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

CIVIL APPEAL NO.ABU 93 OF 2018
(High Court of Lautoka in Judicial Review No. 01 of 2015)

BETWEEN : **AISAKE RAVUTUBANANITU**

Appellant

AND : **ITAUKEI LAND TRUST BOARD**

Respondent

Coram : **Basnayake JA**
Lecamwasam JA
Dayaratne JA

Counsel : **Mr. M. Waqavanua for the Appellant**
Ms. L. Komaitai for the Respondent

Date of Hearing : **13 May 2019**

Date of Judgment : **7 June 2019**

JUDGMENT

Basnayake JA

[1] This is an appeal filed by the applicant-appellant (appellant) against the judgment delivered on 28 June 2017 dismissing the appellant's application for judicial review on

the ground that the court has no jurisdiction to determine issues that have arisen out of claims made by Mataqali or other division or sub division of the people.

Grounds of Appeal

[2] The following grounds have been urged, namely:

1. That the learned Judge has erred in law and in fact in saying that the dispute in the present case in hand is among iTaukei owners of ascertained land for which jurisdiction has been given to the Minister of iTaukei Affairs to appoint a commission to inquire into it under section 16 of the iTaukei Lands Act, Cap 133 (para. 49 of the judgment).
2. That the learned Judge has erred in law and in fact in saying that it is clear as day light that this court has no jurisdiction to entertain this case in this court since the background issues or disputes are between /among Native Fijian Owners (para. 50 of the judgment).
3. That the learned judge has erred in law and in fact in saying that the matter should be expeditiously and carefully dealt with by authorities other than the court (para. 51).
4. That the learned judge has erred in law and in fact in ruling that the dispute before court , that is between the Mataqali and iTLTB should be dealt with under Section 16 of the iTaukei Lands Act (para. 52-54 of judgment)
5. That the learned judge has erred in law and in fact in his ruling in saying that the case before him is identical to Lautoka High Court Case No. HBC 234 of 2008L (para. 55).
6. That the learned judge has erred in law and in fact in saying that the court has no jurisdiction (para. 56).

[3] The appellant filed this case for judicial review against the decision of the respondent to renew eleven Native leases. The appellant originally filed this case by way of a writ of

summons on 2 May 2012 in HBC 98 of 2012. The appellant sought a declaration that the respondent acted *ultra vires* its powers in renewing the eleven leases which is null and void and of no effect, a declaration that the respondent acted unlawfully and contrary to section 9 of the iTaukei Land Trust Act (iTLTA), acted negligently in breach of its statutory duty and contrary to the interests of the native owners in renewing eleven leases without obtaining prior consent of the native owners.

[4] The appellant having obtained leave on 15 July 2015 (pg. 279 of the RHC) on 7 April 2016 filed summons for judicial review (pgs. 120-122 RHC) seeking orders in the nature of Writ of Certiorari to quash the decision to renew the 11 leases and a writ of mandamus directing the respondent to vest the land contained in the 11 leases with the appellant who represents Mataqali Navusabalavu of Tavualevu village in the district of Tavua and province of Ba.

[5] It appears that the respondent has not filed an affidavit in opposition to the summons. The affidavit filed in opposition is dated 27 October 2015 (pgs. 56-119 RHC). The affidavit was filed in response to the affidavit of the appellant dated 20 January 2015 (pgs. 39-45) and Statement issued under O.53 r.3 (pgs 47-53). The learned High Court Judge in his judgment (pgs. 19-30) appears to consider the affidavit of the respondent dated 27 October 2015.

The Judgment

[6] The learned Judge in his judgment having spelt out the cases for the respective parties states in paragraph 49 that the dispute is among the iTaukei owners of ascertained land for which jurisdiction has been given to the Minister of iTaukei Affairs to appoint a Commission to inquire into it under section 16 of the iTaukei Lands Act Cap 133. The learned Judge held that the court has no jurisdiction to entertain this case since the disputes are between/among Native Fijian owners. Hence the application for judicial review filed against the respondent was dismissed with costs.

[7] The appellant filed six grounds of appeal. Those grounds are based on the learned Judge's dismissal of the appellant's application for judicial review on the lack of court's jurisdiction. The submission of the learned counsel is that the court has jurisdiction to hear this case and the learned Judge has erred in his judgment with regard to the issue of jurisdiction. The learned counsel for the respondent too in her oral submissions made at the hearing of this case on 13 May 2019 and in the written submissions filed on 17 May 2019 categorically stated that the learned Judge has erred in placing reliance on the wrong law. The learned counsel for the respondent submitted that the learned Judge ought to have considered the aspect of legality or illegality in the respondent's decision to renew the leases.

Section 16 of the iTaukei Lands Act

[8] *"(1) In the event of* ***any dispute arising the parties to which are Fijians*** *in connection with land in a province or tikina in which* ***the proprietorship of the Fijian owners*** *has been ascertained by the Commissioner or in a province or tikina which it may be inconvenient or inexpedient for the Commissioner to visit without delay or in any other case when he may deem it expedient, the Minister may delegate a member of the Commission or some other proper person to* ***inquire into the same*** (emphasis added***).*** *(sub sections 2-5 not reproduced)"*

[9] In this case no dispute has arisen between Fijians. The dispute arose between the Mataqali and the iTaukei LTB. Therefore clearly the learned Judge could not have invoked the provisions of section 16 of the iTLTA. This is the stance of both the appellant and the respondent.

[10] On the ground that the court has no jurisdiction, the learned Judge has dismissed the appellant's application for judicial review and no decision had been made with regard to the legality and /or illegality or the vires of the act of renewal of eleven leases. The learned Judge has not considered whether the respondent has ignored or taken into account irrelevant considerations in not releasing the land to the appellant and/or whether

there was a legitimate expectation on the part of the appellant to have the land, the subject matter of the eleven leases, back into their fold.

[11] Having considered that the learned Judge has jurisdiction it was incumbent on the learned Judge to consider the above questions. The appellant in his grounds of appeal has urged only with regard to the error the learned Judge has made in his judgment with regard to jurisdiction. As the learned Judge has not considered the pros and cons of this case and decided the case on a wrong footing that he lacks jurisdiction, I am of the view that this case should be sent back for a rehearing.

[12] The appellant is seeking a declaration that a decision taken by the respondent to grant leases to eleven lessees is null and void by way of a writ of certiorari and also seeking a writ of mandamus to compel the respondent to grant those leases to the appellant. At the re-hearing, it will be necessary for the High Court Judge to go into the merits of the matter. The learned High Court Judge is directed to consider as to whether the Application for judicial Review has been properly made, including the issue as to whether necessary parties have been named.

[13] The question with regard to jurisdiction has not been raised by the respondent. The respondent's position too is that the court has jurisdiction and the court should have inquired into the complaint made against the respondent. For that reason I am of the view that parties should bear their own costs. For the reasons given, the grounds of appeal are answered in favour of the appellant and I allow this appeal.

Lecamwasam JA

[14] I agree with the reasoning and conclusions of Basnayake JA.

Dayaratne JA

[15] I agree with the reasons given and the conclusions arrived at by Basnayake JA.

Orders of Court:

1. *Appeal allowed.*
2. *Judgment of the High Court delivered on 28 June 2017 set aside.*
3. *Case to be sent back to High Court for a rehearing.*
4. *Costs to be borne by the parties.*

Hon. Justice E. Basnayake
JUSTICE OF APPEAL

Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL

Hon. Justice V. Dayaratne
JUSTICE OF APPEAL