were issued with a new iTaukei Lease No. 13865 for a term of Fifty (50) years on the 1<sup>st</sup> of January, 2017.
11. The (1<sup>st</sup> named) 1<sup>st</sup> Respondent submits that the Applicant is his biological brother. The arrangement between them was family arrangement. He explains the same in paragraph 6 of his Affidavit in Opposition. He said that in 2012, upon his visit from New Zealand, he saw the Applicant driving a van in Nadi. He felt sorry for him and asked him to move back to the subject land to occupy and cultivate until he could get back on his own two feet. This was the arrangement between them.
12. The 2<sup>nd</sup> Respondent is opposing the application for tenancy and seeks the dismissal of the same.

### **Legal Matrix**

13. I have considered the submission of both parties. In his original application, the Applicant admitted to an arrangement with the 1<sup>st</sup> Respondent(s) however, in his amended application, the Applicant failed to mention any such arrangement between the parties. This is decisive in the matter herein. I therefore hold that the Applicant is subject to his pleadings.
14. Notwithstanding, the claim that the subject land was part of his father – Ram Narayan Singh's Estate. The Applicant has failed to adduce any documentary evidence to substantiate this claim. On the other hand, the 1<sup>st</sup> Respondent(s) have submitted documentary evidence that do confirm the following:
  - a) They became the registered proprietors of iTaukei Lease No. 2510 vide the registration transfer No. 21952 and that.
  - b) They were issued with a new iTaukei Lease No. 13865 on the 1<sup>st</sup> January, 2017.

In essence, the claim by the Applicant that the subject land was a family land is baseless and without documentary proof.

15. I will now deal with the question of arrangement. In paragraph 5 of the Affidavit of Edwin Prasad attached to his amended application dated 20<sup>th</sup> February, 2019, the Applicant avers that '*I started residing on this property in the month of July, 2012 and have lived there ever since with my family*'. This admission is detrimental to the Applicant's case as he is basically admitting to the fact that his occupation and cultivation of the subject land was without the consent of the 1<sup>st</sup> Respondent(s) thereby failing the test under section 4 of ALTA.
16. In the case **Nath v Kumar, Director of Lands** WD No. 44 of 1997, the Learned Tribunal held that:  
  
***'Occupation and Cultivation alone do not create a tenancy. There must be an agreement between the landlord and the tenant for the tenant to have exclusive possession of the property for a fixed period at a certain rent. Such agreement must be intended by the parties to be legally binding'***.
17. The Applicant has admitted to the lack of agreement between the parties. Furthermore, the Applicant cannot simply rely on his occupation and cultivation of the subject land to elevate his status to that of a tenant. At this stage, the relevant question to ask is twofold: whether the Applicant is entitled to seek tenancy under iTaukei Lease No. 2510? And whether the Applicant is entitled to seek a tenancy under iTaukei Lease No.13865?
18. It is clear from the facts that iTaukei Lease No.2510 expired on its legal termination date on the 1<sup>st</sup> of July, 2017 before the original application for tenancy by the Applicant was filed on the 6<sup>th</sup> of April, 2018. The law is clear, that upon expiry of a valid lease, the subject land reverts back to the landlord absolutely. The Landlord has the discretionary to deal with the subject land as it see fit. Even though, iTaukei Lease No. 2510 was subject to a section 13 extension, the 2<sup>nd</sup> Respondent has issued a completely new itaukei lease all together. The Applicant failed to raise the issue in this forum or any other forum. I will therefore let the matter rest. Section 9 of ALTA is applicable. In essence, any application by the Applicant under iTaukei Lease No. 2510 is now moot given the issuance of a new iTaukei lease No. 13865.
19. I will now deal with iTaukei Lease No. 13865. This iTaukei lease was issued to the 1<sup>st</sup> Respondent on the 29<sup>th</sup> of March, 2017 with retrospective effective from the 1<sup>st</sup> of January, 2017. Significantly, the Applicant filed his original application on the 6<sup>th</sup> of April, 2018 and his amended application on the 29<sup>th</sup> of March, 2019. In light of this fact, the application by the Applicant is premature as he is yet to fulfill the 3 year rule required under section 4 and section 5 of ALTA.
20. The Applicant is relying on the legal principles of possessory leasehold and adverse possession. The law under ALTA is clear that the relevant section affords protection only to bona fide tenants whose landlords have subsequently refuses to accept him as such. It is not a short cut to the acquiring of any interest in land by adverse possession. It seems to me that the Applicant has an ulterior motive in using the process under ALTA to acquire an interest in the subject land by adverse possession. It is an abuse of the Court process.

21. The Applicant has reservations about the issuance of an agricultural lease to non-residents of Fiji. The issue raised is irrelevant in as far as the Form 6 application that is before the Court. It is a policy matter within the purview of the 2<sup>nd</sup> Respondent. The same should therefore be raised with the 2<sup>nd</sup> Respondent. It is an abuse of the Court process to raise it in this forum.
22. In the final analysis, the 1<sup>st</sup> Respondent(s) have raised the defence of family arrangement. I accept the same. The law is clear that such family arrangements do not confer any right and/or benefit to cultivate and/or use and/or occupy the subject land. In rural Fijian farming communities, it is common for near family members to enter into informal family arrangements. However, such arrangements do not create tenancies 'but merely a licence to occupy' (see: **Gounder v Zundal & Others** WD No. 32 of 1972). In short, the Applicant does not have any rights arising under ALTA. He is therefore not entitled to seek protection under ALTA.
23. The full Orders of the Court is as follows:
  - a. The application for declaration of tenancy is hereby dismissed.
  - b. The Applicant to pay cost to both Respondents in the sum of \$500.00 each.
  - c. Appeal within 28 days.

Ordered Accordingly,

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Jeremaia N. Lewaravu [Mr.]

**RESIDENT MAGISTRATE**

11<sup>th</sup> November, 2021