

**IN THE COURT OF APPEAL, FIJI ISLANDS**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**CIVIL APPEAL NO. ABU0017 OF 2008S**  
**(High Court Civil Action No. HBC 35/2006)**

**BETWEEN:**

**MOHAMMED SALIM**

***Appellant***

**AND:**

**NATIVE LAND TRUST BOARD**

***Respondent***

**Coram:**

**Pathik, JA  
Khan, JA**

**Hearing:**

**Thursday, 5<sup>th</sup> March 2009, Suva**

**Counsel:**

**A. Ram for the Appellant  
A. Vakatale for the Respondent**

**Date of Judgment: Monday, 16<sup>th</sup> March, 2009, Suva**

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**JUDGMENT OF THE COURT**

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- [1] The appellant inherited a little over 20 acres of sugar cane farm land near Bocalevu, Macuata as a sole beneficiary of his father's will. The land was leased from the Native Land Trust Board ("NLTB") which expired on 30 June 2006.
- [2] This property had the benefit of a sugar cane contract No. 2008.

- [3] The appellant had a brother who disputed the appellant's rights to the land pursuant to the will of his father and took the dispute to the Agricultural Tribunal.
- [4] Before the Tribunal heard the matter, the appellant, his brother Mohammed Aziz and the NLTB reached a compromise which was converted into Tribunal orders dated 6 November 1992.
- [5] The consensual orders made by the Tribunal were as follows:
- (i) Mohammed Aziz was to be allocated a separate lease of half of the farm, namely approximately 10 acres of land.
  - (ii) The appellant was to be allocated a separate lease of the remainder of the land.
  - (iii) The sugar tribunal was to approve 2 separate cane contracts for each of the parties in relation to their land.
  - (iv) A survey was to be conducted to finalise the boundaries. Both brothers were to continue in occupation and farming the land until new leases were issued.
  - (v) As the landlord, the NLTB had the responsibility to oversee and facilitate the subdivision and the issuance of the two new leases.
  - (vi) There were other matters covered by the order such as the payment of certain monies by one to the other and *vice versa*. As they are not relevant to the determination of the issues between the parties in this appeal, we do not set them out.
- [6] Paragraph 6 of the order stipulated that the appellant and his brother Mohammed Aziz were to take possession of their respective halves of their father's land and independently cultivate their respective portions.
- [7] The NLTB did not take any active part to ensure that the Tribunal's orders were fulfilled except to give numerous confirmations in letters which showed that it intended to comply with the orders.

- [8] Much time was wasted by the appellant in waiting for the NLTB to effect the subdivision and ultimately matters came to a head when the NLTB threatened to cancel the existing lease which would have put the existing sugar cane contract in jeopardy. Even though the NLTB did not proceed with the cancellation after receiving a letter from the appellant's solicitors, the appellant felt that he was in a precarious position and sought to clarify his legal position by issuing proceedings in the High Court.
- [9] The appellant's claim at first instance before Winter J was for the enforcement of the Tribunal award dated 6 November 1992.
- [10] In a short judgment Winter J dismissed the appellant's action before him upon the basis that it was statute barred under s.4(4) of the *Limitation Act Cap 35*. That section provides:

*An action shall not be brought upon any judgment after the expiration of 12 years from the date on which a judgment became enforceable...*

- [11] His Lordship went on to observe:

*"I find the agricultural tribunal's judgment was enforceable from the date the order was sealed, 6 November 1992 (Exhibit C plaintiff's primary affidavit). It means that the very latest the ordinary summons seeking to enforce this judgment could be filed was the 6 December 2004.*

*The summons is 20 months out of time and should have not been accepted by the Registry for filing."*

- [12] In this appeal, the appellant has argued that Winter J was wrong in holding that the Tribunal had given a judgment on 6 November 1992 so as to trigger off the running of time under s.4 of the *Limitation Act Cap 35*. It was argued on behalf of the appellant that even if the appellant's action was statute barred, other remedies were

available to him such as specific performance of the agreement and redress by way of an estoppel operating against the respondent.

[13] It is to those issues that we will now direct our attention and reach a decision.

[14] As far as the question of the appellant's action being statute barred under s.4(4) of the *Limitation Act Cap 35* is concerned, the first matter we ought to address our minds to is whether the Tribunal decision could be called a judgment so as to set off the running of time under s.4(4).

[15] Regarding the powers of the tribunal, it is noteworthy that s.18(1) provides:

*"A Tribunal shall have power-*

*(a) to exercise all the powers of a Magistrates' Court in its summary jurisdiction of summoning and forcing the attendance of witnesses, examining witnesses, and enforcing the payment of costs and production of documents.*

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

*(c) to award costs.*

*(d) to extend any period of time whether in relation to a notice or otherwise specified in this Act.*

[16] The other provisions in subsections (2) and (3) do not stipulate any further power of the Tribunal to enforce any order or declaration that it might make in relation to a tenancy or compensation.

[17] Our perusal of the provisions in PART IV –Powers and Duties of Tribunal in the *Agricultural Landlord and Tenant Act ("ALTA")* do not reveal any provision enabling the Tribunal to enforce its decision.

- [18] Rather, the Act seems to have been designed to enable the Tribunal to solve landlord and tenant problems in relation to agricultural land and to enable any of its decision to be used in a Court of Law: See, for example, the provisions of s.34 which deal with maximum rent certificate.
- [19] It will be seen from the quotations of the provisions of s.18 above, that whilst the Tribunal is said to have the full powers of the Magistrate, those powers are limited in nature to the various specific items mentioned therein. Further, as we have said we do not find any provision in the ALTA which entitle the Tribunal to enforce its own decision.
- [20] In view of these matters, we are satisfied that as the Tribunal lacks finality in its decisions in that the Tribunal does not have the power to enforce its own decision, its decision is not a judgment so as to attract the running of the limitation period under s.4(4) of the *Limitation Act*. In this case, what the Tribunal did was to give its imprimatur on 6 November 1992 to an agreement reached between the appellant and his brother Mohammed Aziz as well as the NLTB which agreement had been reduced to writing and dated 3 July 1991 and filed in the Tribunal.
- [21] It follows, in our view, that time did not commence to run against the appellant from the date of the Tribunal decision namely, 6 November 1992. This is because there was no judgment which became enforceable as required by s.4(4) of the *Limitation Act*.
- [22] As an alternative the appellant also argued that he was entitled to an order for specific performance.
- [23] Clearly, there was an agreement between the three parties namely the two brothers and the NLTB which agreement was formalised in an order by the Tribunal on 6 November 1992.

- [24] As an agreement particularly in respect of land, the appellant was entitled to the equitable remedy of specific performance.
- [25] The only defence raised by the respondent to an argument by the appellant that he was entitled to such remedy was that the appellant refused to surrender his lease so that two new leases could be issued in the names of the appellant and his brother Mohammed Aziz in accordance with the terms of settlement and the subsequent order of the Tribunal.
- [26] The respondent argued that the very first step to the subdivision of land and the issuance of two separate leases as was required to be done in this case was the surrender of the original lease over the whole of the land. The appellant argued that this was not so because once a surrender was given the appellant would have been left without any evidence of title and thus left bereft of his rights to the land.
- [27] In the absence of any evidence regarding the procedure to be followed when the disputed land was subdivided, keeping in mind that the parcels of land were also attached to sugar cane contracts, we agree with the appellant's counsel that not only would the appellant have been left without any title to the land and therefore vulnerable in terms of exercising his rights over the land but also if he was required to surrender the lease, his cane contract would have been at serious risk as well.
- [28] In the light of these matters we find that no valid defence has been established against the appellant for an order for specific performance of the agreement of 3 July 1991.
- [29] The appellant also relied on the equitable remedy of estoppel. He argued that the repeated assurances given by the NLTB that it intended to observe and fulfill the orders made by the Tribunal on 6 November 1992 in accordance with the terms of

agreement reached between the parties which included the NLTB on 3 July 1991, clearly, the NLTB is now estopped from asserting that the appellant had no right to enforce the order of the Tribunal with the assistance of the High Court and this Court because the NLTB assurances had induced him to forebear from asserting his claim long before he commenced his action in the High Court which was heard by Winter J.

[30] The principles of estoppel are well established and its elements were clearly expressed by His Honour Brennan J in the High Court of Australia in the decision of *Waltons (Stores) (Interstate) Ltd. v. Maher* (1988) 164 CLR 387 where at page 428 His Honour said :

“In my opinion, to establish an equitable estoppel, it is necessary for plaintiff to prove that

- (1) the plaintiff assumed that their particular legal relationship that existed in the plaintiff and the defendant or expected that a particular legal relationship could exist between them and, in the latter case the defendant would not be free to withdraw from the expected legal relationship,
- (2) the defendant has induced the plaintiff to adopt that assumption or expectation;
- (3) the plaintiff acts or abstains from acting in reliance on the assumption or expectation;
- (4) the defendant knew or intended him to do so;
- (5) the plaintiff's action or inaction will occasion detriment if the assumption or expectation is not fulfilled; and
- (6) the defendant had failed to act to avoid that detriment whether by fulfilling the assumption or expectation or otherwise.

[31] See also the case of *Commonweath v. Verwayan* (1990) 170 CLR 394.

[32] It is clear in this case, in our opinion, that the dilatoriness of the NLTB in effectuating the orders of the Tribunal, despite its assurances, is a case of unconscionable conduct which induced the appellant to act to his detriment by not taking any steps which he could have taken in order to have the Tribunal orders put into effect.

[33] In our view the elements of the estoppel spoken of by Brennan J in *Waltons Stores (Interstate) Ltd. v. Maher* are also made out in this case and the appellant is entitled to an order forcing the NLTB to put the Tribunal's orders of 2 July 1992 into effect.

[34] We make the following orders:

- (a) The appeal is allowed.
- (b) The decision of Winter J made on Thursday 27 September 2007 is quashed.
- (c) The respondent, NLTB, perform and carry into execution the orders of the Tribunal made on 6 November 1992.
- (d) The respondent pay the appellant's costs assessed in the sum of \$3,000.00.



*Pathik*

Pathik, JA



*Khan*

Khan, JA

**Solicitors:**

**Gibson and Company, Labasa for the Appellant  
Legal Section – Native Land Trust Board, Suva for the Respondent**