

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

JUDICIAL REVIEW NO. HBJ 5 OF 2017

BETWEEN : **KAVEKINI VARO** of Navoci Village, Nadi, Pastor.

APPLICANT

AND : **ITAUKEI LAND TRUST BOARD** a statutory body duly incorporated under the iTaukei Land Trust Act 1940 of Fiji of 431 Victoria Parade, Suva.

RESPONDENT

Appearances : Ms A. Chand for the applicant
Mr J. Cati for the respondent
Mr Duanasali for the intended interested party

Date of Hearing : 22 May 2019

Date of Ruling : 24 June 2019

R U L I N G

[Joinder of a party]

Introduction

[01] This is an application to joinder as a party to the proceedings.

[02] By summons dated 29 August 2019 and filed on 30 August 2019, supported by an affidavit of Mr Semi Titoko, the intended party (*'the application'*), the intended party (*'the applicant'*) seeks an order that leave be granted for Semi Titoko to be added as a party to these proceedings with costs to be in the cause.

[03] The application is made under Order 15, Rule 6 of the High Court Rules, as amended (*'HCR'*), Rule 6 (2) (b) provides, so far as relevant:

“Misjoinder and nonjoinder of parties

(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application–

(a)...;

(b) order any of the following persons to be added as a party, namely–

(i) any person who ought to have joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter”. (Emphasis added)

[04] The original applicant did not file any affidavit in opposition, albeit he obtained sufficient time for that purpose.

[05] At the hearing, Ms Chand appearing on instruction for the applicant made an application for the vacation of the hearing on the ground that Mr Nawaikula counsel for the applicant was unable to appear in court to argue the matter and at the same time sought final 7 days to file and serve affidavit in opposition. This application was opposed to by Mr Cati, counsel for the respondent and Mr Duanasali counsel for the intended (interested) party. As a result, the Court refused the application made by Ms Chand on behalf of the applicant and ordered the hearing to proceed. Then she made another application that the applicant be given time to file and serve written submissions. Considering this application, the court granted 14 days to the applicant to file written submissions. However, both the intended-interested party and the respondent

orally argued the matter and only the intended interested party tendered his written submission. Subsequently, on 18 June 2019 the original applicant filed his written submission.

Background

[06] In these judicial review proceedings, the applicant seeks among other things a quashing order (*writ of certiorari*) that the decision of the iTaukei Land Trust Board, the respondent dated 9 October 2017, refusing to issue to the applicant an offer to lease Native Land known as Lot 2 Drabila, NLTB Ref: 4/10/6857 ("*the land*") and a *mandamus* (*mandatory injunction*) directing the respondent to issue to the applicant an offer to lease the land. The relief sought by the applicant directly affects the intended party, Semi Titoko, who is a solicitor. One of the grounds relied upon by the applicant for judicial review is that he had a legitimate expectation that the respondent will issue to him the offer but the lease was dishonestly transferred to his solicitor, Semi Titoko, in February 2017. The intended party, Semi Titoko was not added as an interested party to these proceedings. He now applies to the court that he be added as an interested party to the proceedings.

The ground upon which the application is made

[07] The intended party makes this application on the ground that he (intended party) is the last registered proprietor of the land to which the judicial review application relates and that his presence before the Court is necessary to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon.

Meaning of interested party

[08] The intended party wishes to be added in the proceedings as an interested party. As such, it is important to understand the meaning of interested party.

[09] Interested party is defined as any person (other than the claimant and the defendant) who is directly affected by the claim.

[10] The meaning of persons '*directly affected*' was considered by the House of Lords in *R v Rent Officer Service, ex parte Muldoon* [1996] 1 WLR 1103 and suggested (by Lord Keith of Kinkel at p.1105), '*That person is directly affected by something connotes that he is affected without intervention of any intermediate agency.*'

Discussion

- [11] The intended party seeks leave of the Court to be joined as an interested party to these proceedings.
- [12] At any stage of the proceedings, the Court may on such terms as it thinks just and either of its own motion or on application order any of the following persons to be added as a party, namely – (i) any person who ought to have been joined as a party or whose presence is necessary before the court or (ii) any person between whom and any other party to the cause or matter there exists an issue relating to the relief sought (see O 15, R 6 (2) (b)).
- [13] The application to be joined as a party is supported by an affidavit of the intended party showing his interest in the matter as required in Rule 6 (3) of the HCR. It is in order.
- [14] It will be noted that there is no opposing affidavit filed by the applicant.
- [15] In these judicial review proceedings, the applicant seeks an order quashing the decision of the respondent to issue the lease of the land to the intended party, which, if granted, effectively cancel the lease issued to the intended party. This means the relief sought in these proceedings directly affects the intended party. Thus, the intended party falls within the definition of interested party and his presence before the court is necessary to ensure that all matters in dispute in the proceedings to be effectively and completely determined and adjudicated upon. Further, an issue also arising between the intended party and the applicant to the judicial review proceedings in relation to the relief sought.
- [16] I would reject the contention advanced by the applicant that the application to joinder will be prejudicial as the party (intended) is under investigation with the

Legal Practitioners Unit, the court has the discretionary power whether to allow or refuse such an application.

Conclusion

[16] For the reasons set out above, I conclude that the intended party, Semi Titoko, would be directly affected by the relief sought in these judicial review proceedings. In my opinion, it would be just and convenient to add the intended party as an interested party in these proceedings and I should exercise my discretion in favour of the application. Accordingly, I would grant leave to Semi Titoko, to be joined as an interested party to these proceedings. The costs will be in the cause.

The result

1. Leave granted to Semi Titoko to be added as an interested party in these proceedings.
2. The costs will be in the cause.

M.H. Mohamed Ajmeer
..... 24/6/19

M.H. Mohamed Ajmeer
JUDGE



At Lautoka
24 June 2019

Solicitors:

For applicant: Nawaikula Esquire, Barristers & Solicitors

For respondent: Legal Services Department, TLTB

For the intended party: Toganivalu & Valenitabua, Barristers & Solicitors