IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 271 of 2018

BETWEEN : **ORISI VUKINAVANUA** of Solevu Village, Malolo, Nadroga/Navosa representing himself and the members of his Mataqali, Yavusa Taubere.

PLAINTIFF

A N D : **ILAISA VUINAMOTU** of Solevu Village, Malolo, Nadroga/Navosa, Turaga ni Mataqali, representing himself and the members of his Mataqali Taubeni, Yavusa Taubere.

FIRST DEFENDANT

A N D : **FREESOUL REAL ESTATE DEVELOPMENT (FIJI) PTE LTD** having its registered office at 7 Thomson Street, Suva, Fiji.

SECOND DEFENDANT

A N D : **ITAUKEI LAND TRUST BOARD** a body corporate formed under the iTaukei Land Trust Act Cap. 134.

THIRD DEFENDANT

A N D : **MATAQALI NARUKUSARA** through their Representative Lote Koroi Tutraga ni Mataqali of Solevu Village, Malolo, Nadroga Navosa.

FOURTH DEFENDANT

A N D : **THE DECENDANTS OF PAULINA LEWAIA** through their representative Jope Lewaia of Sanasana, Malolo, Nadroga.

FIFTH DEFENDANT

A N D : **THE TAUKEI LAND AND FISHERIES COMMISSION THROUGH THE OFFICIAL ATTORNEY GENERAL OF SUVAVOUSE HOUSE, SUVA OFFICE**

INTERESTED PARTIES

Appearances: Mr. Saimoni Nacolawa for Plaintiff
Mr. Nemani Tuifagalele for the 1st Defendant
Mr. Duanasali on instructions of Toganivalu & Valenitabua for 2nd, 4th 5th Defendants
Mr Cati J. for 3rd Defendant
Mr Mainavolau for 6th Defendant (Interested Parties)

Hearing : 05 November 2019
Date of Ruling : 13 December 2019

RULING

INTRODUCTION

1. Before me are two applications to strike out the statement of claim. Both applications were filed on 21 March 2019. Both allege that the statement of claim discloses no reasonable cause of action. The first application was filed by Tuifagalele Legal for the first defendant. The second application was filed by Toganivalu & Valeinitabua for the second, fourth and fifth defendants.

2. The principles of striking out are well settled.

3. It is only in the rarest of cases when the Courts will exercise its discretion to strike out a claim.

4. The principles of striking out a claim on the ground that it discloses no reasonable cause of action require a Court to examine the facts as pleaded and assume they are proven and then ask whether these facts disclose a reasonable cause of action.

5. I have examined the amended statement of claim. This case is all about a tussle between various *i-taukei* landowning units on Malolo Island over the true ownership of three parcels of *i-taukei* land on the island.

6. According to the claim, the three parcels of land in question, namely *Koronikula, Wacia* and *Qalilawa*, are all registered in the Register of Native Lands (RNL) to the *Mataqali Taubere*. This means that the said Mataqali is the registered "true native owner" of these above lands.

7. The plaintiff is a representative of *Mataqali Taubere*, of *Yavusa Taubere* of the island of Solevu.

8. According to the claim, the three parcels of land in question were allotted to *Mataqali Taubeni, Mataqali Nakurisara* and the descendants of Paulina Lewaia (altogether **"units"**) at some point time for their limited use and occupation, although, these

lands remained registered in the RNL to the *Mataqali Taubere*. In other words, these *units* "were dependents" units.

DEPENDENT UNITS

9. As I observed in **State v iTaukei Land Trust Board** [2019] FJHC 383; HBJ05.2014 (1 May 2019):

> *In pre-colonial times, well before Fiji was ceded to Great Britain in 1874, for one reason or another, some sections of i-taukei people would leave their customary land and re-settle elsewhere in Fiji on lands belonging to other i-taukei "tribes". This pre-colonial internal migration saw many i-taukei people being separated from their own "tribes" and re-settle in lands belonging to other "tribes". It was often the case that the i-taukei "migrants" were allotted land by the host "tribes". These lands were allotted purely for the "migrants" beneficial use and occupation, but not to own.*
> *The "migrants" themselves would band as a kinship group and form their own i-tokatoka or mataqali or even yavusa as the case maybe, which would one way or another, be grafted onto and be entwined with, the existing socio-political structure of the host "tribes".*
> *However, although "migrants" were absorbed into and entwined with the socio-political structure of their host tribes, and were disassociated from their ancestral "tribes", they and their descendants were still called "dependents" and were considered to live in a state of "dependency" on the host tribe. The i-taukei term for the word "dependent" which is "tu vakararavi" or "ravi" is still used today in relation to an i-tokatoka, or mataqali, or yavusa whose ancestors were "migrants" in the sense that I have used above.*
> *The term "dependent" is defined in section 3 of the i-Taukei Lands Act (Cap 133) as follows:*
> *"dependents " mean native (i-taukei) Fijians who at the time of the erection of the Fiji Islands into a British Colony had become separated from the tribes to which they respectively belonged by descent and had by native custom lost their rights in tribal lands and were living in a state of dependence with other tribes, and includes their legitimate issue ...."*
>
> *In **Native Lands Trust Board v Nagata** [1993] FJCA 4; Abu0075e.91s (11 February 1993), the Fiji Court of Appeal discussed the origin of section 3 as follows:*
> *This section appears to have its origin in the Native Lands (Dependents) Amendment Ordinance 1919. The recital to that Ordinance reads:*
> *"WHEREAS it has been ascertained that at the time of the erection of the Fiji Islands into a British Colony certain native Fijians in various parts of the Colony had become separated from the tribes to which they respectively belonged by descent and had by native custom lost their rights in the tribal lands and were living in a state of dependence with other tribes:*
> *And whereas it is desirable to make provision whereby sufficient land may be allotted for the use and support of such natives and their legitimate issue hereinafter referred to as "dependents" as well as for natives of illegitimate birth born after the year one thousand eight hundred and seventy-four."*

Section 18 of the i-Taukei Lands Act (supra) recognizes that ownership of the lands allotted to dependents remained with the host "tribes". Whilst section 18(1) gives power to the i-TLC to allot at its discretion land for the use and occupation of any dependent, the proviso is that if the dependant ceases to reside with the mataqali from whose lands the said portion was allotted, the dependent will thereupon loose its interest in the said land. As I have said above, under section 18(2), the said land shall thereupon revert to its i-taukei owners.

PLAINTIFF'S GRIEVANCE

10. The plaintiff's grievance is that the three dependent units named above have leased out portions of these lands that were allotted to them to Freesoul Limited. It is alleged that because these units are dependent units, they cannot deal with their allotted lands as such without the prior consent of the *Mataqali Taubere.*

FURTHER EVIDENCE

11. At some point in time, the Office of the Attorney-General did file an affidavit of Kelevi Curuki, Principal Administrative Officer of the *i*-Taukei Lands & Fisheries sworn on Commission 20 May 2019 and on 26 September 2019 and a Supplementary Affidavit of Timoci Tovoka, also Principal Administrative Officer of *i*-Taukei Lands & Fisheries sworn on Commission 26 June 2019.

12. Curuki and Tovoka depose as follows:

Koronikula *(Affidavit of Timoci Tovoka at paragraph 4)*	This land was sworn under oath during the *i*-TLC sitting held at Solevu, Malolo on 07 November 1930. Its proprietor is Mataqali Taubeni. This land was surveyed in 2005 and its plan approved by the Surveyor General on 23 March 2011. However, the registered title was issued by i-TLFC on 12 February 2014.
Wacia *(1st Affidavit of Kelevi Curuki)*	This land was sworn under oath during the *i*-TLC sitting held at Solevu, Malolo on 07 November 1930. Its proprietor is the 4th defendant. This land was surveyed in August 2005 and its plan approved by the Surveyor General on 23 March 2011. However, the registered title was issued by i-TLFC on 12 February 2014.
Qalilawa *(1st Affidavit of Kelevi Curuki)*	This land was sworn under oath during the *i*-TLC sitting held at Solevu, Malolo on 07 November 1930. Its proprietor is the 5th defendant. This land was surveyed in August 2005 and its plan approved by the Surveyor General on 23 March 2011. However, the registered title was issued by i-TLFC on 12 February 2014.

13. The affidavits filed by the Office of the Attorney-General were insisted upon by Mr. Nacolawa, counsel for the plaintiff. These affidavits also confirm that an RNL has since been issued to the respective units following the above surveys.

14. It is common ground that for a dependent unit, once an RNL is issued, the dependent unit becomes a fully-fledged LOU with exclusive rights of ownership.

FURTHER COMMENTS

15. While I agree with the submission that the principles of striking out a claim require me to look only at the facts pleaded in the claim and assume they are proved, in this case, I have taken into account also the facts raised in the affidavits filed by the Office of the Attorney-General.

16. I do so for the following reasons:

(i) as I have said, the affidavits were insisted upon by Mr. Nacolawa.

(ii) the affidavits challenge the basic premise of the plaintiff's case which is founded on the following presumptions of fact:

(a) that *Koronikula, Wacia* and *Qalilawa* are unsurveyed and on reserve land.
(b) that the Mataqali Taubere is still the true owner of these lands.
(c) that Mataqali Taubere, Mataqali Nakurusara and the descendants of Paulina Lewaia are "**dependents**" (with limit rights are allotted lots)

(iii) the above are no longer true.

(iv) as I have said, it is common ground that once a dependent unit is registered in the Register of Native Lands, and issued with an RNL, the dependent unit thereby becomes a fully-fledged holder of native title of whatever plot of land with exclusive rights of ownership.

(v) what these affidavits reveal is that the three units are now registered as proprietors of *Koronikula, Wacia* and *Qalilawa* respectively, and are no longer dependent units.

(vi) to challenge these facts is to challenge the procedure by which they were determined. This is a public law matter.

17. Now, it may or may not be open yet to the plaintiffs to challenge the facts deposed to in the affidavits above. However, this is not the forum to challenge the facts in question. Those facts will need to be challenged through the procedures set out in the relevant *i*-Taukei Lands Trust Act 1940 and the i-Taukei Lands (i-Taukei Reserves) Regulations 1940 and any other relevant subsidiary regulation.

18. While I agree that I should only look at the facts as pleaded in the claim in striking out a claim on the ground that it discloses no reasonable cause of action, it is still an abuse of process to raise public law issues in a writ claim.

CONCLUSION

19. In the final, I strike out the claim. I award costs to the all the defendants as well as the interested party which I summarily assess at $500-00 (five hundred dollars) each.

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Anare Tuilevuka
JUDGE
Lautoka