

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 345 of 2018

BETWEEN : **SAKIUSA BOLADAI WAQA**

PLAINTIFF

AND : **BASIC INDUSTRIES LIMITED**

DEFENDANT

Counsel : Plaintiff: Mr. S. Valenitabua
: Defendant: Mr. A. Nathan

Date of Hearing : 13.9.2019

Date of Judgment : 15.10.2019

JUDGMENT

INTRODUCTION

1. Plaintiff filed a Motion seeking order for contempt against first Defendant and or its subsidiary Standard Concrete Industries for entering *Mataqali Ulugai* reserve land and cleared the said land in contrary to final judgment of this action delivered on 30.4.2019. In the final judgment Defendant and its agents and or servants were restrained from *'conducting any type of work that would damage fauna and flora of iTaukei Reserve belonging to Mataqali Ulugai including and not limiting use of road already constructed until that is regularized and specific road access is grant through a sketch or plan.'* All parties agreed at the hearing of this action that the site of gravel extraction stated in the licence obtained by the Defendant cannot obtain access without disturbing a iTaukei Reserve (The Reserve) and there was a need to construct an access road through that. There is no dispute that such a road access for commercial purpose required dereservation of the said portion before granting a lease of the said portion of land for road access. First Defendant in the affidavit in opposition stated that they were granted an Agreement to Lease by second Defendant, who held all iTaukei land on trust for the

benefit of the owners¹. On the strength of that Agreement to Lease first Defendant allege they can complete the road work within the Reserve and also use it for heavy vehicles for transportation. It is also admitted fact that first Defendant is using that road for gravel extraction after Agreement for Lease was granted², at the hearing and on that admission no oral evidence was adduced and parties relied on respective affidavits. Both parties submitted written submissions and in the submission again this position of using road access is reiterated. First Defendant states that upon grant of Agreement to lease they can use road access through the Reserve.

ANALYSIS

2. Plaintiff commenced this proceeding by way of Motion filed on 8.7.2019, having obtained leave to file committal against first Defendant through *ex parte* motion filed 4.7.2019. Leave to file contempt proceedings against first Defendant was granted by the court on 5.7.2019.
3. In the statement filed in terms of Order 52 rule 2(2) Plaintiff stated that first Defendant and or its subsidiary Standard Concrete Limited entered the Reserve and cleared it without having obtained dereservation of the said portion and or having failed to obtain an Environmental Impact Assessment (EIA) for said clearance of fauna and flora.
4. In the judgment delivered on 30.4.2019 first Defendant was restrained from
‘conducting any type of work that would damage fauna and flora of iTaukei Reserve belonging to Mataqali Ulugai including and not limiting use of the road already constructed until that is regularized and specific road access is granted through a sketch or plan’.
5. It is an admitted fact that in order to access to gravel extraction site stated in the licence granted by the second Defendant a road was required through the Reserve.³ It was also admitted by second Defendant who is the trustee of the said land, that dereservation is *sine qua non* to grant access to first Defendant to construct a road through the Reservation. This was admitted in the affidavit filed by second Defendant in the originating summons and this is stated in the judgment delivered on 30.4.2019
6. Second defendant cannot grant any lease of any nature to the first Defendant without dereservation of the said area covered in the land road access.(see Section 16(1) of iTaukei Land Trust Act, 1940).

¹ Section 4 of iTaukei Land Trust Act, 1940

² Paragraph 3.3 of the submissions of the first Defendant

³ Paragraph 3.2 of the submissions of the first Defendant.

7. There is no evidence of de reservation which needs to be gazette in terms of Section 17(2) of iTaukei Land Trust Act, 1940.
8. First Defendant in the submission filed on 1.10. 2019 had admitted that dereservation of the portion of the Reserve is in process. In the paragraph 7 of affidavit in reply filed by CEO of first Defendant had admitted that they had continued to liaise with second Defendant to obtain a dereservation after delivery of judgment on 30.4.2019. So first Defendant knew the importance of dereservation of the portion of the Reserve, but there was no evidence of dereservation even at the time of hearing though they have commenced completion and using the road, inside the Reservation.⁴
9. In the light of the admitted facts and clear legal position as to the requirement to obtain dereservation before any kind of work on the Reserve, the preliminary objection raised by first Defendant regarding the non inclusion of exact violation in the Motion for contempt filed on 8.7.2010 is rejected. There is no ambiguity as to the act that was restrained first Defendant in judgment delivered on 30.4.2019 and that relate only to order (c) of the final orders of said judgment.
10. In the light of the admissions that first Defendant had commenced using road access through the Reserve after the grant of Agreement to Lease, without proof of dereservation, the objection relating to the photographs submitted by Plaintiff, need not be considered. There is no need to state exact date of destruction of fauna and flora.
11. In the circumstances there is no regularization of access road to the gravel extraction site. This was known to first Defendant. Manger Compliance and Natural Resource Development of first Defendant had written an email on 2.5.2019 annexed as A to affidavit in reply of CEO of first Defendant, where issue of de reservation was raised.
12. Without dereservation no land belonging to Reserve can be alienated to be used as a road and or construct or clear as a road in terms of final order (1) of judgment delivered on 30.4.2019. (See Section 16(1) of iTaukei Land Trust Act, 1940.
13. In the paragraph 10 of the affidavit in in reply filed by CEO of first Defendant states
"That, given the Defendant now had a proper lease over the road access, it is now entitled to complete the road construction to access the river where the quarry works are to commence"
14. First, there is no proper lease obtained by first Defendant and or its agents and or subsidiaries over the Reserve. The document annexed B to the said affidavit in reply of

⁴ See paragraphs 10 of the Affidavit in reply filed by CEO of first Defendant

CEO of the first Defendant was only an Agreement for Lease for Access way purpose and it cannot be used to access and or clear fauna and flora of the Reserve for heavy vehicle, without dereservation of the same. Second alienation of a portion without dereservation is void in law. Third there is no legal basis to construct and or use a road in the Reserve.

15. First defendant was aware of obtaining dereservation and also lease over the Reserve before using it and this is evident from email annexed A to the affidavit in reply filed.⁵
16. First Defendant had relied on said Agreement for Lease and had completed the road construction and or using a part of reserve for commercial purpose without dereservation of the same. So, first Defendant had violated order (c) of judgment delivered on 30.4.2019 hence, committed a civil contempt.
17. Parties are granted further opportunity before imposing a punishment for contempt for consideration of migratory factors.

FINAL ORDERS

- a. First Defendant is guilty of contempt of court using and or completing construction of road inside iTaukei Reserve without obtaining dereservation of the land in violation of order (c) of the judgment delivered on 30.4.2019
- b. Cost is summarily assessed at \$3,000.
- c. Matter to be mentioned on 17.10.2019 (at 9.00 am) for mitigation submission.

Dated at Suva this 15th day of October, 2019.



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Justice Deepthi Amaratunga
High Court, Suva

⁵ See email of 2.5.2019 from Kitone Raratabu annexed A to affidavit in Reply of CEO of first Defendant