

IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

JUDICIAL REVIEW NO. HBJ 03D OF 2006S

BETWEEN : STATE V. NATIVE LANDS COMMISSION
RESPONDENT
EX-PARTE: NIMA RASEWAI
APPLICANT

Counsel for the Applicant : R. Matebalavu : ESESIMARM & CO.
Counsel for the Respondent : J. Bai : ATTORNEY-GENERAL'S
CHAMBERS
Date of Decision : 9 August, 2007
Time of Decision : 9.30 a.m.

DECISION

This is an application for leave to file a claim for judicial review against the decision of the Native Lands Commission on 3 November 2005 affirming the retention of the ownership of the land known as Nabouwalu Lot 14 containing 103 acres and described in the Register of Native Lands Vol. 4 Folio 425 by the Yavusa Daviko, of the Vanua of Bua. The Commission's enquiry that resulted in the decision now being challenged, was made pursuant to the Order of Pathik J in Nima Rasewai v. The Attorney-General & Ors. CA No. 166A/2003, directing it to make the necessary

inquiries *"in accordance with the provisions of the Native Lands Act."* (Cap. 133) to determine the rightful owners of the land in question.

The grounds upon which the challenge is based are that the Commission had acted illegally, irrationally and failed to observe basic rules of natural justice and/or failed to act with procedural fairness towards the Applicant (procedural impropriety). The Applicant has elaborated under each of these grounds in his Statement.

In opposing leave the Respondent submitted that there is no merit to support the grounds of illegality, irrationality and procedural impropriety, in that the Commission had complied fully with the order of the Court in conducting its inquiry. In any case, the application is nothing more than a form of an appeal against the Commission. In the alternative, the Respondent contended that the Applicant's action is premature. He has not exhausted alternative remedies in that there is still the appeal process to the Appeals Tribunal available to him.

The Court had directed that the Respondent file submissions in support of its opposition. This, the Respondent failed to do.

Leave

Order 53 rule 3 sets out the requirements before a Court can consider an application. Thereafter the Applicant must prove to the Court that he has an arguable case on the merits, that he has sufficient interest in the matter, there is no delay, and no alternative remedies available to the Applicant to pursue. *In Regina v. Secretary of State for the Home Department ex.p. Swati* [1986] 1 WLR 477, the Court said at p. 482,

"If the Applicant were to obtain leave, he had at least to satisfy the Court that he had an arguable case for judicial review upon the

grounds of illegality "irrationality" (i.e. Wednesbury unreasonableness: see Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1KB 223) or procedural impropriety: see Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374, 410."

It is not required of the Court at the leave stage to indulge in the details of the merits or otherwise of the case. It is enough for it to grant permission, if it is satisfied that there exists a point which merits further arguments or "*investigation on a full inter parte basis, with all the relevant evidence and arguments on the law.*" Secretary of State for Home Department ex.p. Rukshanda Begum and Angur Begum [1990] C.O.D. 107.

The Fiji Court of Appeal in National Farmers Union v. Sugar Tribunal & Ors. CA 8/1990 said:

"We accept at the leave stage of the application for judicial review the Court is not required to do more than decide whether the applicant (leaving aside the issue of locus standi and delay which are not at issue here) has shown prima facie and arguable case on the merits of each ground of relief."

The facts of this case are clear enough. The Applicant asserts that his Mataqali Natukuta not Yavusa Daviko are the rightful owners of native land described in the Register of Native Lands Vol. 4 Folio 425, notwithstanding the decision of the Commission of 3 November 2005. The gist of the Applicant's argument and which forms the grounds of this action is that the Commission has not acted in accordance with the requirements of the Act, and in the process either acted illegally or unreasonably. There is also the allegation of denial of natural justice on the ground that the Chairman of the Inquiry is the Chief of Vanua of Bua.


I am satisfied from the facts before me that there is merit in the application and that leave should be granted. This is notwithstanding the fact that the Respondent had failed to substantiate its grounds for opposing the leave through its inability to file submissions ordered by the Court.

Leave is hereby granted.

Consequential directions are made as follows:

- (1) Applicant to file his submission within 21 days.
- (2) Respondents to file submissions 14 days thereafter, with liberty to the Appellant to reply 7 days after that if necessary.

Adjourned to 2 October, 2007 at 10.00 a.m. for hearing.



F. Jitoko
JUDGE

At Suva

9 August 2007