

**IN THE CENTRAL AGRICULTURAL TRIBUNAL**

**AT SUVA**

**CAT APPEAL No. 07 of 2019**

**Agricultural Tribunal Reference No. ND 02 of 2005**

**BETWEEN**

**iTAUKEI LAND TRUST BOARD** a statutory body registered under the provisions of Native Land Trust Act with its Head Office at Suva in the Republic of Fiji.

**APPELLANT [Original 1<sup>st</sup> Respondent]**

AND

**WAHID HUSSEIN** of Natabucola, Wailevu, Labasa.

**FIRST RESPONDENT [Original 2<sup>nd</sup> Respondent]**

AND

**MOHAMMED YASIB** of Nawaiwai, Wailevu, Labasa.

**SECOND RESPONDENT [Original Applicant]**

**Counsel** : Mr. Ratule K. for the Appellant  
Mr. Sen A. for the First Respondent  
Second Respondent absent and unrepresented

**Date of Hearing** : 26<sup>th</sup> March 2020

**Date of Judgment** : 23<sup>rd</sup> April 2020

## **JUDGMENT**

- [1] The 2<sup>nd</sup> respondent filed a Form 7 application before the Agricultural Tribunal seeking to have the boundaries of the agricultural holding which is the subject matter of this appeal demarcated.
- [2] The appellant granted a lease to the 2<sup>nd</sup> respondent and subsequently another lease was granted to the 1<sup>st</sup> respondent over a part of the same agricultural holding.
- [3] The learned Tribunal after hearing the parties ordered the appellant to pay the 2<sup>nd</sup> respondent \$17,000.00 as compensation for breach of statutory duty under section 54(2) of the Act, Loss of tenancy, and for delay in resolving the matter. The Tribunal also order the appellant to pay \$3000.00 as costs of the application.
- [4] The appellant appealed the said award of compensation to the Central Agricultural Tribunal of the following grounds:
- 1 That the learned Referee of the ALTA Tribunal erred in law and in fact in failing to consider that settlement proposals between the parties were on a without prejudice basis and thereby ordered the appellant to pay compensation for its delay in resolving the matter in the sum of \$10,000.00.
  - 2 That the learned Tribunal failed to take into consideration that section 54(2) of the Agricultural Landlord and Tenant Act place no statutory duty on the Appellant as landlord but rather it placed a duty on the tenant.

- 3 That the learned Tribunal erred in ordering the Appellant to pay compensation for loss of tenancy to the 1<sup>st</sup> Respondent in the sum of \$5000.00 when such an award is not possible.
- 4 That the learned Tribunal erred in ordering the Appellant to pay compensation in the sum of \$20,000.00 to the 1<sup>st</sup> Respondent in the absence of any clear reasons as to the award under each head it had formulated.
- 5 That the learned Tribunal erred in ordering the Appellant to pay compensation to the 1<sup>st</sup> Respondent under section 18(2) of the Agricultural Landlord and Tenant Act when such a situation did not arise in the circumstances and there was no evidence existing at the material time.

[5] Section 54(2) of the Act provides:

A tenant of an agricultural holding shall be responsible for ensuring that the boundary marks of such holding are maintained in their original position throughout the term of his tenancy.

[6] Section 54(2) of the Act does not impose any responsibility on the landlord. It provides that the responsibility for maintaining the boundary marks of an agricultural holding is on the tenant. The Tribunal has decided to award compensation on the basis that the appellant has breached its statutory duty under section 54(2) of the Act which is incorrect.

[7] It is also important to note that this application was only for the demarcation of boundaries and there was no claim for damages. The law does not confer discretion on the Tribunal to award compensation *ex mere motu* without an application from a party. Further, the learned Tribunal has failed to state in the judgment the basis on which it arrived at the quantum of compensation awarded. The learned Tribunal has awarded compensation without any evidence.

[8] Section 18(2) of the Agricultural Landlord and Tenant Act (the Act) provides:

Where a tribunal considers that any landlord or tenant is in breach of this Act or of any law, the tribunal may declare the tenancy or a purported tenancy granted by such landlord or to such tenant as

aforesaid, null and void and may order such amount of compensation (not being compensation payable under the provisions of Part V) paid, as it shall think fit, by the landlord or by the tenant, as the case may be, and may order all or part of the agricultural land the subject of an unlawful tenancy to be assigned to any tenant or may make any determination or order that a tribunal may make under the provisions of this Act.

- [9] In paragraph 6 of the judgment the learned Tribunal says that the 1<sup>st</sup> Respondent (Appellant) is duty bound under section 54(2) of the Act to clearly ascertain the boundary and point it out to the tenant at the beginning of a tenancy. Section 54(2) of the Act does not impose a duty on the landlord to ascertain boundaries. However, a lease cannot be granted unless and until the boundaries are ascertain.
- [10] The learned Tribunal goes on to say that the 1<sup>st</sup> Respondent (Appellant) has clearly breached its statutory duty under section 54(2) of the Act which is incorrect.
- [11] The learned Tribunal awarded \$5000.00 for loss of tenancy. The learned counsel for the Appellant submits that compensation for loss of tenancy cannot be awarded. In this regard the Appellant relied on the decision in **Wati v Native Land Trust Board** [2008] FJHC 190; Civil Appeal 002.2008 (2 September 2008). The facts of the case are briefly as follows:

The basis of plaintiff's action is negligence in that the NLTB having earlier granted a lease to another person over the same land, then proceeded to grant a lease to the plaintiff over the same piece of land. While that is clearly negligent because it shows the defendant had not checked its records, but it nevertheless raises the issue – what did the plaintiff get? How can there be two concurrent leases to two different persons? The Magistrate's Court was not told what was the term of lease over the same law issued to Isireli Tamani Tuiwawa.

The court held:

However Tuiwawa had acquired an interest in the land. Once an interest in the land or chattels is effectively acquired, the right of property can only be lost by some unequivocal act of alienation by the lessee or forfeiture by the owner. Hence the NLTB could pass no interest in the land to the plaintiff as long as the

interest of Tuiwawa subsisted. In view of that the market value of lease to the plaintiff was nil.

[12] In view of the decision cited above the award of compensation for loss of tenancy is liable to be set aside.

[13] For the reasons set out above this Tribunal makes the following orders.

### **ORDERS**

1. The appeal is allowed.
2. The judgment of the Agricultural Tribunal awarding damages for loss of tenancy and for the delay in resolving the matter, is set aside.
3. Order of the Tribunal awarding costs is also set aside
4. Parties to bear their own costs of this appeal.



  
Lyone Seneviratne

**Central Agricultural Tribunal**

23<sup>rd</sup> April 2020