

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL ACTION No. HBC 121 of 2017**

**BETWEEN**

**GOLD ROCK INVESTMENT LIMITED** a limited liability company having its  
registered office located at 54 Miller Street, Vatuwaqa, Suva.

**PLAINTIFF**

**AND**

**iTAUKEI LAND TRUST BOARD** a body corporate duly constituted under the  
provisions of the iTaukei Land Trust Act 1940.

**FIRST DEFENDANT**

**AND**

**STANDARD CONCRETE INDUSTRIES LIMITED** a limited liability company  
having its registered office at Lot 1 Jai Hanuman Road, Bhindi Subdivision,  
Vatuwaqa, Suva.

**SECOND DEFENDANT**

AND

MATAQALI ULUGAI Customary owners of itaukei land known as Wailiko and  
Qoliqoli owners of adjacent creek and river of Dakuinuku Village,  
Sawakasa, Tailevu.

INTERESTED PARTY

**Counsel** : Mr N. Tuifagalele for the Plaintiff  
Ms Q. Vokanavanua for the 1<sup>st</sup> Defendant  
Ms S. Saumatua for the 2<sup>nd</sup> Defendant  
The Interested party is absent and unrepresented.

**Date of Trial** : 27<sup>th</sup> February, 2019

**Date of Judgment** ; 11<sup>th</sup> April, 2019

**JUDGMENT**

[1] The plaintiff filed this writ of summons seeking the following orders:

- i. That the 1<sup>st</sup> defendant be restrained to process and/or issue any gravel extraction license to the 2<sup>nd</sup> defendant over the creek and/or river and land customarily owned by the interested party.

- ii. That the 1<sup>st</sup> defendant be restrained from harassing the plaintiff and/or conducting themselves in a manner as Landlord that will prejudice the plaintiff as a lease or license applicant.
- iii. That the 2<sup>nd</sup> defendant be restrained from carrying out any field work or scientific tests, environmental assessment and extraction of sand and/or gravel over the creek and/or river and land customarily owned by the interests party.
- iv. Specific Damages
- v. Consultation Costs
- vi. General Damages
- vii. Exemplary Damages at Common Law
- viii. Interest
- ix. Costs of the action on an indemnity basis

[2] The 1<sup>st</sup> defendant admits receiving two application for gravel license. The 2<sup>nd</sup> defendant has lodged its application in June 2016 whereas the plaintiff has lodged its application on 24<sup>th</sup> April 2017. The position of the 1<sup>st</sup> defendant is that some members of the Mataqali Ulugai consented to grant of license to the plaintiff and the others supported the application of the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant after having discussed the matter with the members decided to grant license to both applicants to extract gavel along the same creek but on different areas.

[3] At the pre-trial conference the parties admitted the following facts:

1. The plaintiff is a limited liability company whose core business is stone crushing and supply of gravel materials.

2. The 1<sup>st</sup> defendant is an institute established under the iTaukei Land Trust Act 1940 and empowered to issue and administrate iTaukei land leases and gravel extraction licenses on behalf of iTaukei land owners.
3. The 2<sup>nd</sup> defendant is a limited liability company who possesses similar core obligation as the plaintiff.
4. The interested party is the land owning unit within the village of Dakuinuku, Sawakasa, Tailevu, confirmed to be qoliqoli owners of land, adjacent river and creek are where the gravel extraction license is applied over by the plaintiff from the 1<sup>st</sup> defendant.

[4] The plaintiff's case is that the 1<sup>st</sup> defendant is wrong in granting gravel extraction license to the 2<sup>nd</sup> defendant without the consent of the members of Mataqali Ulugai. The plaintiff called two witnesses to testify at the trial. The first witness is an officer of the plaintiff. His evidence is that he discussed with the members of Mataqali and obtain signatures of 60% of the membership of Mataqali before making the application for license. The witness tendered in evidence marked as "P2" the minutes of the meeting of Matagali Ulugai dated 09<sup>th</sup> January, 2017. In paragraph 4.0 of the said minutes it is stated:

- 4.1 Stone Rocks) – the Mataqali Ulugai has consented/endorsed/approved by showing of hands of its members for Gold Rock Investment to extract stones/rocks from Wailiko.
- 4.2 That members of Mataqali Ulugai have endorsed Gold Rock Investment Ltd to extract rocks/stone from the land

[5] The next witness for the plaintiff is the Head of the Mataqali Ulugai. His evidence is that the members of the Mataqali Ulugai except 3 or 4 members agreed to grant the gravel extraction license to 2<sup>nd</sup> defendant. The document "D1" is a letter written by the 1<sup>st</sup> defendant to the witness informing him its decision to grant licenses to both the plaintiff and the 2<sup>nd</sup> defendant. The witness said this decision of the 1<sup>st</sup> defendant is wrong and at the meeting to discuss this decision all the members present objected to it. The witness

also said they prefer if only one company extracts gravel. In cross-examination the witness said he is not living in the village but in Suva.

- [6] The 1<sup>st</sup> witness for the 1<sup>st</sup> defendant Mr Young is an Acting Team Leader of TLTB. He said when the Head of Mataqali is not there they contact his younger brother. Basic Industries (Standard concrete) applied for gravel license and they have been extracting gravel since 2006. He also said only four members of the Mataqali supported the plaintiff.
- [7] The 2<sup>nd</sup> witness for the 1<sup>st</sup> defendant is the brother of the Head of Mataqali Ulugai who testified for the plaintiff. He said in the absence of his brother he looks after the affairs of the Mataqali. The Head of Mataqali Ulugai in his evidence admitted that he lives away from the village in Suva. He said the members support Standard Concrete because they support the villagers and the church and also he did not want to give the land to a Chinese company.
- [8] From this evidence it is absolutely clear that the membership of Mataqali Ulugai is divided on this issue. Some members support the plaintiff and the others support the 2<sup>nd</sup> defendant. The question here is whether the plaintiff has to *locus standi* to bring this action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- [9] The 2<sup>nd</sup> defendant made an application for gravel extraction license. Even prior to that the 2<sup>nd</sup> defendant has been extracting gravel on the same land. It is a right for anyone to make an application and whether the application should be granted or not is a matter for the licensing authority which in this matter is the 1<sup>st</sup> defendant. By making an application for gravel extraction license the 2<sup>nd</sup> defendant has not violated any rights of the plaintiff for it to claim damages from the 2<sup>nd</sup> defendant. The plaintiff's action against the 2<sup>nd</sup> defendant is therefore, liable to be dismissed.
- [10] It is common ground that the 1<sup>st</sup> defendant granted license for both the plaintiff and the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant's position is that it decided to grant two licenses for the same creek due to the dispute arose among the members of Mataqali Ulugai. Under these circumstances the court must first consider the nature of the cause of action, if any,

accrued to the plaintiff to sue the 1<sup>st</sup> defendant. The plaintiff alleges that the 1<sup>st</sup> defendant has acted against the wishes of the members of Mataqali Ulugai in granting gravel extraction license to the 2<sup>nd</sup> defendant. The plaintiff cannot as of a right demand for license to extract gavel. It is the 1<sup>st</sup> defendant that decides who should be given license in consultation with the relevant Mataqali. If the 1<sup>st</sup> defendant acts contrary to the wishes of the Mataqali then it is the members of the Mataqali who has the right to take action against the 1<sup>st</sup> defendant and not the plaintiff. Mataqali Ulugai is the interested party to this matter. There is no claim by the interested party against any of the defendants. I am therefore of the view that the plaintiff's action against the 1<sup>st</sup> defendant is misconceived in law and it must necessarily fail.

[11] For the reasons set out above court makes the following orders.

#### ORDERS

1. The action of the plaintiff is dismissed.
2. The plaintiff is ordered to pay the 1<sup>st</sup> and 2<sup>nd</sup> defendants \$8,000.00 (\$4000.00 to each defendant) as costs of this action.



  
Lyone Seneviratne

JUDGE

11<sup>th</sup> April, 2019