

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Action No. HBT 05 of 2019

BETWEEN

BAKERFIELD COMPANY LIMITED of Pathik Cres, Namadi Heights, Suva.

APPLICANT

AND

CHIEF EXECUTIVE OFFICER, FIJI REVENUE AND CUSTOMS SERVICE,

Revenue and Customs Services Complex, Corner of
Queen Elizabeth Drive and Ratu Sukuna Road,
Nasese, Suva.

RESPONDENT

Counsel : Mr. S. Parshotham for the Applicant
Ms. R. Malani for the Respondent

Date of Hearing : 20th January, 2020

Date of Judgment : 21st February, 2020

JUDGMENT

[1] The applicant filed this application for review in the Tax Tribunal seeking the following reliefs:

- A. To revise or set aside the decision of the respondent dated 10th April 2019 (Objection Decision).
- B. To allow the applicant exemption from Stamp Duties (Budget Amendment) Act 2015 under paragraph 29 of Part 2 of the schedule to the Stamp Duties Act on the following instrument:

Transfer of the land comprised in Certificate of Title No. 9397 and the land comprised in Crown Grant No. 1523, dated 20 June 2018 from Yatu Lau Company Limited to the Applicant for the price of \$2,000,000.00 where stamp duty of \$60,000.00 was assessed and which was paid by the Applicant to the Respondent

- C. To the Respondent that it repays the sum of \$60,000.00 to the Applicant.

[2] This application was originally filed in the Fiji Tax Tribunal and on an application made by the applicant the learned Tribunal, for the reasons stated in its decision dated 26th June 2019, transferred the matter to the High Court.

[3] The grounds relied on by the applicant in this matter, in support of its application are as follows:

- A. That the applicant is a Small and Medium Enterprise (“SME”) in terms of the Stamp Duties (Budget Amendment) Act 2015 under paragraph 29 of Part 2 of the Schedule to the Stamp Duties Act (“the Relevant Provision”), in that its annual turnover from its business activities does not exceed \$500,000.00.
- B. That the respondent erred in treating the applicant as an SME in terms of section 13(1)(e) of the small and Micro Enterprise Development Act 2002.
- C. That the respondent erred in aggregating the business of other entities (through shareholding and common directorships) to the business of the applicant thereby disqualifying it to be entitled to exemption from stamp duty.
- D. That the respondent erred in taking into account the purported intention of the introduction of stamp duty relief measures when it claimed that such measures were for the purpose of incentivising and supporting genuine SMEs when this

is irrelevant to a consideration for an application for exemption under the Relevant Provision.

- E. That the respondent erred in taking into account the purported intention of the introduction of stamp duty relief measures when it claimed that such measures were not intended for entities connected to other entities which were not SMEs when this is irrelevant to a consideration for an application for exemption under the Relevant Provision.

- [4] In deciding that the applicant is liable to pay stamp duty the respondent has relied on the provisions of section 13(1) of the Small and Micro Enterprises Development Act 2002 which provides;

A small or micro enterprise is eligible for assistance, incentives, promotion or access to training services **under this Act** if it meets the following requirements—

- a. in the case of a co-operative, self-funded enterprise, association or single proprietorship, the enterprise is wholly owned by a Fijian citizen;
- b. in the case of a company, 100% of the voting share of the company vests in a Fijian citizen;
- c. the enterprise is engaged in a business;
- d. the enterprise must not be a branch or subsidiary of an enterprise which is not a small or micro enterprise;
- e. the enterprise is established by or for the purpose of benefiting economically or socially disadvantaged persons including women, youths and other persons. (Emphasis added).

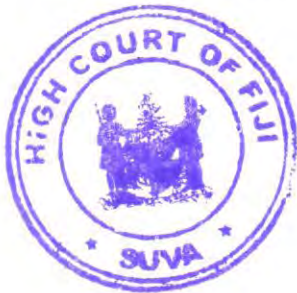
- [5] Small and Micro Enterprises Development Act 2002 does not make provisions for the payment of stamp duties. The purpose of enacting this Act is to establish a National Centre for Small and Micro Enterprises Development, to develop, promote and support Small and micro Enterprises and for related matters.


- [6] What section 13(1) of the Small and Micro Enterprises Development Act 2002 says is that a small or micro enterprise will not be eligible to assistance, promotions etc., provided by the Small and Micro Enterprises Development Act 2002 unless such an enterprise satisfies the requirements contained in subsections 13(1)(a) to 13(1)(e) of the Small and Micro Enterprises Development Act 2002. It is the Stamp Duties Act 1920 that provides for payment, waiver or refund of stamp duties.

- [7] Therefore, the respondent has erred in relying on the provisions of sections 13(1)(d) and (e) of the Small and Micro Enterprises Development Act 2002 in refusing the application of the applicant to waive off the stamp duty.
- [8] The law governing the payment of Stamp Duties are found in the Stamp Duties Act as amended. The provisions relevant to the matter before this court are found in Part 2 paragraph 29 of the Stamp Duties (Budget Amendment) Act 2015 which provides;
- Any small and micro enterprise with an annual gross turnover not exceeding \$500,000 is exempted from paying any stamp duty under this Act provided that they declare by way of a statutory declaration that they have a gross turnover not exceeding \$500,000.
- [9] The only requirement the applicant is required to be satisfied to become eligible for the exemption from stamp duty is that its annual gross turnover does not exceed \$500,000.00. The applicant has made a statutory declaration to that effect and in the decision of the respondent there is nothing to say that the statutory declaration was incorrect.
- [10] For the reasons aforesaid the court makes the following orders.

ORDERS

1. The transfer of the land comprised in Certificate of Title No. 9397 and the land comprised in Crown Grant No. 1523, dated 20 June 2018 from Yatu Lau Company Limited to the Applicant for the price of \$2,000,000.00 is exempted from stamp duty.
2. The respondent is ordered refund the stamp duty of \$60,000.00 paid by the applicant.




Lyone Seneviratne

JUDGE

21st February, 2020