

IN THE CENTRAL AGRICULTURAL TRIBUNAL
AT LAUTOKA

CAT Appeal No. 04 of 2022

Agricultural Tribunal No. WD 19 of 2021 & 21 of 2021

BETWEEN

SHAH MOHAMMED

1st APPELLANT

AND

SHAN MOHAMMED

2nd APPELLANT

AND

WAJID ALI

1st RESPONDENT

AND

DIRECTOR OF LANDS

2nd RESPONDENT

Counsel : Mr. Maisamoa S. for the Appellants.
Ms. Radhia for the 1st Respondent
Mr. Kant S. for the 2nd Respondent

Date of Hearing : 17th April 2023

Date of Ruling : 18th April 2023

RULING

[1] The appellants made two applications (Form 6) in respect of two lands claiming that they had been cultivating since 1985.

[2] Appellants on 31st December 2021 filed an inter-parte Notice of Motion seeking the following orders:

1. That the status quo to be maintained in respect of State Lease No. 21283 LD Ref No. 4/4/992 and cane contract No. 3848 Yanadro Sector until the determination of the within reference.
2. That all sugar cane proceeds in respect of Cane Contract No. 3848 Yaladro Sector do remain with Fiji Sugar Corporation Ltd until a further order of the Agricultural Tribunal.
3. That the 1st respondent be restrained from interfering with the applicant's occupation and cultivation of State Lease No. 21283 LD Ref No. 4/4/992 and cane contract No. 3848 Yanadro Sector until a further order of the Agricultural Tribunal.
4. That the 1st and 2nd applicants to have liberty to sign Memorandum of Gang Agreement (MOGA) forms order fertilizer, Weedsides Chemicals, Rice, Sugar and obtain any government grants until the determination of the within reference.

5. That Police to assist 1st and 2nd Applicants from any forceful interference by the 1st respondent.
6. That the costs of the application be costs in the cause.

[3] The learned Tribunal heard the Notice of Motion and made the following orders:

- a. The application for status quo order in WD No. 19 of 2021 and WD No. 21 of 2021 is hereby denied.
- b. Similarly, the application for declaration of tenancy in WD No. 19 of 2021 and WD No. 21 of 2021 is hereby dismissed.
- c. Each party to bear own costs.
- d. Appeal within 28 days.

[4] The appellants appealed the decision of the Agricultural Tribunal (the Tribunal) to this Central Agricultural Tribunal (CAT) on the following grounds:

1. That the Tribunal failed to take into account at paragraph 17b the fact that this Honourable Court on 19th November 2021 delivered the judgment but there was no adjudication of merit as of declaration of tenancy. Rather, the court was of the view that the application filed does not meet the time frame of three years continuous occupation and cultivation and even if this would qualify than the cannot claim a declaration of tenancy over the expired lease and further stated that there was no agreement between the applicant and the respondent. This matter was not determined on *viva voce* evidence. That the new action number which is filed before the Tribunal consists of totally a new lease and different parties as well. That the Tribunal should have allowed this matter to proceed to trial proper before reaching any conclusions.
2. That the Tribunal failed to take into account at paragraphs 14, 15, 16, 17 and 20 the fact that the status of the Tribunal is akin to that of a Magistrate and the Tribunal has all the powers of a Magistrates' Court.

[5] When this matter came up before this Tribunal (CAT) respondents' counsel raised an objection that the appeal of the appellants is out of time.

[6] Section 48(2) of the Agricultural Landlord and Tenant Act the Act provides;

Within twenty-one days after the slaking of any final award, order or certificate, the appellant shall-

- (a) pay such fee as may be prescribed to the secretary of the tribunal;
- (b) lodge with the tribunal written notice of the appeal, with a receipt for the fee paid under the provisions of paragraph (a);
- (c) serve a copy of the written notice of appeal upon the opposite party.

[7] It is absolutely clear from section 48(2) of the Act that any appeal against any decision of the Tribunal must be filed and served within 21 days from the date of the decision and also the fee must be paid within that period.

[8] The Tribunal delivered the judgment on 12th May 2022 and as per the record the notice and grounds of appeal have been handed over to the Tribunal 23rd June 2023. However, Mr, Maisamoa, the counsel for the appellants, handed over two letters written to the Tribunal Registry and the reply received from the Registry. According to the letter signed by the Court Officer notice and grounds of appeal have been handed over to the Registry on 3rd June 2022. In the said letter the Court Officer states that the delay was caused in the Registry due to the absence of the learned Magistrate. In my opinion, to place the date stamp and to accept the relevant fee it is not necessary to consult the Magistrate. Once a document is handed over to the Registry, the officer who receives the documents is duty bound to place the date stamp.

[9] Even if the court assumes that the notice and grounds were filed on 3rd June 2022, it is still out of time. It had been filed on the 22nd day from the date of judgment and the appeal is still out of time.

[10] The learned counsel for the appellants referred to order (d) in the judgment which reads as “d. *Appeal within 28 days*” and submitted that the appellants followed this order. I must first say that this is not an order but an information about the time within which an appeal, if any, to be filed.

- [11] The statutory provision is absolutely clear and there is no ambiguity. According to section 48(2) of the Act, as I stated above, an appeal must be lodged within 21 days from the date of the judgment. No court or tribunal has the power to amend or override a statutory provision.
- [13] The submission of the counsel for the appellants was that the appellants were unaware of the period within which an appeal should be lodged, is untenable since the ignorance of law cannot be considered as an excuse (*Ignorantia juris non excusatur*).
- [14] For the reasons set out above the appeal of the appellants is clearly out of time and liable to be struck out.

ORDERS

- (1) The preliminary objection is upheld and the appeal of the appellant is struck out.
- (2) The appellants are ordered to pay the respondents \$2,000.00 (\$1000.00 each) as costs.



Lyone Seneviratne

CENTRAL AGRICULTURAL TRIBUNAL

18th April 2023