IN THE FIJI COURT OF APPEAL

Civil Appeal No. 79 of 1985

Between:

ABDUL KADIR f/n Rahim Buksh — Appellant

- and -

NATIVE LAND TRUST BOARD — Respondent

Mr. A.K. Narayan for the Appellant
Miss A. Rogan for the Respondent

Date of Hearing: 7th July, 1986
Delivery of Judgment: 18th July, 1986

JUDGMENT OF THE COURT

Holland, J.A.

The appellant appeals against the judgment of Kearsley J. declining to make an order in favour of the appellant that the respondent renew a Native Lease Number 13813 and to make ancillary declarations.

The matters in issue on appeal were reduced to a narrow compass. It is common ground that the appellant has been in occupation since 1940 of a block of land comprising 2 acres and 1 rood. The latest lease of the land was for a period of 10 years from 1st January 1970. Upon the expiry of that lease, or just prior thereto, the appellant applied for a renewal but this application was declined on the basis that the land being less than 2½

acres did not come within the provisions of the Agricultural Landlord and Tenant Act. The memorandum of lease did not contain a specific right of renewal but clauses 21 and 22 of the document provided as follows:-

> " (21) All the statutory conditions and covenants set out in Section 9(1) of the Agricultural Landlord and Tenant Ordinance are implied and form part of this instrument of tenancy.
>
> (22) "This contract is subject to the provisions of the Agricultural Landlord and Tenant Ordinance, and may only be determined, whether during its 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 that Ordinance makes provision, shall be decided in accordance with such provisions." "

Section 13(1) of the Agricultural Landlord and Tenant Act provides:-

> "13.-(1) Subject to the provisions of this Act relating to the termination of a contract of tenancy, a tenant holding under a contract of tenancy created before or extended pursuant to the provisions of this Act in force before the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976,* shall be entitled to be granted a single extension (or a further extension, as the case may be) of his contract of tenancy for a period of twenty years, unless - ....."

It is the contention of the respondent that Clauses 21 and 22 of the Memorandum of Lease are in error and should have been struck out from the printed form of the lease. The appellant contends that he has a lease specifically incorporating the provisions of the Act and hence giving him a right of renewal for 20 years.

It is clear that both the respondent and the appellant knew, when the respondent tendered the memorandum of lease, that the land was less than 2½ acres and did not constitute an agricultural holding under the Act so as to make the lease subject to the provisions of the Act by virtue of Section 3. That fact is established by a letter dated 6th December 1968 written by the Manager of the respondent to the appellant's Solicitors.

The respondent contends that Clauses 21 and 22 should be struck out of the lease as being parts of a printed document which are inconsistent with the true intention of the transaction. In short it seeks rectification of the lease to enable it accurately to record the true transaction between the parties.

The law is succintly stated in Chitty on Contract's General Principles 24th Edition para 310 where it is said:-

> "It has long been an established rule of equity that where a contract has by reason of a mistake common to the contracting parties been drawn up so as to militate against the intentions of both as revealed in their previous oral understanding, the court will rectify the contract so as to carry out such intentions so long as there is an issue between the parties as to their legal rights inter se."

Such a mistake can often more easily be inferred when the contract is in a printed form as was the case in Baumwoll Manufactur von Scheibler and Furness [1893] A.C. 8 but the party seeking rectification must first establish whether, printed form or not, that the form of the document does not correctly record the intent of both parties.

Although we may well be satisfied that the form of the lease may not correctly record the intent of the respondent we are not satisfied that it necessarily fails to record the true intent of the appellant.

At the time of the lease it was known by both parties that the Act did not apply to the land in question. All that the evidence discloses is that the respondent submitted to the appellant the memorandum of lease containing clauses 21 and 22 and the appellant accepted the lease.

It was submitted to us that the memorandum of lease in its form led to an absurdity and hence clauses 21 and 22 should be deleted. It is not absurd for the parties to mean to incorporate the provisions of the Act even though the Act would not otherwise apply. There may be difficulty in applying all the functions of a tribunal under Section 22 of the Act when in some, if not all cases a tribunal may have no jurisdiction but there is no absurd result in finding, as we do, that on the plain meaning of the words in the memorandum of lease there is an agreement to give the appellant rights of renewal in the same way as if the land were subject to the provisions of the Act.

In the Supreme Court it was held that the appellant was not entitled to a renewal because on the evidence it had not been demonstrated that he had cultivated the land in a manner consistent with good husbandry. The right of renewal given under Section 13 applies unless the tenant has failed to cultivate the land in such a manner. In order to debar the appellant's right of renewal on this ground the onus of establishing failure would have rested on the respondent. Counsel for the respondent informed us that the respondent did not advance this as a ground to oppose the appellant's claim in the Supreme Court, nor did it attempt to support the judgment under appeal on this ground.

It follows that the appeal should be allowed and that in lieu of refusing the appellant relief there should be an order that the respondent Board do renew Native Lease Number 13813 in terms of Section 13(1) of the Agricultural

Landlord and Tenant Act. There appears to have been no order as to costs in the Court below. The appellant is entitled to costs of the appeal to be fixed by the Registrar.

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Vice-President

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Judge of Appeal

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Judge of Appeal