

IN THE HIGH COURT OF FIJI

(WESTERN DIVISION) AT LAUTOKA

JUDICIAL REVIEW NO. HBJ 10 OF 2015

IN THE MATTER of an Application by
ANIL DEO for a Judicial Review under
Order 53, of the High Court Rules 1988

AND

IN THE MATTER of the Decision of the
AGRICULTURAL TRIBUNAL dated 2nd
September 2015 in Agricultural Tribunal
Reference No. WD 09 of 2012

STATE v. SALWENDRA KALI NADIU of Raviravi, Ba, Legal Clerk

FIRST RESPONDENT

A N D : **DIRECTOR OF LANDS** Tavewa Avenue, Lautoka.

SECOND RESPONDENT

A N D : **AGRICULTURAL TRIBUNAL**

THIRD RESPONDENT

EX-PARTE: **ANIL DEO** formerly of Raviravi, Ba but now of 11/113
Wallace Road, Papatoetoe, Auckland, New Zealand

APPLICANT

Counsel : Mr S K Ram for Applicant
: Mr Mohammed Zoyab Shafi for 1st Respondent
: Mrs M Lee for 2nd & 3rd Respondents

Date of Hearing : 11 April 2016

Date of Ruling : 19 May 2016

R U L I N G

Introduction

[01] This is an application for leave to apply for judicial review.

[02] By his application dated 02 December 2015 the applicant (Anil Deo) is seeking leave for judicial review of a decision of the Agricultural Tribunal (3rd respondent) dated 2 September 2015 granting injunction orders to maintain the status qua, restraining the parties from uplifting cane proceeds and allowing the 1st respondent (Salwendra Kali Naidu) to sign the memorandum of gang agreement (MOGA) until determination of the Tribunal matter.

[03] The application is supported by an affidavit sworn by Pravin Deo (the attorney of the applicant).

[04] The leave for judicial review sought is pursuant to Order 53 Rule 3 (2) of the High Court Rules, as amended (HCR).

[05] In opposition the 1st defendant filed an affidavit. He opposes the application on the grounds that:

1. *The power of attorney does not authorize the deponent to conduct legal cases in a court of law for and on behalf of Anil Deo.*
2. *The said Pravin Deo has not been authorized to swear any affidavit on behalf of the said Anil Deo.*
3. *At this point in time Anil Deo does not have any legal rights over Crown Lease No. 9453.*

[06] The 2nd and 3rd respondents oppose leave being granted to the applicant on the grounds that: 1. The decision under review is not amenable to judicial review as it is not an Executive or an Administrative decision by

a Public Officer. 2. The applicant has failed to exhaust the appeal process available under the Agriculture Landlord and Tenant Act (ALTA). The grounds of judicial review on which relief is sought are legal arguments that should properly be put before Central Agricultural Tribunal by way of an appeal.

[07] At the hearing of the application, the parties made oral submissions. In addition, the applicant and the 1st respondent tendered their written submissions.

Background

[08] On 25 June 2015, the First Respondent made an application before the Third Respondent for injunction orders.

[09] The First Respondent was the Plaintiff in the Magistrates Court at Ba and had applied for similar injunction orders and obtained in August 2012. The applicant was unsuccessful in his application for dissolution made in March 2013.

[10] The Applicant appealed the decision of the Magistrates Court and in May 2015, High Court at Lautoka, allowed the appeal, dissolved the injunction and dismissed the entire proceedings in the Magistrates Court.

[11] On 30 June 2015, after hearing an ex-parte application filed by the First Respondent, the Third Respondent granted injunction orders over the same property and the same subject matter.

[12] The Applicant filed a Notice of Motion seeking orders that the matter be referred to the High Court and that the injunction orders be dissolved on the basis that the Third Respondent had no jurisdiction to make injunction orders or to override the decision of the High Court.

[13] After hearing, the third respondent delivered its decision on 2nd September 2015. In its decision the Third Respondent ruled as follows:-

1. *The application to the Agricultural Tribunal was based on powers given under the Agricultural Landlord and Tenant Act and was for a declaration of tenancy which involves different issues from the enforcement of a Sale and Purchase agreement as was adjudicated upon in the Magistrates Court and the High Court.*
2. *The Agricultural Tribunal had powers to grant interlocutory injunction orders on the basis of Regulation 13 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations. The injunction orders granted in the Magistrates Court were based on a sale and purchase agreement and the inherent jurisdiction of the Magistrates Court.*
3. *The High Court had dissolved the injunction orders and therefore there were no similar orders in existence.*
4. *A decision of the High Court being the Re ALTA and Shiu Phula HBC 481 of 1981L (4 February 1982) (at that time called the Supreme Court) was not binding on the Agricultural Tribunal.*
5. *Section 62 of the Agricultural Landlord and Tenant Act is not applicable to this case.*

[14] It is against the above ruling the applicant seeks leave to apply for judicial review.

The Reliefs Sought

[15] The Applicant seeks the following relief:

- a) **AN ORDER OR CERTIORARI** to remove the said decision of the **AGRICULTURAL TRIBUNAL** made on the 2nd September 2015 into this Honourable Court and that the same be quashed.

- b) **AN ORDER OF MANDAMUS** directing the **AGRICULTURAL TRIBUNAL** to refer the application of the Applicant to the High Court with immediate effect.
- c) **A DECLARATION** that the Agricultural Tribunal does not have jurisdiction to make interlocutory or final injunction orders.
- d) That there be a stay of proceedings and orders made in the Agricultural Tribunal pending the determination of the judicial review application.
- e) Damages
- f) Further declaration or other relief as to this Honourable Court may seem just.
- g) Costs of this action.

The Grounds upon which relief is sought

1. *The Agricultural Tribunal erred in law and went beyond its jurisdiction and acted ultra vires when it held that:*
 - 1.1 *An application for declaration of tenancy based on a Sale and Purchase agreement could be entertained or heard by the Tribunal after the issues in relation to the Sale and purchase agreement had been determined by the High Court;*
 - 1.2 *Regulation 13 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations gives powers to the Agricultural Tribunal to grant injunction when the purpose of the said Regulations were to regulate the procedures of the Tribunal rather than to confer powers upon it. The jurisdiction and powers of the Tribunal are given by the Act and not the Regulations.*
 - 1.3 *Just because the High Court had dissolved the same or similar order it meant that the Tribunal could now make the same orders.*
 - 1.4 *A decision of the High Court was not binding upon the Tribunal when the doctrine of precedent and Stare Decisis very clearly*

provides such authorities are binding upon lower courts and tribunals.

2. *The Agricultural Tribunal acted beyond the powers given to him under the Agricultural Landlord and Tenant Act.*

2.1 *The Agricultural Tribunal made a fundamental error of law and acted beyond its jurisdiction when it granted injunction orders without considering the principles upon which injunctions are granted and established by established case law. The tribunal purported to have wider powers and discretion than the High Court when it simply relied on what was "Necessary for doing justice".*

2.2 *The Agricultural Tribunal made a fundamental error of law when he held that the Magistrate Court had inherent jurisdiction.*

The Law

[16] The relevant law in relation to leave for judicial review is HCR O.53, r. 3 (2), which provides:

'Grant of leave to apply for judicial review (O.53, r.3)

3.- (1) *No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.*

(2) *An application for leave must be made upon filing in the Registry; a notice in Form 32 in the Appendix hereunder containing statement of-*

- (i) particulars of the judgment order, decision or other proceedings in respect of which judicial review is being sought;*
- (ii) the relief sought and the grounds upon which it is sought;*
- (iii) the name and description of the applicant;*
- (iv) the name and address of applicant's Solicitors (if any); and*
- (v) the applicant address for service;*

(a) an affidavit which verifies the facts relied on.

(3) *(i) Copies of the application for leave and the affidavit in support must be served on all persons directly affected by the application.*

- (ii) *The Court may determine the application without a hearing and where a hearing is considered necessary the Court shall hear and determine the application inter partes.*
 - (iii) *Notice of hearing of the application shall be notified in writing to the parties by Registrar.*
 - (iv) *Where the Court determines the application without a hearing the Registrar shall serve a copy of the order of the Court on the applicant.*
- (4) *Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the relief sought and the grounds thereof to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.*
- (5) *The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. (Emphasis provided)***
- (6) *Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.*
- (7) *If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.*
- (8) *Where leave to apply for judicial review is granted, then-*
- (a) *if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;*
 - (b) *if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.*
- (9) *Upon granting leave the Court may, if satisfied that such a course is justified, direct that the grant shall operate either forthwith or conditionally as an entry of motion under rule 5 (4) and may then proceed to Judgment on the application for judicial review or may give such further directions as may be warranted in the circumstances.'*

Discussion

[17] The applicant seeks leave to apply for judicial review of the third respondent's order granting interim injunction in favour of the first

respondent. The interim injunction is granted pursuant to an application made to the third respondent on the basis that the first respondent has been occupying and cultivating of the subject farm land (land covered under Crown Lease No. 9453).

[18] The applicant has made a statement of the particulars of the decision in respect of which judicial review is being sought. The application seeks among other things orders in the nature of certiorari (quashing order) and mandamus (Mandatory order) to quash the decision and to order the third respondent to refer the application of the applicant to the High Court on the grounds of jurisdiction and acted ultra vires. The application gives name, description and address of the applicant. The application provides all the details as required in O.53, r.3 (2) (a) of the HCR. The application is in order. There was no dispute with regard to the formality of the application.

[19] The applicant has filed an affidavit verifying the facts relied on pursuant to O.53, r.3 (2) (b) of the HCR.

[20] The first respondent challenges the applicant's verifying affidavit on the ground that it has been sworn by the applicant's attorney without express authority to swear an affidavit on behalf of the applicant. The deponent has attached the power of attorney given by the applicant. Upon perusal one can find that the power of attorney does not give express authority to the deponent to swear an affidavit for or on behalf of the grantor, namely the applicant. Discretion and personal knowledge is needed to swear an affidavit. I therefore accept the argument that the deponent has sworn an affidavit without express authority of the applicant. Further, the power of attorney does not authorise the deponent to conduct legal proceedings in a court of law for and on behalf of Anil Deo (Applicant).

[21] The application to apply for leave to judicial review of the decision delivered on 2 September 2015 seeks quashing orders to vacate it. The applicant has filed this application on 2 December 2015. There was no issue of undue delay.

[22] Another threshold the applicant has to meet pursuant to O.53, r. 3 (5) is 'standing'. According to this rule the court will not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

[23] The first respondent contended that the applicant at this point in time does not have any legal right over Crown Lease No. 9453. The 2nd and 3rd respondents argue that the relief sought by the applicant cannot be entertained by the court as it lacks legal basis and that the lease in question is an expired lease whereby all rights and interests have reverted back to the State.

[24] Mr Ram, counsel for the applicant submits that, the lease upon which the injunction orders were made belongs to the applicant. These injunction orders were made in favour of somebody who is not a lawful lessee to the land in question but claims to be a purchaser pursuant to a sale and purchase agreement. The applicant has been directly affected by the injunction orders as he is not permitted to work on his own land or to uplift cane proceeds from his own land. He cited the case authority of *Proline Boating Company Ltd v Director of Land* [2014] FJCA 159; ABU0020.2013 (25 September 2014).

[25] In essence, Mr Ram's submission is that the decision to be reviewed interferes directly with the applicant's personal.

[26] In **Proline** (supra), where the respondent issued leases in the applicant's favour and cancelled the leased, the Fiji Court of Appeal said:

'...

If the decision is sought to be reviewed interferes directly with the applicant's personal rights then the applicant is said to have a 'sufficient interest'.

[27] The facts in this case are different from that of the above case. In this case the lease has expired and there is nothing on the record to suggest that the applicant has applied for renewal. In the circumstances, in my view, the applicant cannot say that his personal rights are affected by the decision sought to be reviewed judicially.

[28] The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates (O.53, r.3 (5)).

[29] The phrase 'sufficient interest' has been given wide interpretation by the courts. They will assess the extent of the claimant's interest against the factual and legal circumstances of the claim. The test for deciding whether a claimant has sufficient interest was considered by the House of Lords in ***R v Inland Revenue Commissioners, ex parte National Federation of Self-Self-Employed and Small Business Ltd*** [1982] AC 617. The court held:

'That not only was standing a ground in itself upon which permission could be granted, it should also be considered at the substantive hearing after the relevant law and facts were examined in full.'

[30] The respondents have landed a 'knock-out blow' on the applicant's leave for judicial review application that the applicant has no sufficient interest as the lease of which the applicant was the proprietor has expired.

Conclusion

[31] The affidavit that verifies the facts relied on by the applicant has not been sworn by the applicant, but his attorney without apparent authority. As such, there is no proper verifying affidavit. Moreover, the

lease granted to the applicant has expired. As a result of it, all rights and interest have reverted back to the State. The decision to be reviewed is made in respect of the land covered by the expired lease. There is nothing on the record to show that applicant has applied for renewal of the same. In the circumstances, the applicant fails to establish that he has sufficient interest in the matter to which the application relates. I would therefore refuse to grant leave to apply for judicial review. I would also order the applicant to pay summarily assessed costs of \$650.00 to each respondent totalling \$1,300.00.

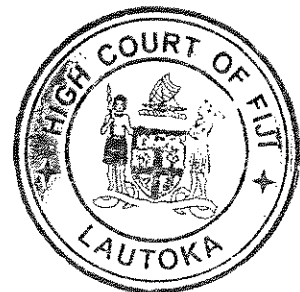
The result

1. Application for leave to apply for judicial review refused.
2. Applicant will summarily assessed costs of \$650.00 to each respondent totalling \$1,300.00.

M H Mohamed Ajmeer 19/5/16
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M H Mohamed Ajmeer

JUDGE



At Lautoka

19 May 2016

Solicitors:

For applicant: Samuel K Ram, Barrister & Solicitor

For first respondent: Fazilat Shah Legal, Barristers & Solicitors

For second respondent: Office of the Attorney General, Lautoka