IN THE CENTRAL AGRICULTURAL TRIBUNAL AT SUVA

Reference No. WD 01 of 2018

CAT Appeal No. 01 of 2020

BETWEEN

LIKAT ALI of Naboutini, Sabeto, Nadi.

APPELLANT

AND

SHEIK FAIZAL ALI of Auckland, New Zealand.

FIRST RESPONDENT

AND

iTAUKEI LAND TRUST BOARD a statutory body having its registered office at 431 Victoria Parade, Suva.

SECOND RESPONDENT

Counsel : Mr. Singh A.J. for the Appellant

Mr. Nawaikula N. for the 1st Respondent

Ms. Vokanavanua Q. for the 2nd Respondent

Date of Hearing : 07th December 2020

Date of Judgment : 19th January 2021

JUDGMENT

[1] The appellant made an application (Form 6) to the Agricultural Tribunal (the Tribunal) seeking a declaration of tenancy over the land described in iTaukei Lease No. 11408 with iTLTB reference No. 4/10/7735 known as Voce No. 2 in the Tikina of Sabeto in the Province of Ba on the basis that he had been paying rent since 2011 to the 1st respondent but the landlord refused to accept him as the tenant.

[2] The learned Tribunal denied the application of the appellant and the appellant appealed to this Tribunal on the following grounds of appeal:

1. The learned Trial Magistrate erroneously concluded that the occupation of the land was informal, when the weight of the evidence was, that the appellant occupied the property for eight years, paid all the land rental, fenced the property, had the lease re-issued and it was not until 2018 that he received a notice to vacate, this caused miscarriage of justice.
2. The appellant was for all intent and purpose a tenant under the Act and he used the land for an agricultural purpose and the first respondent allowed the occupation which benefited in the payment of rental, re-issuance of the lease and avoided breach of agricultural purpose of the lease, the learned Magistrate was wrong in law and he caused a miscarriage of justice.
3. The learned Magistrate erred in law in not finding that a tenancy was presumed on the totality of the evidence both in law and equity when the evidence proved that the respondent tacitly allowed the appellant to occupy, pay rental, secure the lease, ensure his lease obligation and improve the land by fencing, this cause a miscarriage of justice.
4. The learned Magistrate erred in law in his interpretation of section 4(1) and 5(1) of ALTA thereby causing miscarriage of justice.

5. The learned Magistrate failed to consider that because of the use of the land for agriculture and the payment of rental to iTLTB, the appellant protected the lease and avoided breach and/or cancellation of lease as the respondent was overseas and not capable to fulfil the lease condition thereby causing miscarriage of justice.

[3] Section 4(1) of the Act provides:

> Where a person is in occupation of, and is cultivating, an agricultural holding and such occupation and cultivation has continued before or after 29 December 1967 for a period of not less than 3 years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent and, if the landlord fails to satisfy such onus of proof, tenancy shall be presumed to exist under the provisions of this Act:
>
> Provided that any such steps taken between the 20 June 1966 and 29 December 1967, shall be no bar to the operation of this subsection.

Section 5(1) of the Agricultural Landlord and Tenant Act (the Act) provides:

> A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration, the tenancy shall be deemed to have commenced when the tenant first occupied the land:
>
> Provided that rent shall only be recoverable where the tribunal is satisfied that it is just and reasonable so to order.

[4] The learned Tribunal refused the application of the appellant on the ground that the appellant occupied the subject land under an informal family arrangement.

[5] The learned Tribunal refused the application of the appellant on the ground that his occupation of the land was an informal family arrangement. The appellant and the 1st respondents are close relatives. The 1st respondent lives in New Zealand.

[6] The question is whether this is in fact a family arrangement. The appellant and the 1st respondent are cousins. They are children of two brothers. Family arrangement is an arrangement between the members of the same family and not of the extended family.

In my view family is parents and children. All distant relations cannot be considered as members of the same family. Therefore, the arrangement between the appellant and the 1st respondent cannot be taken as a family arrangement.

[7] It is also important to note that the lease rental which should have been paid by the 1st respondent had been paid by the appellant to the 2nd respondent. Section 4(2) of the Act provides that where payment in money or in kind to a landlord by a person occupying any of the land of such landlord is proved, such payment shall, in the absence of proof to the contrary, be presumed to be rent. The payment of rent to the 2nd respondent was to the benefit of the 2nd respondent. Since there is no evidence to the contrary the learned Tribunal should have presumed that the payments made by the appellant to the 1st respondent to be the rent.

[8] There is evidence that the appellant cultivated Dalo for four years and also did dairy farming on this land.

[9] From the above it appears that the learned Tribunal had sufficient material to grant a declaration of tenancy to the appellant.

ORDERS

1. The appeal of the appellant is allowed. Judgment of the learned Tribunal is set asdie
2. A declaration of tenancy is granted to the appellant.
3. The 1st respondent is ordered to pay the appellant $1000.00 as costs of this appeal within 14 days.

CENTRAL AGRICULTURAL TRIBUNAL SUVA

Lyone Seneviratne

CENTRAL AGRICULTURAL TRIBUNAL

19th January 2021