

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION

CIVIL ACTION NO. 60 OF 2006

BETWEEN : MANJULA WATI and BIMAL DEO as Administrators  
In the estate of RAM SEWAK late of Nasealevu, Labasa.

PLAINTIFF

AND : SHIU CHARAN of Nasealevu, Vunivutu, Labasa,  
Cultivator.

1<sup>ST</sup> DEFENDANT

: NATIVE LAND TRUST BOARD a body corporate duly  
Constituted under the Native Land Trust Act Cap. 134.

2<sup>ND</sup> DEFENDANT

: SUGAR INDUSTRY TRIBUNAL

3<sup>RD</sup> DEFENDANT

Date of Hearing : 11<sup>th</sup> June, 2015

Date of Decision : 30th September, 2015

COUNSEL

Mr. A. Sen : for the Plaintiff

Mr. K .Ratule : for the 1<sup>st</sup> Defendant

No appearance for the 2<sup>nd</sup> Defendant.

## DECISION

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### Introduction

[1] The Plaintiffs filed this action for demarcation of boundaries and damages. They had obtained certain injunctive orders against the 2<sup>nd</sup> Defendant. The dispute is regarding the boundaries of two adjoining agricultural lands. The instruments of tenancy were issued to the Plaintiff and the 1<sup>st</sup> Defendant by the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant referred the dispute of the boundary to the

Agricultural Tribunal for determination in terms of Section 22(1)(i) of Agricultural Landlord and Tenant Act (ALTA). While the matter is pending in the Agricultural Tribunal the Plaintiff requested to proceed with the present action, but the Defendants sought an adjournment on the basis that Agricultural Tribunal is now seized with the issue of boundary dispute.

### The Facts

- [2] The Plaintiffs are the administrators in the Estate of Ram Sewak who are the tenants of an agricultural holding known as Lot 3 Waibata Subdivision in the District of Labasa containing an area of 12.2236 ha on TLTB Ref No. 4/9/6262 issued by the 2<sup>nd</sup> Defendant on 1<sup>st</sup> January, 2001 for a period of 30 years. The subject area was not surveyed.
- [3] The 1<sup>st</sup> Defendant is the tenant of the land containing an area approximately 11.765 ha known as Waibata subdivision Lot 2 and being the whole of the land comprised in the instrument of tenancy No 6936 effective from 1.1.2001 for 30 years.
- [4] The Plaintiffs and the 1<sup>st</sup> Defendant are tenants of adjoining agricultural lands. The Southern boundary of the Defendant's land and the Northern boundary of the Plaintiffs' land are now disputed by parties and 1<sup>st</sup> Defendant alleges that land covered in his instrument of tenancy was encroached by the Plaintiff.
- [5] The claim against the 3<sup>rd</sup> Defendant is withdrawn in terms of terms of settlement entered 2<sup>nd</sup> February, 2010.
- [6] The issue before the court was to determine the disputed boundary between the parties and if there is a trespass to determine the damages. The Plaintiff requested to proceed with this action for hearing, while the same dispute is before the Agricultural Tribunal in terms of ALTA.

### Analysis

- [7] As a starting point I would like to quote a stamen of Fiji Court of Appeal in *Lotan v Garrick* [1984] FJCA 7; Civil Appeal No. 45 of 1984 (decided 24 November 1984) (unreported), following terms;

*'...that ALTA can in major part be read with the general body of law and the Court's duty is to harmonize the provisions wherever possible'*

- [8] So, Fiji Court of Appeal as far back as 1984 discovered the conflicts of ALTA, with 'general body of law' in Fiji. This is not a strange phenomenon when

considering the body of law relating to the lands and the principles of common law applicable to land as well as to tenancy, boundary disputes etc in Fiji and provisions of ALTA, when it relate to Agricultural Lands. The purpose of the ALTA is to create a special statutory laws relating to agricultural lands.

- [9] It should be borne in mind that the Lotan (supra) was a case where the conflict was between two statutes relating to the exercise of jurisdiction in terms of said statutory provisions. The conflict was between the eviction proceeding in terms of Land Transfer Act (Cap 131) and the determination of agricultural tenancy in terms of ALTA (Cap 230). Land Transfer Act had provision stating that legislations is to be considered notwithstanding anything contrary to any other law. In that context Fiji Court of Appeal held,

*'Although the discretion of the Court will usually be exercised to allow a bona fide claim to be examined by the tribunal most conveniently suited to such a task, the Court must still have the power in a given case to decide that there is no material fit to be so assessed'*

- [10] I could not come to such a finding that there was 'no material fit to be so assessed' by the Agricultural Tribunal, though such thing would not arise in this case for two reasons. First the ALTA's jurisdiction in terms of Section 22(1)(i) 'in the case of any dispute, specify the area and boundaries of any agricultural holding' is statutory as opposed to general jurisdiction of this court to determine boundaries of disputed land. Secondly, and more importantly, the parties have already consented to stay hearing of this action, which I would deal later.

- [11] In the Lotan (supra) a stay of proceedings in Agricultural Tribunal was requested and was granted on the basis of pending litigation under Land Transfer Act. In High Court again a stay was sought on the basis of pending proceedings in ALTA. If the stay was granted it would have created a stalemate of both proceedings.

- [12] If there is unavoidable conflict, as it often happens in social legislation like ALTA, it is expressly dealt in section 62 of ALTA, which states as follows;

'Avoiding conflict

62. - (1) *The central agricultural tribunal or a tribunal shall take judicial notice of all matters of which a court of law would take judicial notice.*

(2) *Subject to the provisions of section 34, all awards, certificates, determinations or orders of the central agricultural tribunal or of a tribunal purporting to be*

*signed by the person appointed as the central agricultural tribunal or as a tribunal shall be admitted in evidence in any court of law or before a tribunal as prima facie evidence of the facts contained therein.*

- (3) *A tribunal shall not entertain any application for adjudication upon any issue which has been decided between the same parties by any court of law.*
- (4) *Where proceedings have been instituted in any court of law in relation to any matter submitted for adjudication to the central agricultural tribunal or a tribunal, the central agricultural tribunal or a tribunal, as the case may be, may refuse to adjudicate or may stay or adjourn the matter as it shall think fit.*
- (5) *The central agricultural tribunal or a tribunal may, at any stage of any proceedings, refer any question of law-*
  - (a) *in the case of the central agricultural tribunal, to the Fiji Court of Appeal or;*
  - (b) *in the case of a tribunal, to the Supreme Court, and the Court of Appeal or the Supreme Court, as the case may be, shall have power to hear and determine every such question.*
- (6) *Where any reference has been made to the Fiji Court of Appeal or to the Supreme Court under the provisions of subsection (5), the central agricultural tribunal or a tribunal, as the case may be, shall not make any award, determination or order, or issue any certificate, except in accordance with the determination of the said question by the Court of Appeal or the Supreme Court, as the case may be.*
- (7) *Any reference to the Fiji Court of Appeal or to the Supreme Court under the provisions of this section shall be made in accordance with rules of court". (emphasis added)*

[13] If the same issue is dealt in Agricultural Tribunal as well as in the High Court it might be possible to obtain two conflicting orders and the appeals from the respective determinations are to Central Agricultural Tribunal and Court of Appeal respectively. The High Court can review the decision of the Central Agricultural Tribunal's decision in a Judicial Review after obtaining leave for

judicial review. The duty of the court and other bodies created by ALTA is to prevent such happening and to harmonize, the provisions of ALTA.

[14] ALTA contains provisions to avoid conflicts and reference of legal issues to High Court (Supreme Court) or the Court of Appeal is provided. (see Section 62(5) of ALTA). This reinforces the intention of the legislature to leave the determination of factual issues by the tribunals created by ALTA. So, when dealing with factual issues the Agricultural Tribunal has jurisdiction to deal with it without any assistance from relevant courts. If the same matter is before court, the discretion is given to Agricultural Tribunal either to 'refuse to adjudicate or may stay or adjourn the matter as it shall think fit.'

[15] Such power for stay is reciprocal and can be exercised in the inherent jurisdiction of the court. In Lotan v Garrick [1984] FJCA 7; Civil Appeal No 45 of 1984 (decided 24th November 1984) (unreported) Fiji Court of Appeal held;

*'Nevertheless the courts and the tribunals are encouraged to work in harmony-see the provision of Section 62 of ALTA aimed to avoid conflict- in particular subsection (3) applying the principle of res judicata to the tribunals, and subsection(4) giving the tribunals discretionary power the general power in the courts to adjourn has often been exercised to enable adjudication to be obtained -which in many cases will define the status of the parties in a way which renders further court proceedings unnecessary.'*

Further held,

*'A similar matter was considered at the same sitting with an identically constituted court in Azmat Ali v. Mohammed Jalil F.C.A. Civil Appeal 44/81.*

*The court said that the provisions of Section 62(4) giving the tribunal power to adjourn pending determination in a court of law were not mandatory and the Supreme Court in its turn, of course, had the converse power.'*(emphasis added)

[16] In this case the court had exercised this 'general power' and the parties represented by legal counsel consented to such staying of the hearing of the action in this court till final determination of proceedings before Agricultural Tribunal.

[17] This matter was adjourned for hearing from 3<sup>rd</sup>-to 5<sup>th</sup> February, 2010 and at the hearing before Justice Calanchini (as his lordship then was) and following was recorded on the minutes of 3<sup>rd</sup> February, 2010;

*'By consent, hearing of the action is stayed pending a final decision from Agricultural Tribunal in Proceeding 01/06'.*

- [18] The counsel for the Plaintiff who had appeared on 3<sup>rd</sup> February, 2010 and consented to the stay of this action pending final decision from the Agricultural Tribunal is now making an application, before me on 11<sup>th</sup> June, 2015 to proceed with the hearing. The counsel for the 1<sup>st</sup> Defendant objected to the said application on the basis of jurisdiction of the court when the main dispute is pending before Agricultural Tribunal.
- [19] Both parties did not inform the court of earlier orders made by Justice Calanchini (as his lordship then was) staying this action pending final determination of Agricultural Tribunal Proceeding 01/06. In the circumstances there is no need for me to make a determination on the issue whether this court can proceed with the hearing of this action while the Agricultural Tribunal is dealing with the demarcation of boundary of the agricultural land. The order made on 3<sup>rd</sup> February, 2010 was made by consent of the parties, on the day of hearing while the parties were represented by their counsel.
- [20] The Fiji Court of Appeal in Lotan (supra) held, that in the interpretation of the ALTA, it should be done to harmonize ALTA with the general body of law. Since the Agricultural Tribunal is seized with the boundary dispute relating to Agricultural lands of the Plaintiffs and the 1<sup>st</sup> Defendant the same issue should not be dealt in this court. In my judgment the intention of the legislation is to deal with Agricultural Lands in accordance with ALTA as much as possible and the disputes named in Section 22 of ALTA to the Agricultural Tribunal. If the Court is of mind that there is no material to be provided by Agricultural Tribunal, the Court need not stay (see – Lotan (supra)).
- [21] In this matter both parties have acquiesced, with such position and had let the Agricultural Tribunal to deal with boundary dispute and consented to stay the hearing of this action before this court from determining common boundary between the parties.

### Conclusion

- [22] The Plaintiffs and the Defendants are cultivating adjoining lots and the dispute relating to the boundary is now before the Agricultural Tribunal. On 3<sup>rd</sup> February, 2010 both parties had consented to stay for the hearing of action till final determination by the Agricultural Tribunal. It was the first date of

hearing of this matter and parties were represented by counsel when that order was made by the Court. The bone of contention is demarcation of boundary between the parties upon their instruments of tenancy which were issued without a proper survey.

**FINAL ORDERS**

- a. The request to proceed with hearing of this action is refused.
- b. No cost.

Dated at Suva this 30<sup>th</sup> day of September, 2015.



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Judge Deepthi Amaratunga  
High Court, Suva