

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC No. 277 of 2015

BETWEEN: **JONE BATINIKA** of Vuci Road, Vunivaudamu No. 2
Subdivision, Nausori, Fiji, Farmer.

PLAINTIFF

AND: **ITAUKEI LAND TRUST BOARD** a statutory body established
under the iTaukei Affairs Act, Cap 120 whose principal place of
business is at 431 Victoria Parade, Suva, Fiji Islands.

DEFENDANT

Before: Hon. Justice Kamal Kumar

Counsel: Mr J. Lanyon for Plaintiff
Ms Q. Vokanavanua for Defendant

Date of Hearing: 30 January 2018

Date of Judgment: 5 December 2018

JUDGMENT

Introduction

1. On 12 August 2015, Plaintiff filed Writ of Summons with Statement of Claim.

2. On 17 August 2015 and 11 September 2015, Defendant filed Acknowledgement of Service and Statement of Defence.
3. On 21 October 2015, Plaintiff filed Reply to Statement of Defence.
4. On 15 December 2015, Plaintiff filed Summons for Directions and on 10 February 2016, Order in Terms of Summons for Directions was made by the Court.
5. On 16 March 2016, parties were directed to file Affidavit Verifying List of Documents ("**AVLD**") and this matter was adjourned to 1 April 2016, for mention.
6. On 15 March 2016, Plaintiff filed AVLD.
7. On 1 April 2016, Defendant was granted time to file AVLD by 8 April 2016, and this matter was adjourned to 26 April 2016.
8. Defendant failed to comply with Courts direction and on 26 April 2016, time for filing AVLD was extended by another fourteen (14) days and this matter was adjourned to 2nd June 2016, for mention.
9. Defendant again failed to file AVLD as directed by Court and this matter was adjourned to 28 June 2016, for mention.
10. On 28 June 2016, Defendant filed AVLD.
11. On 29 June 2016, this matter was adjourned to 18 August 2016, for mention.
12. On 18 August 2016, this matter was adjourned to 20 October 2016, for parties to formalize Pre-Trial Conference ("**PTC**").
13. On 20 October 2016, this matter was adjourned to 23 November 2016, for parties to hold PTC.
14. This matter was next called on 15 February 2017, when it was adjourned to 27 February 2017, for parties to convene PTC.
15. On 27 February 2017, parties were directed to convene PTC within seven (7) days and this matter was adjourned to 16 March 2017, for mention only.

16. On 16 March 2017, Court directed parties to hold PTC on 20 March 2017, and adjourned this matter to 3 April 2017.
17. On 27 March 2017, Plaintiff filed Minutes of PTC.
18. On 2 April 2017, the then Master directed parties to take next course of action within fourteen (14) days and adjourned this matter to 24 April 2017, when it was adjourned to 31 May 2017, for same reason.
19. On 21 April 2017, Plaintiff filed Order 34 Summons and Copy Pleadings.
20. On 31 May 2017, Order in Terms of Order 34 Summons was made.
21. This matter was called in this Court on 7 July 2017, and adjourned to 30 and 31 January 2018, for trial.
22. Trial concluded on 30 January 2018, when parties were directed to file Submission by 6 March 2018, and this matter was adjourned for Judgment on Notice.
23. Plaintiff filed his Submission on 26 February 2018, with Defendant not filing any Submission.

Documentary Evidence

24. Following documents were tendered in evidence by both parties:-

<u>Exhibit No.</u>	<u>Documents</u>
P1	Instrument of Tenancy dated 18 January 1983 (NLTB Ref No. 4/14/7697)
P2	Copy of Certified True Copy of Transfer of Native Lease
P3	Photocopy of Application Screening Form (Internal Use Only) dated 1 July 2011 with photocopy of Defendant's Official Receipt for \$57.50

- P4 Defendants Official Receipt dated 4 December 2012, for Transaction No. 33217 together with letter dated 28 November 2012, from Defendant to Plaintiff
- P5 Letter dated 28 May 2013, from Defendant to Plaintiff
- D1 Copy of Proposed Master Land Use Plan from Lami - Nausori Corridor approved in principle by Director of Town and Country Planning in May 2007

Plaintiffs Case

25. Plaintiff during examination in chief gave evidence that:-

- (i) He resides at Vuci Road, Vunivaudamu No. 2 Subdivision and is member of Mataqali Rara, Tokatoka Savukuku where he lived since 1983;
- (ii) Subject land is Mataqali land and he is elder brother of the landowner;
- (iii) From 1993 upto 2011, there was debt on the land which he took over and he lives on the lot marked in orange in the Instrument of Tenancy (Exhibit 1) which land is subject to this case;
- (iv) On 29 April 2011, he had an Agreement with his elder brother for him to clear debt owed to Defendant and for his elder brother to transfer subject land to him;
- (v) Elder brother transferred land to him (Exhibit P2) with area of 6 acres 3 roods 19 perches;
- (vi) When subject land was transferred to him, one and half years was left for lease to expire (31 December 2012);
- (vii) On 1 July 2011, he applied for renewal of the lease and paid \$57.50 being Application fee (Exhibit P3);

- (viii) He supported his Application with supporting letter dated 30 June 2011 from Ministry of Agriculture (Exhibit P3);
- (ix) Purpose for Application was stated as Dalo Planting and Farming;
- (x) On 28 November 2012, Defendant wrote to him stating that it accepted his application for renewal with condition that he had to pay \$1,150.00;
- (xi) He paid \$1,150.00 (Exhibit P4) and was told by Defendant to come after two (2) weeks to get condition of contract;
- (xii) The person who gave letter told him that and whose name he forgot;
- (xiii) He then waited for response;
- (xiv) Then in January 2013, he went to Defendant's office and was told that his file is missing;
- (xv) In response to leading question from his Counsel that from issuance of letter of 28 November 2012, right through January/February he followed up with Defendant he answered "Yes" he "followed up";
- (xvi) After that he kept on going to them up until May 2013;
- (xvii) On 27 May 2012, one Autiko, Officer in Charge of Central/Eastern Division asked him to go through consultation with Mataqali Rara and Defendant at District Officer's office in Nausori;
- (xviii) He attended consultation at District Officers Conference Room with three (3) Mataqali representatives namely Tevita Turaganisolevu (Head of Mataqali), Lorima Derenituraga (Tevita's brother) and Viliame Naqeli;
- (xix) At the meeting Defendant's representative told Mataqali representatives that land was controlled by Defendant when Viliame Naqeli asked whether Mataqali could allocate someone who can take over the land to which the response was "No";

- (xx) After meeting Autiko went to him, and asked him to come next day and take offer letter and Agreement to lease land;
- (xxi) Following day at 8.30am he went to Defendant's office and saw Autiko who took out letter in an envelope and gave to him;
- (xxii) When he was trying to open the envelope Autiko stopped him, and told him to open envelope at home;
- (xxiii) In the evening while sitting in front of his children, he opened the envelope and read the letter when he told his wife that everything is totally wrong;
- (xxiv) In the letter they gave him residential lease (Exhibit P5);
- (xxv) Agreed that area of land in letter was 1 Rood 21 Perches and not 6 Acres he applied for;
- (xxvi) He was very disappointed after what Defendant did to him;
- (xxvii) Next morning (29 May 2013) he went to see Autiko, but he was not at work that day;
- (xxviii) He then saw Defendant's Manager when he told Manager that he did not apply for that land, he was about to be made redundant by Public Works Department, he applied for renewal to his farm and left the letter on Manager's table and came out;
- (xxix) Defendants officers kept on calling him to take the offer letter and showed him the Master Plan;
- (xxx) He told Defendants officers that he did not know about the Master Plan and asked them as to why they did not tell him in December 2012;
- (xxxi) Agreed that Court is to enforce the offer that Defendant made to him and he paid for on 28 November 2012.

26. During cross-examination Plaintiff:-

- (i) Stated that he is member of Mataqali Rara and has no record from Native Land Commission (“**NLC**”) to verify this;
- (ii) When it was put to him that his and his families names were removed from Mataqali Rara at NLC he stated that he cannot answer;
- (iii) Agreed that he is aware that Defendant gives benefit to landowners who apply to lease their own land;
- (iv) When asked if he knew as to what term of lease was left when he made arrangements with his brother to take over the lease he stated that he already knew two years was left;
- (v) Stated that there was debt from 2011, when his father asked him to clear the debt and his older brother transferred land to him;
- (vi) Stated that receipt for clearance of debt is missing;
- (vii) When asked if he consulted Defendant when he agreed with brother for him to farm he stated that he went to Defendant’s office to pick Application for Consent to Assign;
- (viii) Stated that he did not have discussion with Defendant’s officers of his intention to take over the farm;
- (ix) When it was put to him that he took risk with only 2 years left, he stated that he did not think so because he applied for it;
- (x) Stated that he filled Form for Renewal in presence of Defendant’s officer;
- (xi) Agreed that Defendant wrote in Exhibit P3, “Expiry” as he was not new Applicant and was existing tenant of Defendant;
- (xii) Denied that when he lodged Application Defendant’s officers advised him that lease will not be renewed;
- (xiii) Denied that he kept on going to Defendant;

- (xiv) When it was put to him that when he went to Defendant he was told that they will not be renewing Agriculture lease, he stated that all this story started in June 2013;
- (xv) Stated that he was shown Master Plan in June 2013;
- (xvi) In respect to reason for Consultation at District Officers office, stated that he was told by Autiko would tell Mataqali that he is going to be owner of the subject land;
- (xvii) Denied that Autiko told him that he will get residential lease and he went to complain at DO's office;
- (xviii) Stated that he does not know if this type of consultation always take place at DO's office;
- (xix) Stated that Mataqali Rara is for Nacuru Village;
- (xx) When asked if Mataqali Rara supported his Application he stated that he is owner of lease and did not want to involve Mataqali;
- (xxi) When it was put to him that land belongs to Mataqali he stated it belongs to Defendant;
- (xxii) When it was put to him that Defendant does not own land, it belongs to Mataqali and Defendant is Trustee he stated he was told Defendant is registered and Mataqali is not in that land;
- (xxiii) Denied that all Autiko did at DO's Office was show him the Master Plan and stated that Master Plan was shown to him by Defendant's Manager in June 2013;
- (xxiv) Stated that he received offer (Exhibit P5) from Defendant next day after consultation;
- (xxv) Denied that before letter attached to Receipt (Exhibit P4) was issued he was advised by the Defendant that it will offer him a Residential Lease and stated that he applied for Renewal;

- (xxvi) Denied that he was informed by Defendant that it will not renew his lease;
- (xxvii) Agreed that in Exhibit P5 (offer letter), he is being charged premium of \$4,500.00;
- (xxviii) Stated that he did not pay premium as he is waiting for Renewal of 6A 3R 19P;
- (xxix) Denied that he knew that Defendant was not going to offer him a Agricultural Lease;
- (xxx) Stated that both Agriculture Lease and Residential Lease bring same income to landowner as they both bring same outcome;
- (xxxii) Agreed that he has allowed other people to come and occupy the said land (Note: Initially he did not want to answer);
- (xxxiii) When it was put to him that he allowed them to build house on the said land he stated that only one Indian man came and built house there;
- (xxxiiii) When it was put to him that he has no right over the land he stated that he is fighting for his right.

27. During re-examination Plaintiff:-

- (i) Stated that Defendant gave him offer on 28 November 2012, after which meeting took place with Mataqali at DO's Office;
- (ii) Agreed that all talk of Master Plan came after;
- (iii) Agreed that Autiko said land was owned by Mataqali and controlled by Defendant;
- (iv) Agreed that Defendant issued offer letter on 28 November 2012, and he paid the fee;
- (v) Agreed that later on Defendant did want to give Agriculture Lease and gave totally different thing;

- (vi) Stated that he applied for a renewal of Agriculture Lease and wants Court to enforce the offer.
28. Defendant called Epeli Nadraiqere of Delainavesi, Lami, Senior Land Use Planner as its first witness (“**DW1**”).

Defendant’s Case

29. DW1 during evidence in chief gave evidence that:-
- (i) His job includes formulating Land Use Master Plan to guide Defendants for years to come, development of itaukei land and processing of subdivision application;
 - (ii) Exhibit D1 is Master Land Use Plan for greater Suva Region and extends from Naboro to Suva to Nausori (“**Master Plan**”) which was approved in 2007 by Director of Town and Country Planning (“**DTCP**”) at that time;
 - (iii) Significance of Master Plan is:-
 - (a) to control and guide development in the specific area and in this case greater Suva region;
 - (b) Once it is endorsed by DTCP it becomes legal document for Defendant;
 - (c) Defendant then ensures that, what is in the Master Plan is implemented by it;
 - (d) Apart from Plan they also undertake research which result in formulation of Master Plan together with Policies which control development of sites;
 - (e) Like any other plan its implementation takes long time;
 - (f) Master Plan is revised after every five (5) years for updates;

- (iv) Master Plan is prepared after lengthy discussion with all stakeholders including public/private sector, government agencies and itaukei landowners who are advised directly or through Roko Tui's office;
- (v) Colours in Master Plan (Exhibit D1) reflect use of land as follows:-
 - (a) Dark Green: Set aside as forest;
 - (b) Pale Green: Agriculture;
 - (c) Brown: Residential;
 - (d) Yellow: Mixed usage;
- (vi) Use of land is determined by:-
 - (a) Stakeholders consultation by dividing stakeholders and asking them what they want land to be in 5 to 20 years time;
 - (b) Look at trend of development on assumption that change will continue for 20 years;
 - (c) Taken into consideration demand for various land uses in terms of residential development;
- (vii) If there is an existing Agricultural Lease within brown area (residential development) and Lessee wants to change its zoning he/she can come to Defendant for change of zoning;
- (viii) If Agricultural Lease had expired Defendant will lease according to Master Plan and in this case it will be residential.

30. During cross-examination DW1:-

- (i) Stated that he has been Senior Land Use Planner for two (2) years;
- (ii) Stated and approved in principle means that it will be used by Defendant as a guide to control development;
- (iii) Stated once Master Plan is approved by DTCP it is no longer Proposed Plan and it supersedes any other Plan;

- (iv) Stated that Master Plan is currently being revised and is with DTCP;
 - (v) Agreed that Master Plan was approved by Defendant in June 2003 and by DTCP in 2007;
 - (vi) In reference to Exhibit P3 (Application) agreed that it is Defendant's document, Applicant is Plaintiff who is applying for farming, at paragraph 3.06 it is written "Renewal" and Application was made in 2011;
 - (vii) In reference to letter dated 28 November 2012, attached to Exhibit P4 agreed that Defendant was prepared to approve if Plaintiff paid \$1,514.00;
 - (viii) Stated that the fee included consultation with landowners and processing fee;
 - (ix) Agreed that Exhibit P4 is Defendant's receipt.
31. In re-examination DW1 stated that Master Plan was implemented after it was approved by DTCP on 7 May 2007.
 32. In response to clarification sought by Court DW1 clarified that subject land falls within brown area of Master Plan and \$1,514.00 fee involved office work, to see site for inspection and consultation.
 33. In reference to question by Plaintiff's Counsel arising out of clarification DW1 stated that letter dated 28 November 2012, is processing fee letter for Applicant to pay for processing fee.
 34. Defendant called Kameli Ritova of Vunivivi Hill, Nausori, Estate Officer as its Second Witness (DW2).
 35. DW2 during evidence in chief gave evidence that:-
 - (i) His job includes processing Application for lease and issuing leases in Central/Eastern Region;
 - (ii) He looks after Tailevu South area which has 9 Tikinas;

- (iii) Subject land is known as “Vunivaudamu”, falls within Mataqali Rara, Tikina of Nausori in Naduru Village which is fronting Vuci Road Nausori and is half kilometer from Nausori Town boundary;
- (iv) Subject land is on top hand right corner of Master Plan (Exhibit D1) between dark green and pale green and marked “X”;
- (v) Process for obtaining lease is receiving application, vetting it, obtaining details such as bank statements, birth certificates, consulting landowners, consulting technical team in office to get confirmation on availability/zoning and if land is available, they process application and issue offer letter;
- (vi) Applicant is required to pay \$54.50 lodgment fee and they write letter to Applicant to pay processing fee upfront which was \$1,150.00 but now it is \$1090.00;
- (vii) Processing fee is used for them to go and do work such as site inspection, consultation with landowners and other expenses;
- (viii) In reference to Exhibit P4 (Receipt for \$1150.00) stated that receipt for Plaintiff and that payment of this money does not guarantee that Applicant will get lease because payment of processing fee does not guarantee Applicant the lease;
- (ix) Difference between new lease and expired lease is that for new lease land is vacant whereas for expired lease, land is occupied;
- (x) Whether to issue new lease or renew expired lease will depend on availability of land;
- (xi) Defendant did not renew Agriculture lease over subject land for the reason that according to Master Plan this land has gone to residential zoning;
- (xii) If land is zone residential they will issue Residential Lease and if land is zoned Agricultural they will issue Agricultural Lease;

- (xiii) If a member of Land Owning Unit apply to lease their own land, they are not charged premium;
- (xiv) Exhibit P5 (letter dated 28 May 2013) is offer letter for Residential Lease and Plaintiff was charged premium of \$4500.00 in total \$5965.00;
- (xv) Plaintiff has not paid that money to date and is still occupying the subject land;
- (xvi) He liaises with Mataqali Rara every week and deals with this land every day;
- (xvii) Defendant has subdivided the subject land for residential purposes;
- (xviii) Members of Mataqali receives maximum value from subdivision in that 6 acres of land can be divided into 20 lots which will fetch \$200,000.00 in premium (\$10,000 x 20) and \$6000.00 in yearly lease rental (\$300 x 20) whereas Agricultural Lease over 6 acres of land fetch \$700.00 in premium and \$300 yearly rental;
- (xix) Landowners of Mataqali Rara support the subdivision with whom they had last discussion in September last year and he visited land yesterday;
- (xx) Plaintiff is still occupying the land;
- (xxi) At the beginning of this year (2018) he visited the site and found that a building is being built beside Plaintiff's house and the person building it built on someone else's lease;
- (xxii) He issued that person unlawful occupation notice;
- (xxiii) When they served notice on person (Avinesh) he refused to receive notice and showed them piece of paper that Plaintiff consented him to build the house;
- (xxiv) Plaintiff does not have valid lease with Defendant.

36. During cross-examination DW2:-

- (i) Stated that he does not have copy of document Avinesh showed it to him but stated that Avinesh did show it to him;
- (ii) Stated that Plaintiff followed the steps for process of lease;
- (iii) Stated that only offer letter given to Plaintiff was in 2013, for Residential Lease;
- (iv) In reference to letter dated 28 November 2012, attached to Exhibit P4 agreed that “Heading” say “New Lease Offer” and stated \$1150.00 was paid;
- (v) Agreed that offer of 28 May 2013, is not what Plaintiff applied for;
- (vi) Stated that he did tell Plaintiff prior to giving offer letter in 2013, that his application is being objected;
- (vii) Stated that meeting was held between Plaintiff, previous officers of Defendant and Land Owning Unit (“**LOU**”);
- (viii) Stated that Plaintiff’s Application was processed and he was offered a Residential Lease;
- (ix) When asked if he explained Master Plan to Plaintiff he stated that they make decisions by determining zoning from Master Plan;
- (x) Stated that they have nothing in writing from LOU supporting subdivision.

Undisputed Facts

37. It is undisputed that:-

- (i) Defendant issued lease over land known as “Vunivaudamu Tikina of Bau Province of Tailevu containing approximately 6 acres 3 roods and 19 perches for a term of thirty (30) years from 1 January 1983 to Savenaca Ranatawake Ramokosoi and subject to Instrument of Tenancy No. 1089 (“**the Lease**”);

- (ii) On 29 April 2011, the lease was transferred to Plaintiff in consideration of natural love and affection and \$10.00 (“**Transfer**”);
- (iii) On 1 July 2011 (18 months prior to expiry of lease), Plaintiff applied for renewal of Lease and paid \$57.50 Application fee (“**the Application**”);
- (iv) On 28 November 2012, Defendant wrote to Plaintiff in respect to the Application in following terms:

“Re: New Lease Offer

Land Name: Vunivaudamu No. 2

Province: Tailevu District: Nausori

Ni sa Bula Vinaka,

After care consideration, the Board is prepared to approve your request provided that you pay this office the sum of One Thousand One Hundred Fifty Dollars (\$1,150.00) being our lease processing fees including consultation meetings with the customary landowners of Naduru Village.” **(28 November letter)**

- (v) On 4 December 2012, Plaintiff paid \$1,150.00 as required in 28 November letter;
- (vi) Plaintiff, with Defendant’s representative, and representatives of Mataqali Rara had consultation in District Officer’s Office in Nausori;
- (vii) After the consultation, Defendant issued offer letter to Plaintiff on 28 May 2013, for Residential Lease for term of 50 years from 1 January 2013, and detailing the premium and fees to be paid by Plaintiff;
- (viii) Plaintiff did not accept that offer or pay the sum requested in the said letter.

Court Analysis and Finding

38. In addition to the undisputed facts this Court makes following finding:-

- (i) Plaintiff is not a member of Mataqali Rara, the LOU of the subject land which is contrary to his evidence stated at paragraph 25(i) of this Judgment;
- (ii) Plaintiff was lessee of subject land when he applied for renewal of lease;
- (iii) Defendant on 28 November letter, (see paragraph 37(iv) of this Judgment) stated that it is “prepared to approve your request”;
- (iv) Accept DW1 and DW2’s evidence that 28 November letter is not an offer letter but letter advising that the Application will be processed upon payment of \$1150.00 being processing fee including consultation with landowners;
- (v) Accept DW2’s evidence that processing of Application needs vetting Application, obtaining details such as bank statement, birth certificates, consulting landowners, consulting technical team in office to get confirmation on availability/zoning;
- (vi) It is during the processing, Defendant by its officers discovered that under the Master Plan the land subject to the lease has been rezoned to Residential and as such offer for Residential Lots need to be issued;
- (vii) Accept DW2’s evidence that Plaintiff gave permission to one Avinesh to build home next to his house on the subject land and part of land on which Avinesh built his house was leased to someone else. Plaintiff in his evidence stated that he allowed one Indian man to build as appears at paragraph 26(xxxi) of this Judgment;
- (viii) By attending the consultation at DO’s Office Plaintiff was well aware or deemed to have been aware that Defendant was still processing his Application and as such he cannot take 28 November letter as offer letter for Agriculture Lease;**

- (ix) Mere fact that 28 November letter states “Re: New Lease Offer” does not make it offer letter for Agriculture Lease;
 - (x) 28 November letter does **not say Defendant has approved** Agricultural Lease or renewed the lease but stated Defendant is **“prepared to approve”**;
 - (xi) If 28 November letter was offer letter then there would not be need to process the application or have consultation with Mataqali representatives at DO’s office.
39. In view of what is stated at paragraphs 37 and 38 of this Judgment, this Court finds that 28 November letter is not an offer letter by Defendant to Plaintiff or a representation by Defendant that it will issue an Agricultural Lease over the subject land and only offer letter given by Defendant to Plaintiff was on 28 May 2013, for Residential Lease which Plaintiff did not accept and failed to pay the sum of \$5,965.00 as required in the said offer letter.

Promissory Estoppel

40. Plaintiff in his submission has relied on promissory estoppel on basis of 28 November letter.
41. It is well settled that hallmark of doctrine of promissory estoppel is that there must be a representation by promisor, in this case the Defendant and reliance on the representation by promisee who in this case is Plaintiff to his determinant.
42. Having held that 28 November letter was not a representation by Defendant to issue Agricultural Lease or renew lease over subject land to Plaintiff, doctrine of promissory estoppel cannot help the Plaintiff.

Conclusion

43. This Court after analysing the evidence finds that no representation was made by Defendant to Plaintiff to grant him Agricultural Lease or Renew Lease over subject land and as such Plaintiff's claim should be dismissed and struck out.

Costs


44. Court takes into consideration that trial lasted for only one day, Defendant failed to file Submission as directed and Plaintiff is a retiree.

Order

45. This Court makes following Orders:-

- (i) Plaintiff's claim is dismissed and struck out;
- (ii) Each party bear their own costs of this proceeding.




K. Kumar
JUDGE

At Suva
5 December 2018

M.A. KHAN ESQUIRE for Plaintiff
LEGAL SERVICES DEPARTMENT, ITLTB for Defendant