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

CIVIL APPEAL NO. ABU 81 OF 2016
(High Court Civil Action No: 57 of 2014 [Lautoka])

BETWEEN	:	**iTAUKEI LAND TRUST BOARD**	***Appellant***
AND	:	**RATU VERETI RALULU**	***Respondent***

Coram	:	**Lecamwasam JA** **Almeida Guneratne JA** **Jameel JA**
Counsel	:	**Ms L Komaitai for the Appellant** **Mr M Waqavanua for the Respondent**
Date of Hearing	:	**13 February 2019**
Date of Judgment	:	**8 March 2019**

JUDGMENT

Lecamwasam JA

[1] This appeal has been filed by the appellant against the judgment of the Learned High Court Judge at Lautoka dated 10 June 2016. The factual background of the case is

lucidly illustrated by the Learned High Court Judge in his judgment thus while dispensing with the need to repeat the same. However, for the convenience of this Court I take the liberty to reproduce the factual background of the case as stated by the learned High Court Judge from paragraph 9 of his judgment onwards:

"9. *The land was leased out to a Mrs. Ravea previously. She was the second ever lessee on the land. Mrs. Ravea's lease expired on 31 December 2000, however, she had ceased occupation earlier sometime in 1997 or 1998. Before she ceased occupation, Mrs. Ravea, purportedly, had sold the balance of her lease tenure lease to one Josefa Ralulu (**"Josefa"**) who later sold it on to Ratu Vereti. It appears that all these happened without the knowledge or consent of NBF Asset Management Bank (**"NBF"**), which held a mortgage on the land at the time.*

10. *Ratu Vereti started occupying the land sometime in 1999.*

11. *The sale from Mrs. Ravea to Josefa, and from Josefa to Ratu Vereti, are both irrelevant to Ratu Vereti's case theory. However,on one occasion, the i-TLTB did try to capitalise on the irregularity in the dealings, seemingly,as a decoy to distract argument away from the real issues.*

12. *Sometime in late 1999, shortly after he started occupying the land, Ratu Vereti applied to i-TLTB for a lease. According to Ratu Vereti, he lodged his application together with the majority consent of his mataqali. Upon receiving his application, i-TLTB then processed it and, on 02 December 1999, offered him an instrument of tenancy for a term of 30 years commencing 01 January, 2001 with a rental of$400-00 per annum, reassessable in accordance with the Agricultural Landlord and Tenant Act.*

13. *That offer was "subject to consultation of the relevant native owners and payment of the total remittance" (my emphasis) and to payment of certain dues. It also gave Ratu Vereti an option to upgrade from an instrument of tenancy to a formal lease, but only after signing an instrument of tenancy.*

14. *At some point in time, Ratu Vereti would have signed the instrument of tenancy. He would then have communicated to i-TLTB his desire to have a formal lease. i-TLTB would have told him then to settle a processing fee of $1,029.06 before the lease could be processed. Sometime thereafter, Ratu Vereti would approach the Cane Farmer's Cooperative, Savings & Loans Association (**"CFCSLA"**) for a loan to cover the processing fee. It seems that CFCSLA would only loan him the money if there was some certainty that a formal lease would be granted. Hence, on **13 August 2003**, i-TLTB would advise CFCSLA by letter that a fee of $1,029.06 was required to prepare and process Ratu Vereti's lease.*

15. *Later the same day, on 13 August 2003, CFCSLA settled the processing fee in full with i-TLTB out of a loan account of Ratu Vereti.*

16. *Some seven months or so later, a letter dated* ***23 March 2004*** *was written by the then Tui Tavua, Ratu Ovini Bokini to the General Manager, i-TLTB to stake TDICL's claim on the land.*

17. *The letter would mark the turning point in Ratu Vereti's and i-TLTB's relationship. Immediately thereafter, i-TLTB, which, had started processing Ratu Vereti's lease, would begin to display a sudden change in attitude. The various letters which I set out below demonstrate this clearly.*

18. *More than a year after Ratu Ovini's letter, a Mr. Solomone Nata of i-TLTB, would write to Ratu Vereti on* ***17 May 2005*** *to convey i-TLTB's withdrawal of the offer and to return Ratu Vereti's cheque.*

19. *On* ***16 June 2005****, Ratu Vereti's solicitors would respond by returning the cheque to i-TLTB. The position they took was that a contract was already in place.*

20. *Obviously, i-TLTB's change of attitude made Ratu Vereti feel that his stake on the land was vulnerable. In a bid to doubly secure his interest, Ratu Vereti would file on 26 September 2005 an application for a declaration of tenancy at the Agricultural Tribunal under the Agricultural Landlord & Tenant Act (Cap 270).*

21. *I believe that Ratu Vereti's ALTA claim had a lot of promise. I believe too that i-TLTB knew that and was apprehensive about the promising prospects of the ALTA application. As Ratu Vereti deposes in paragraph 23, sometime in October 2005, i-TLTB told him:*

> *....to first pay arrears of $1,405.34, which I paid in fact on the 23rd October 2006, before they will prepare my lease documents.*

22. *Masi concedes that Ratu Vereti did pay the sum of $1,405.34 to i-TLTB on* ***23 October 2006*** *on account of arrears of* ***"ground rent****. He also concedes that Ratu Vereti and i-TLTB would go on to execute a lease instrument on* ***01 November 2006*** *-a week after Ratu Vereti had settled the ground rent arrears, and some three years or so after Ratu Vereti had paid the lease processing fee. The lease document was duly stamped and was then lodged by i-TLTB at the Registrar of Titles for registration on the very next day,* ***02 November 2006****.*

23. *However, barely three weeks later, i-TLTB would retract the lease instrument from registration. As one would expect, a series of letters ensued between Ratu Vereti, i-TLTB, and various Government Departments and agencies to which Ratu Vereti had turned for assistance.*

24. The reason why i-TLTB retracted was because of pressure from Ratu Ovini."

[2] Against the above background the respondent (Original Plaintiff) filed originating summons before the High Court at Lautoka moving for the following declarations:-

> *"1. A DECLARATION THAT the Defendants attempt to refuse to issue to the Plaintiff a lease by letter dated September 15th 2011 and upon returning to the Plaintiff a cheque in the sum of $1142.80 is unlawful, null and void and of no effect.*
>
> *2. THAT the Defendant is obliged under contract to issue to the Plaintiff a leasehold title in accordance with the offer it made in December 2nd 1999 and in accordance with the lease document executed between the parties and dated 1st November 2006 which lease document the Defendant has yet to remit to the Plaintiff.*
>
> *3. Damages for unlawfully withholding the Plaintiff's title with effect from December of 2006 to the date of its delivery to the Plaintiff, to be assessed."*

[3] Having heard the case, the learned High Court Judge held in favour of Ratu Vereti. Accordingly, he had ordered the i-TLTB to forthwith proceed with the completion of registration of the lease to Ratu Vereti. The learned judge also awarded costs to Ratu Vereti summarily assessed at $1,500 failing the payment of which, Ratu Vereti was entitled to apply to the High Court for assessment of common law or equitable damages in lieu of specific performance.

[4] Aggrieved by the above judgment, the Appellant filed the instant appeal on the following grounds of appeal:-

> *"1. That the Learned Judge erred in fact and in law in upholding that section 9 of the iTaukei Land Trust Act only applies to reserve land.*
>
> *2. That the Learned Judge erred in fact and in law when upholding that the Respondent (Original Plaintiff) herein did obtain the majority consent required to meet the condition for majority consent for the subject lease.*

The offer by the Appellant was subject to consultation of the relevant native owners and payment of the total remittances.

3. *That the Learned Judge erred in fact and in law by maintaining that the Respondent did obtain majority consent of the landowners to meet the necessary precondition to allow for dereservation of the subject land.*

4. *That the learned Judge erred in fact and law by maintaining that the Respondent had obtained the mandatory majority consent of the landowning unit in order to fully obtain the lease.*

5. *Abandoned (as per written submissions of the Appellant)*

6. *That the Learned Judge erred in fact and in law by upholding that the Appellant legitimately obtained the lease for the subject land.*

7. *That the learned Judge erred in fact and law that the section 9 of the iTaukei Land Trust Act only applies to reserve land.*

8. *That the learned Judge erred in fact and law by determining that the Appellant's duty to act for the benefit of the landowners or Fijian owners did not apply to this case involving the Respondent. This is to say that the Appellant's assessment that the land and its location would yield more financial returns when leased as a development lease as opposed to an agricultural lease.*

9. *That the learned Judge erred in fact and law by maintaining that the Respondent herein held a valid lease as a result of fully complying with the Appellant's lease application procedures.*

10. *Abandoned (as per written submissions of the Appellant)"*

[5] In view of the history and facts given by the learned High Court Judge and the grounds of appeal raised before us, it becomes necessary for us to identify whether the land in question is a reserved land or not. if the land in question is not a reserved land, the majority consent is not necessary as admitted by the Appellant itself in paragraph 12 of the written submissions.

[6] Hence, in determining whether the land is reserved land or not, the Agricultural Tenancy issued to the Respondent becomes relevant. As per page 51 of the High Court record, the

Native Land Trust Board had offered an agricultural tenancy to the Respondent on the 2nd of December 1999. It reads thus, *"on behalf of the board I am pleased to offer you an agricultural tenancy of the said land for the term of 30 years from the 1st day of January 2001....."* which is ample evidence of the existence of an agricultural tenancy offered by the Appellant itself.

[7] Section 3 of the Agricultural Landlord and Tenant Act provides as follows:

"3. (1) This Act shall apply to all agricultural land in Fiji except -

(a)....

(b).....

(c) all iTaukei land situated within an iTaukei reserve, ..."

Therefore, it is evident that the Agricultural Landlord and Tenant Act does not apply to iTaukei reserved land. As the Appellant had dealt with this land by offering an Agricultural tenancy to the Respondent, it would be reasonable to conclude that the land is not reserved land.

[8] The intention of the Appellant is further manifested in the letter dated 2nd of December 1999 in which the appellant had expressed the desire to offer an agricultural tenancy to the Respondent. In view of this letter, without need of further proof, it is clear that the Appellant itself had treated this particular land as a land falling outside the reserve. After the exchange of many a letter over the years, the Respondent had subsequently applied for a lease, presumably on the strength of the promise made by the Appellant in the letter i.e. "*RVNR 6*" in the following words; *"if subsequent to the signing of your Instrument of Tenancy, you decide that you wish to have a formal lease of land, giving you "Registered Title", the Board will of course be glad for you to have this."*

[9] It is also pertinent to note that the Appellant was silent on the issue of "consent by majority" when this agricultural tenancy was offered way back in 1999, although it referred to consultations with the relevant native owners. Therefore I am of the view that consent was not material in relation to this land.

[10] Therefore, the requirement of consent at the time of applying for a lease begs the legitimate question of whether consent was not material at the time of the original offer of the agricultural tenancy. It is evident that the respondent had paid all monies due from him to the Appellant in the preparation of the lease. Although the cheque of $1,142.81 was returned subsequently, the Appellant had by that time entered into an agreement with the Respondent, which the Appellant was not in a position to repudiate unilaterally. The Appellant was bound by the above agreement and cannot now claim that the NBF (National Bank of Fiji) or the 'TDICL' had a *'prior interest'* over the respondent's interest in the land. There is no evidence at all to suggest that the TDICL was ever granted the lease by way of mortgage sale or otherwise.

[11] The general conduct of the appellant towards the respondent in the aftermath of the letter dated 23 March 2004 received from Ratu Ovini which changed the whole canvas of events further bears witness to a clear change in circumstances. The once cordial relationship had turned acrid. The respondent had not up to that point in time avoided his obligations in relation to the land. He had been paying the ground rent, and in fact had also cleared the arrears of ground rent, despite the claim of the Appellant that the respondent had failed to fulfil his contractual obligations on the basis of non- payment of fees due. I find that the Appellant had been approbating and reprobating in its conduct during the entire course of events that led to the matter at hand, which brings into question the *bona fides* of the appellant.

[12] The appellant had, without reasonable justification, withdrawn the lease i.e. "*RVNR13*" three weeks after tendering it for registration to the Registrar of Title in favour of the respondent leading to the reasonable assumption of bias. The unilateral decision of the Appellant to abstain from issuing an agricultural lease was communicated by "*RVNR 9*", which was issued by the Manager North Western Region, Solomone Nata stating the Board has decided not to issue an agricultural lease as the former lease to Joseva Ralulu from Fereti Ralulu was irregular.

[13] This reason does not hold good as it was within the purview of the Appellant itself to have cured any defect which would have prevented a lease from being issued. The Appellant was in fact obliged to remedy the issue as it was contractually bound to honour its obligations. In addition to the above reasons, the Manager also states that as the land is suitable for commercial and industrial development use it will serve the best interest of the land owners as a whole to not proceed with the agricultural lease. The 'best interest of land owners' is a position that should be considered in the light of section 9 of the iTaukei Land Trust Act 1940 which reads thus:

> *"Conditions to be observed prior to land being dealt with by way of lease or licence.*
>
> *9. No iTaukei land shall be dealt with by way of lease or licence under the provisions of this Act unless the Board is satisfied that the land proposed to be made the subject of such lease or licence is not being beneficially occupied by the Fijian owners, and is not likely during the currency of such lease or licence to be required by the Fijian owners for their use, maintenance or support."*

[14] As correctly appreciated by the learned High Court Judge, this section is only applicable in respect of reserved land. Even in the event the said section applies to the land in question, the Appellant had overlooked the fact that it had already agreed to the issuance of an agricultural tenancy for a period of 30 years in favour of the respondent, when it decided to take cover behind the above provision. As alleged by the respondent the change in attitude had taken place after the letter of Ratu Bokini, a powerful entity in the Fijian context, this letter had prompted the appellant to make a 'u' turn from his original position and decline the issuance of a lease to the Respondent.

[15] In view of all these facts, I hold that the appellant was still bound by the agreement entered into between the respondent and the appellant, and that it cannot resile from the initial position taken. I hold that the learned High Court judge had come to the only possible conclusion that was available to him under the circumstances. This is a case of 'Heads I loose and Tails you win' for the Appellant. The learned High Court Judge had exhaustively and meticulously dealt with issues before him in his 98 paragraphed

judgment. Hence, in view of the elaborate and accurate consideration of the facts of this case by the learned High Court Judge, I do not see any reason to interfere with the judgment of this case. I affirm the judgment of learned High Court judge and answer the grounds of appeal thus:

> Grounds 1 and 7- the learned Judge had not erred.
>
> Grounds 2, 3, 4 and 8- majority consent is not a requirement as it is a land outside a reserve. However, the respondent maintains that he had obtained the majority consent.
>
> Grounds 6 and 9 - I hold that the learned Judge had not erred.

[16] In view of the above, I dismiss the appeal and order $5,000.00 to be paid by the appellant to the respondent in addition to the amount of costs ordered by the learned High Court Judge.

Guneratne JA

[17] I agree with the reasons, conclusion and the orders proposed by Lecamasam JA in his judgment.

Jameel JA

[18] I agree with the reasons and conclusions of Lecamwasam JA.

Orders of the Court:

1) Appeal dismissed.

2) Appellant to pay FS5,000.00 to the Respondent.

Hon. Justice S Lecamwasam
JUSTICE OF APPEAL

Hon. Justice Almeida-Guneratne
JUSTICE OF APPEAL

Hon. Justice F Jameel
JUSTICE OF APPEAL