

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

HBC NO. 49 OF 2018

BETWEEN : **NETANI TUBULURUA** for and on behalf of himself and on behalf of the members of Tokatoka Nalimolevu, Mataqali Noisigarua

PLAINTIFF

AND : **ITAUKEI LAND TRUST BOARD** a statutory body established under the iTaukei Land Trust Act of 361 Victoria Parade, Suva.

1ST DEFENDANT

AND : **ASERI TASERE NAUCABALAVU** of Nadrala village, Nadroga, Villager.

2ND DEFENDANT

Appearance : Plaintiff absent and unrepresented.
: Mr. J. Cati for the 1st Defendant.
: 2nd Defendant absent and unrepresented.

Date of Hearing : 25th June 2018

Date of Ruling : 25th June 2018

RULING

A. Introduction:

1. This ruling is made in relation to the application of the Plaintiff dated 17th May 2018, made by way of "Summons to enter judgment" supported by the affidavit of the Plaintiff, namely, NETANI TUBULURUA.

2. This application is made pursuant to Order 13 Rule 6 and Order 14 Rule 1 & 2 of the High Court Rules 1988.

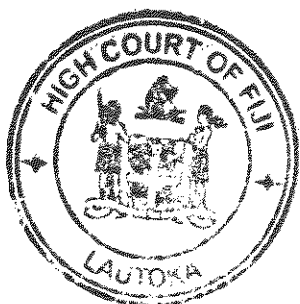
B. Background & Discussion

3. The Plaintiff filed his writ of summons and the statement of claim moving for certain declaratory relief and orders against the 1st and 2nd Defendants.
4. The writ of summons being served on the 1st Defendant, iTaukei Land Trust Board on 16th March 2018, the acknowledgment of service, expressing its intention to contest the proceedings, was filed on 04.04 2018 and no statement of Defence was filed within the stipulated period .
5. Though, the Summons on the 2nd Defendant too was, reportedly, served on him, he is said to have refused to sign same and no statement of Defence has been filed by him.
6. Under these circumstances, the solicitors for the Plaintiff, having done a search for the Defence by the 2nd defendant, filed the Summons in hand to enter judgment as follows.
 - a. For a judgment against the 1st Defendant under Order 13 Rule 6.
 - b. For a judgment against the 2nd Defendant under 14 Rule 1 & 2.
7. The matter being referred to my Court as per the Order of the learned Master, required NOAH was issued to the Solicitors for parties returnable on 25th June 2018. Accordingly, when the matter was mentioned before me on 25th June 2018 with the appearance of the learned Counsel for the 1st Defendant, neither the Plaintiff nor the Solicitors for the Plaintiff was present in court.
8. However, on perusal of the record, I find that since the 1st Defendant has duly filed the acknowledgment of service, the Order and rule under which the Plaintiff can move for default judgment against the 1st Defendant is not Order 13 Rule 6. This Order 13 and any rule under it come into play only when the acknowledgement of service is not filed by the Defendant. The appropriate Order under which the application should be made is Order 19 and the applicable rule has to be decided considering the nature of the claim.

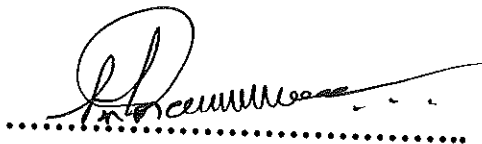
9. Accordingly, I find that the plaintiff cannot rely on the Order 13 and Rule 6 for the default judgment against the 1st defendant and the application has to be rejected.
10. As far as the 2nd Defendant is concerned, the plaintiff moves for Judgment under Order 14 Rules 1 & 2 of the High Court rules. The Order 14 Rules 1 & 2 comes into play only when the relevant Defendant has **filed the Notice of Intention to defend the action**. Once the Defendant files the notice of intention to defend the action, the plaintiff may, on the ground that the Defendant has no defence to claim included in the writ, or to a particular part of such claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant. **Vide Order 14 Rule 1 of the High court Rules.**
11. In the absence of the Notice of intention to defend the action filed by the defendant, the Plaintiff cannot move for summary judgment against the 1st defendant hereof in terms of Order 14 Rule 1 – 2.

C. **Outcome**

- a. The application of the plaintiff is made under wrong Orders and Rules of the High court rules. Accordingly, I dismiss the application on the basis of irregularity.
- b. This ruling may be conveyed to the solicitors for the Plaintiff by placing it on the folder and by way of Telephone or fax.
- c. The 1st Defendant shall be entitled for a summarily assessed cost of \$200.00.
- d. The Plaintiff shall be at liberty to seek for further directions.



At Lautoka
25th June, 2018


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A.M. Mohamed Mackie
Judge