

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

Civil Action No. 005 of 2009

BETWEEN: Karalaini Lape Yanuyanutawa as Administratrix of the Estate of Iivani Cavalevu for and on behalf of herself and on behalf of the members of Tokatoka Nautovuso No. 309 of Dawa Village, Natewa.

Plaintiff

AND: Native Land Trust Board

1<sup>st</sup> defendant

Gulabdhas and Company

2<sup>nd</sup> defendant

The Attorney General of Fiji

3<sup>rd</sup> defendant

Appearances: Mr P.R. Lomaloma for the plaintiff

Ms Raitamata for the first defendant

Date of hearing: 12<sup>th</sup> September, 2012

Closing submissions of the plaintiff filed on 30 November, 2012

### **JUDGMENT**

1. This action arises out of logging operations carried out on native land in Vanua Levu. The plaintiff, is the administratrix of the estate of her father, Iivani Cavalevu, a member of the mataqali nautovuso(mataqali), in the province of Cakaudrove. She brings this action on behalf of herself and the members of the Tokatoka nautovuso. It is alleged that the third defendant, on the recommendation of the first defendant, the I-Taukei Land Trust Board(TLTB), unlawfully and illegally granted license no. 81666 to Tomasi Rakita, without the consent or authority from the mataqali owners. Tomasi Rakita was the Turaga ni Koro of Dawa village, in the province of Cakaudrove.

**2. *The statement of claim***

2.1 The statement of claim states that prior to the grant of the license to Tomasi Rakita, two licenses were issued to Ilivani Cavelevu, to remove logs from the mataqali land, upon payment of royalty and costs.

2.2 It is alleged that 235.147 cubic meters of indigenous log had unlawfully removed from the mataqali land, under the license of Tomasi Rakita during the period 13 September, 2002, to 24 April, 2003.

2.3 The plaintiff seeks a declaration that the license issued by the third defendant to Tomasi Rakita, was “*unlawful, null and void and of no effect*” and that the defendants compensate the plaintiff for the volume of 235.147 cubic meters of logs removed.

**3. *The statement of defence of the first defendant***

3.1 The TLTB, in its statement of defence, states that the license granted to Ilivani Cavalevu was renewed up to 31<sup>st</sup> December, 2001.

3.2 The TLTB denies that the license issued by the third defendant to Tomasi Rakita no. 81666 was unlawful, null and void, It was the collective wish of the mataqali, to have the license renewed to Tomasi Rakita, to extract logs equivalent to the sum of \$ 9283.00 owed by the mataqali to Lumber Processors Ltd .

3.3 Finally, it is averred that the TLTB has no knowledge of the total volume of logs extracted by Tomasi Rakita.

**4. *The statement of defence of the third defendant***

The third defendant’s statement of defence, reiterates the averments in the statement of defence of the TLTB, and further states that the license was issued, on the recommendation of the TLTB.

**5. *The hearing***

5.1 At the commencement of the hearing, Mr Lomaloma, counsel for the plaintiff stated that the second defendant was struck out by an order of court on 21<sup>st</sup> September, 2010, since no relief was sought against the second defendant.

**5.2 *PW 1***

5.2.1 The plaintiff testified. She said she was the daughter of Ilivani Cavelevu. He passed away, in 2002. She was appointed administratrix of his estate. She

produced the probate and the register of native leases pertaining to the mataqali nautovuso. She explained that two logging licenses were issued to her father by the Forest Dept, to obtain timber to build a church in the Dawa village. The relevant licenses nos.81714,(for the period 8 the TLTB October, 1999, to 30 June, 2000), and 81826,(for the period 24 January,2001, to 24 July, 2001).She said they were “*free issue licenses*”.

5.2.2 She produced an agreement dated 22 January,2001, between Lumber Processors(Fiji)Ltd and Ilivani Cavelevu,(as representing the mataqali), permitting the removal of 500m of logs under “*Free Issue 81826* ”by Lumber Processors(Fiji)Ltd, to pay the mataqali debt with the second defendant and Anderson Fong & Sons. Next, a letter dated 5 March, 2001, from the Acting Divisional Forest Officer, Northern to Ilivani Cavelevu, was produced.

5.2.3 The plaintiff said fourteen members of the mataqali, by letter dated 21 June,2001,had required that a license be granted to Tomasi Rakita, when there were sixty seven members of the mataqali, over the age of 21. Fourteen members do not constitute a majority. The letter of 21 June,2001, a copy of license no. 81666 issued to Tomasi Rakita on 3<sup>rd</sup> August,2001,and a letter dated 20 August, 2001, that followed from the Acting Divisional Forest Officer, Northern to Tomasi Rakita, were exhibited .

5.2.4 In support of her claim, the plaintiff, concluded her evidence in chief, by producing summaries of the timber extracted by Lumber Processors under the license granted to Tomasi Rakita, together with the corresponding royalty payable to the mataqali in a sum of \$ 9542.67

5.2.5 Ms Raitamata, counsel for the TLTB, in cross-examination, elicited that the plaintiff did not have any documents to establish that she represented the mataqali. At that point, Mr Lolomola stated this matter was not raised at the pre-trial conference. It emerged that Ilivani Cavelevu owed money to the mataqali.

5.2.6 The plaintiff said that the license granted to Tomasi Rakita, was unlawful.

### 5.3 PW2

5.3.1 Viliame Cegumalau, a Forest Officer gave evidence. Mr Lomaloma referred this witness to the letters dated 5 March,2001, and 20 August,2001, from the Acting Divisional Forest Officer, Northern to Ilivani Cavelevu and Tomasi Rakita respectively. Viliame Cegumalau said a free issue license was issued to Ilivani Cavelevu, to remove 500 m<sup>3</sup> of log. The letter to Tomasi Rakita provided it was

a commercial license. The logger/ swamiller was the same for both persons, namely Lumber Processors.

5.3.2 He said that the summary of timber harvested by Lumber Processors, under the license granted to Tomasi Rakita, was prepared by the Dept of Forests.

5.3.3 In cross-examination, this witness said that licenses are issued by the TLTB, if their criteria and harvesting plan provided by the applicant, is met. This is then given to the Forest Dept. He said that in terms of the letter of 20 August, 2001, from the Forest Officer, the license granted to Tomasi Rakita, was lawful.

#### *5.4 The defence*

5.4.1 Solomone Keteravu, Estate Assistant of the TLTB said the TLTB had received a letter from members of the mataqali, to issue a free license to Ilivani Cavelevu. Subsequently, the mataqali requested that a license be issued to Tomasi Rakita.

5.4.2 The witness then, produced a letter dated 24 January,2002, from the TLTB. This letter provided that the mataqali owed a sum of \$ 9283.00 to Lumber Processors. The TLTB approved the issue of a free issue license to Tomasi Rakita, to extract timber equivalent to that amount. He also produced a letter dated 6 November,2001, signed by 21 members of the mataqali, requesting that the license be given to Tomasi Rakita, since the mataqali had a disagreement with Ilivani Cavelevu.

5.4.3 He said that the consent of the mataqali was not necessary, since the license given to Tomasi Rakita, pertained to a land outside the reserved area. Mr Loloma objected to a document being produced in this regard, as this contention was not pleaded in the TLTB's statement of defence. I upheld the objection.

5.4.4 It transpired in cross-examination, that the TLTB had not verified whether the persons who signed the consent letter relied on, were members of the mataqali. Mr Lomaloma, referred the witness to the letter dated 24 January,2002,from the TLTB to the Forest Dept, and commented it was issued after the license. He also posed the question why the TLTB did not investigate the dispute the mataqali had with Ilivani Cavelevu.

## **6 *The determination***

6.1 The questions for determination in this case are twofold. The first is whether the license issued to Tomasi Rakita was illegal and void, for the reason that the consent and authority of the mataqali was not obtained The second is whether the defendants are

liable to compensate the plaintiff for the volume of 235.147 logs removed under that license.

6.2 The regime of the Native Lands Trust Act(cap 134), as so far as material, is as follows:

6.2.1 Section 4 vests control of all native land in Fiji, in the TLTB.

6.2.2 Section 8 gives the TLTB, the power to grant leases or licenses of land outside native reserves.

6.2.3 Section 9 provides:

*No native land shall be dealt with by way of lease or licence under the provisions of this Act unless the Board is satisfied that the land proposed to be made the subject of such lease or licence is not being beneficially occupied by the Fijian owners, and is not likely during the currency of such lease or licence to be required by the Fijian owners for their use, maintenance or support.*

6.2.4 Section 16, sub-section (1) and (2) read :

*Subject to the provisions of the Crown Acquisition of Lands Ordinance, the Forest Ordinance, the Oil Mines Ordinance, the Mining Ordinance and to the provisions of this section, no land in any native reserve shall be leased or otherwise disposed of*

*Leases or licences may with the consent of the native owners be granted by the Board to native Fijians in accordance with regulations made under section 33.*  
(emphasis added)

6.2.5 Section 8 of the Native Land (Forest) Regulations provides that royalty shall be paid on all forest produce, except timber-

*(ii) which has been taken under a licence issued to a member of a mataqali or other land-owning unit within land owned by that land-owning unit where it is stipulated in writing by the chief of the mataqali or other land-owning unit that royalty under the said licence may be waived.*

- 6.3 It is not in dispute that the consent of the mataqali, is required for the grant of a licence by the TLTB.
- 6.4 The TLTB contends, that by letter of 20 June,2001, the mataqali consented to the transfer of the licence to Tomasi Rakita, the Turaga ni Koro of Dawa.
- 6.4.1 The translation of this letter, as provided by Mr Lolmaloma, provides that the logging license granted to Iivani Cavelevu, was to be transferred to Tomasi Rakita. The reason given was that the license issued to Iivani Cavelevu, was only for 500 cubic meters and he had breached the agreement, by not paying a part of the money to the village.
- 6.4.2 The TLTB also produced a letter dated 6 November, 2001, signed by 21 members of the mataqali, consenting to the issue of a licence to Tomasi Rakita
- 6.4.3 The plaintiffs' riposte was that the letter of 20 June,2001,was signed by fourteen members, which do not constitute a majority. The plaintiff contends that there were sixty seven members, over the age of 21 years.
- 6.4.4 The TLTB did not produce the *Vola ni Kawa Bula*, the Register of members of the mataqali, to prove otherwise.
- 6.4.5 It would follow that the grant of the licence to Tomasi Rakita was prima facie illegal .
- 6.5 The TLTB also contended that the license was issued specifically to extract logs equivalent to the sum of \$ 9283.00, owed by the mataqali to Lumber Processors Ltd, as set out in its letter dated 24 January,2002, to the Forest Dept. The letter of 6 November, 2001, from members of the mataqali, also appears to refer to the sum of \$ 9283.00 .
- 6.5.1 The question which lies at the heart of this case is whether any monetary loss was caused to the mataqali.
- 6.5.2 The letter of 24 January,2002, reads:

***Mataqali Nautovuso owes Lumber Processors the sum of \$9,283.00 that was expended by the said company for the construction of Dawa Village church seats.***

***The Board hereby approves the issues of a FREE ISSUE LICENCE to Tomasi Rakita on behalf of the Mataqali. The volume to be extracted is***

*specifically to be equivalent to the amount owed as stated above.*

*All logging operations pertaining to this Free Issue is to cease once the amount owed is fully recovered.* (emphasis added)

- 6.5.3 It would appear that the TLTB, as statutory trustee of native land, facilitated the discharge of the debt of the mataqali to Lumber Processors, by enabling it to log timber, under the license issued to Tomasi Rakita, the Turaga ni Koro of Dawa village.
- 6.5.4 The debt was not disputed . In my view, the debt qualified for appropriation .
- 6.5.5 The documents produced by the plaintiff, as records of the Forest Dept, provide that the royalty payable to the mataqali, on the timber logged by Lumber Processors under license no 81666, was \$9542.67. This amount is in excess of the debt of \$ 9283.00 owed by the mataqali. The monetary loss to the mataqali, is then, a sum of \$ 259.67 This is payable by the TLTB.

## 7 *Orders*

I make order that the first defendant shall pay the plaintiff, for and on behalf of the members of mataqali nautovuso, a sum of \$ 259.67. In all the circumstances, I make no order as to costs.

18 September, 2013

**A.L.B.Brito-Mutunayagam**  
**Judge**