

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**APPELLATE JURISDICTION**

**Civil Appeal No. 124 of 2016**

**BETWEEN** : **AISAKE RAVUTUBANANITU** on behalf of himself and on behalf of the majority members of the Mataqali Navusabalavu of Tagitaginatua, Tavua.

**APPELLANT**

**A N D** : **OVINI BOKINI** of Tavualevu, Tavua.

**1<sup>ST</sup> RESPONDENT**

**A N D** : **ANJALI DEVI PRAKASH** of 28 Kavika Street, Tavua.

**2<sup>ND</sup> RESPONDENT**

**A N D** : **ITAUKEI LAND TRUST BOARD** a statutory body established under the iTaukei Land Trust Act.

**3<sup>RD</sup> RESPONDENT**

**A N D** : **REGISTRAR OF DEEDS**

**4<sup>TH</sup> RESPONDENT**

**Counsel:**

Mr. Niko Nawaikula for the Appellant

Mr. Ratu Isoa Tikoca for the First and Second Respondents

Mr. Tomasi Dunasali for the Third Respondent (iTLTB)

(Ms.) Manuliza Olivie Faktaufon for the Fourth Respondent (AG's Chambers)

Date of Hearing : Thursday, 16<sup>th</sup> August, 2018

Date of Ruling : Friday, 21<sup>st</sup> September, 2018

## RULING

(1) This is an application filed by the Appellant seeking the following Orders;

(1) *To enlarge time to file application for leave to appeal the Master's decision of 06<sup>th</sup> December 2017.*

(2) *Leave to appeal the Master's decision delivered on 06<sup>th</sup> December 2017.*

(2) The application was made by Summons dated 23<sup>rd</sup> February 2018 and supported by an affidavit sworn on 20<sup>th</sup> February 2018 by 'Aisake Ravutubananitu', the Appellant. The application was opposed. An answering affidavit sworn on 14<sup>th</sup> March 2018 by 'Ovini Bokini', the First Respondent was filed on behalf of the First and Second Respondents. The Third and Fourth Respondents did not file any material in relation to this application.

(3) The Summons state that *"this application is made pursuant to Order 59 Rule 11 and Order 59 Rule 8 (2) of the High Court Rules 1988 and under the inherent jurisdiction of the Court."*

(4) The Plaintiff [the Appellant] sued *"for and on behalf of himself and on behalf of the majority members of the Mataqali Navusabalavu of Tagitaginatua"*. The Plaintiff [the Appellant] filed this action against all the Defendants for the alleged attempt by the First Defendant (the First Respondent) to transfer the property to the Second Defendant, which he has been occupying and cultivating.

The First and Second Defendants (Respondents) filed Summons to strike out the Plaintiff's claim on the basis that it discloses no reasonable cause of action.

On 06<sup>th</sup> December 2017, the Master made his ruling striking out the whole action on the ground that the claim discloses no reasonable cause of action.

(5) Retuning back to the Appellant's Summons for extension of time to make an application for leave to appeal, at the outset, the matter does require a close and detailed examination as to the admissibility of the supporting affidavit. Objections were taken by the Respondents to the affidavit filed by the Appellant in support of his Summons for extension of time to make an application for leave

to appeal. Objections were taken by the Respondents as regards the Appellants' locus to commence proceedings in the application for extension of time to make an application for leave to appeal.

- (6) I note with concern that this court has not been supplied with a document signed by persons claiming to be members of mataqali appointing the Plaintiff to represent them in the application for extension of time to make an application for leave to appeal and for leave to appeal. I can find no evidence here to show that the majority of the members of the mataqali appointed the Plaintiff to be their authorized spokesman and representative in all legal matters pertaining to their mataqali. It is a simple matter for the Plaintiff to produce evidence of their assertion in the form of perhaps a statement signed by the members of their mataqali or better affidavits verifying the Plaintiffs' application for leave to appeal. Unfortunately, there is no such evidence. An individual member of a mataqali who cannot produce evidence of consent from other members of the mataqali to act on their behalf does not have locus to commence proceedings in the application for leave to appeal. Because that each member of the mataqali has equal rights and their consent needs to be obtained before any action is taken on their behalf. Therefore, the Plaintiff (the Appellant) cannot seek leave to appeal representing the proprietary unit.

- (7) Order 41, rule 11 provides;

**Documents to be used in conjunction with affidavit to be exhibited to it**  
(O.41, r.11)

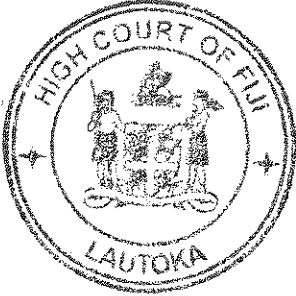
*11. -(1) Any document to be used in conjunction with an affidavit must be exhibited to the affidavit.*

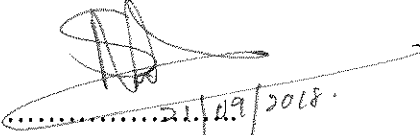
*(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.*

- (8) CONCLUSION

The Court is minded to strike out the Appellant's Summons and the supporting affidavit. However, in the interest of justice the court grants leave to the Appellant to file a supplementary affidavit for the production of any letter or any

record signed by persons claiming to be members of mataqali appointing the Appellant to represent them in the application seeking an extension of time to make an application for leave to appeal.



  
.....21.09/2018.  
**Jude Nanayakkara**  
**Judge**

**At Lautoka,**  
**Friday, 21<sup>st</sup> September 2018**