

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 026 of 2020
[Civil High Court at Labasa Case No. HBC 07 of 2018]

BETWEEN : **USAIA ROKONAI** for and on behalf of himself and on behalf of the members of the Mataqali Niukeakea of Drama Village, Bua.

Appellant
(Original Plaintiff)

AND : **ITAUKEI LAND TRUST BOARD** a Statutory Body registered under the provisions of the Native Land Trust Act, Cap 134 with its Head Office at 431 Victoria Parade, Suva.

1st Respondent
(Original 1st Defendant)

FIJI PINE LIMITED a body corporate of Vakabuli Village Road, Drasa, Lautoka.

2nd Respondent
(Original 2nd Defendant)

Coram : **Prematilaka, RJA**

Counsels : **Appellant absent and unrepresented**
Ms. K. Nauwakarawa for the 1st Respondent
Ms. M. Baleloa for the 2nd Respondent

Date of Ruling : **23 June 2025**

RULING IN CHAMBERS

[1] The appellant on 24 April 2020 appealed against the judgment dated 13 March 2020¹ containing the following orders:

- a. *The lease issued by first Defendant to second Defendant had expired on 30.6.2002.*
- b. *Since land was planted with Pine by second Defendant, before expiration of lease the Land had come under ALTA. A statutory tenancy of twenty years created in terms of Section 13 of ALTA and this was informed to second Defendant by first Defendant through an offer and it was accepted unconditionally. So, there was no room for renewal of lease that expired on 30.6.2002.*
- c. *Ownership of Pine plantation on the Land subject to the expired lease and current tenancy (which was formalized by execution of instrument of tenancy on 24.9.2018) is with second Defendant.*
- d. *Considering the circumstances of the case, each party to bear their own costs.*

[2] The trial judge had outlined the following facts in the judgment:

1. *Plaintiff is seeking declarations regarding an iTaukei lease iTLTB Ref No 4/2/2047 (The Land). This land is planted with Pine trees by second Defendant and or its agents and or servants. Second Defendant is a company that plant and harvest Pine as its business. This land was first leased to a third party but subsequently through a mortgagee sale second Defendant obtained it and this transaction was consented by first Defendant. The Land is subject to provisions of Agricultural Landlord and Tenant Act 1966 (ALTA) and in terms of Section 13 (1) of ALTA there is statutory obligation to grant twenty year extension of tenancy subject to the ALTA. Initial term of lease granted to third party was for thirty years from the date 1.7.1972 and there is undisputed fact that land was cultivated by second Defendant, hence there was a right to another extension of twenty years of tenancy to the Land in terms of ALTA. First Defendant had granted instrument of tenancy for twenty years commencing from 2002 and this instrument of tenancy was registered on 24.9.2018. First Defendant had collected rentals from second Defendant for the Land, but due to administrative reasons it was not entered against the Land in their information system. There was evidence that first Defendant had offered to second Defendant twenty year tenancy and it was unconditionally accepted by second Defendant promptly. So statutory tenancy in terms of Section 13 of ALTA was created in 2002. The instrument of tenancy entered on 24.9.2018 only confirms that position and regularized said tenancy of second Defendant. Plaintiff and or his land owning unit cannot claim Pine Plantation, on the land.*

¹ **Rokonai v iTaukei Land Trust Board** [2020] FJHC 213; HBC07.2018 (13 March 2020)

- [3] The appellant has paid the security for costs as ordered by the Chief Registrar on 22 June 2020. Summons for security for costs had been filed by Nawaikula Esquire.
- [4] The matter came up before a single Judge of this court on 23 March 2021, 28 October 2021 and 01 December 2021 to see the progress of the preparation of the appeal records and the appellant was legally represented on all three occasions. The appeal records seem to have been ready by 15 February 2023 (the appellant was absent and unrepresented) when the matter was mentioned but not served on the 02nd respondent. The hearing of the appeal was fixed on 15 February 2023 to be taken up on 09 May 2023. However, on that day the appellant was absent and unrepresented and the hearing could not proceed before the Full Court as the appellant had still not served the appeal records on the 02nd respondent and the hearing was adjourned to enable the appellant to effect service of the appeal records on the 02nd respondent.
- [5] The matter again came up before me on the next call over date on 07 March 2025 where the appellant was absent and unrepresented. On that day, the counsel for the 01st respondent complained that the appellant had not served appeal records on them as well. There was no appearance for the 02nd respondent. On 23 April 2025, the appellant was again absent and unrepresented and the 02nd respondent's counsel moved for more time to file an application to have the appeal struck out. The 01st respondent's counsel concurred with the application. The matter accordingly, came up on 09 June 2025 and the appellant was absent and unrepresented. The solicitors for the 02nd respondent has now filed summons (11 June 2025) seeking to have the appeal struck out subject to costs. The counsel for the 01st respondent agreed with that position.
- [6] The appellant appears to have been in clear breach of Rules 18(8) and 44 (9) of the Court of Appeal Rules and paragraphs 2 and 3 of the Practice Direction No.01 of 2018. Therefore, by operation of Rule 18(10) read with Rules 17(2) and 44(13), the appeal becomes deemed abandoned. As per paragraph 8 of the Practice Direction No.01 of 2023, the Registrar must send a notice of abandonment on the appellant. However, the appellant's persistent lack of due diligence and default in serving the records on the

respondents go far beyond a mere noncompliance with Court of Appeal Rules but amounts to an obvious want of prosecution of his appeal. Therefore, on account of the said non-compliances and for want of prosecution, acting under section 20(1) (g) and (h) of the Court of Appeal Act, I am inclined to dismiss the appeal subject to costs.

Orders of the Court:

1. *Appeal is dismissed.*
2. *Registry to serve a copy of this Ruling on the appellant forthwith.*
3. *Appellant to pay costs of \$1,500.00 each to the 01st and 02nd respondents respectively within 21 days hereof.*
4. *Appellant to pay \$2,500.00 as wasted costs of this court to the Registry within 21 days hereof.*




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Appellant absent and unrepresented
Itaukei Land Trust Board for the 1st Respondent
Haniff Tuitoga for the 2nd Respondent