

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

Civil Action No. HBC 21 of 2014

BETWEEN : **VILIMONI TUIDEKEI, MARIKA SOQETA** and **PITA RATUGONE** of Likuliku Resort, Mana Island Resort and Yaro Village respectively, all trustees of Mataqali Ketenamasi Trust.
Plaintiffs

AND : **AKUILA KOROIRATU, PENAI A SOQETA** and **LASARUSA BULI** of Mana Island Resort, Malolo, Hotel Workers.
1st Defendants

AND : **VILIAME BOGISA** and **RUSIELE CAGINAVANUA** of Lauwaki Village, Lautoka and Ba, Villager and Civil Servant.
2nd Defendants

AND : **SERUPEPELI NAITAU, PONIPATE RATUAGONE, JOSEVA SOQETA** of Mana Island Resort, Yaro Village, Malolo, Hotel Workers and Unemployed respectively.
3rd Defendants

Counsel : Mr Tuifagalele for the Plaintiff
: Mr Vuataki for the Defendant

R U L I N G

1. I am being asked to dissolve an injunction I gave *ex-parte* on 20 February 2014. Alternatively, I am being asked to partially uplift or waive the said Orders to allow the 1st defendants to withdraw funds from the ANZ Bank Account Number 11094612 as may be required by Mataqali Ketenamasi of Yaro Village until ruling.
2. There is a dispute between the parties as to who is the legal and lawful trustees of Mataqali Ketenamasi Trust (“**Trust**”) of Yaro Village in Malolo in the province of Nadroga.

3. The plaintiffs say that they are the current legal trustees of the Trust and were appointed under a Deed of Trust which was registered on 24 October 2011.
4. They also say that they were endorsed by majority consent of members of the Mataqali during their AGM convened at Yaro Village on 23 December 2013 to run as trustees until 15 February 2015, although, a panel of new trustees were to be appointed during the trust AGM in December 2014, who were to formally take over as trustees at the end of the term of the current trustees on 15 February 2015.
5. However, it so happened, according to the plaintiffs, that an illegal meeting was convened at Yaro Village on 12 February 2014 attended by some 30 or so people. At that meeting, the first defendants were purportedly appointed as trustees of the Trust.
6. The plaintiffs say that the said meeting was in direct contravention of the wishes of the majority of the members of the Mataqali.
7. It is alleged that the second defendants, who are linked maternally to the Mataqali, but are not registered members of the mataqali, are behind all this “*disturbance*” as the plaintiffs would call it. It is also alleged by the plaintiffs that the 3rd defendants who are members of the Mataqali, have been colluding with the second defendants all along.
8. Both 1st and 2nd named second defendants have filed affidavits refuting the allegations against them.
9. The 3rd named 3rd defendant (“**Soqeta**”) has also filed an affidavit. He deposes that he is authorised by majority adult members of the Mataqali and annexes a document which contains the names and signatures of some sixty-seven persons, who are purported to be members of the Mataqali.
10. Soqeta deposes that the plaintiffs were initially appointed trustees by a Deed of Trust dated 10 February 2009 supported by the signatures of some 27 adult members. Under that Deed, the term of their appointment was 5 years from 10 February 2009 to 10 February 2014.
11. In his affidavit, Soqeta points to various instances of alleged abuse of powers and mismanagement by the plaintiffs which saw them improperly disbursing trust funds in breach of the trust, clogging housing

development programs on Mataqali land, and sacking the Chairman of the Development Committee.

12. A reconciliation meeting was then scheduled which the plaintiffs deliberately avoided.
13. It was then that new trustees were appointed which was endorsed by 72 out of the 124 members.
14. This was followed by another Deed appointing the plaintiffs, followed by another “*rival*” Deed. In the midst of all that fracas, a Mataqali meeting was then convened Chaired by the Commissioner Western to resolve their differences. It was resolved at that meeting that the plaintiffs were to be removed from office. However, the Commissioner Western suggested that they continue in office to complete their term which would end on 12 February 2015.
15. Needless to say, the plaintiffs, through the affidavit in reply sworn by Vilimoni Tuidekei on 11 March 2014, deny almost all of the allegations in the affidavit of the 2nd named 1st defendant.

ISSUES

16. The main issue between the parties is, who are the lawful trustees of the Trust. The question of “lawfulness” of appointment depends firstly on who has majority support of the members. It also depends on the question whether due process was followed in the removal of the old and the appointment of the new trustees.

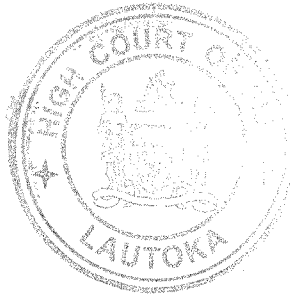
COMMENTS

17. The lands that belong to the Mataqali from which rental income is paid into the trust include lands on which such major resorts as Mana Island Resort, Likuliku Bay Resort, Malolo Island Resort and some other smaller resorts are located.
18. Some \$900,000-00 worth of rental income is paid into the trust annually.
19. I note that the plaintiffs do not dispute that their term as trustees would end on 12 February 2015, which is today.

20. Accordingly, I think this matter would have resolved itself once the plaintiffs' term as trustees lapses today and once new trustees are appointed.

DECISION

21. There is so much at stake for the members of the mataqali. The best course to take is for me to keep the injunction in place and to dissolve it only once papers are filed, by the applicant, to re-confirm that the plaintiff's term has lapsed and to confirm the appointment of new trustees.
22. This case is adjourned to Friday 27 February for parties to file the necessary documents.



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end. A dotted line is positioned below the signature.

Anare Tuilevuka
JUDGE
12 February 2015.