

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 50 of 2020

Mukesh Chand

Arun Chand

Plaintiffs

v

iTaukei Land Trust Board

Defendant

Counsel: Mr V. Maharaj for the plaintiffs
Ms Q. Vokanavanua for the defendant

Date of hearing: 14th February, 2020
Date of Ruling: 26th February, 2020

Ruling

1. By ex parte notice of motion filed on 6th February, 2020, the plaintiffs sought an interim injunction to restrain the defendant from harassing or trespassing on the iTLTB land known as "*Vunidogo*" No. 4/3/1715 in the District of Naitasiri, as contained in Instrument of Tenancy No. 774 having an area of 7.6890 hectares, until further order of the Court.
2. On 7th February, 2020, Mr Maharaj, counsel for the plaintiffs submitted that the defendant was excavating the cultivation effected by the first plaintiff on the land. On that basis, I granted ex parte, an interim injunction until 12 February, 2020. On 12 February, 2020, I gave directions to counsel. Affidavits in opposition and reply were filed by the parties. The interim injunction was extended till delivery of this Ruling.

3. Mr Maharaj submitted that the statement of claim pleads the following serious issues to be tried.
4. Firstly, since the land is agricultural land, the plaintiffs, as occupants have statutory protection under section 4(1) of Agricultural Landlord and Tenant Act, (ALTA) provided the conditions stipulated therein are met. Second, the first plaintiff claims an equitable interest in the land based on a verbal representation made to him by an employee of the defendant. It was submitted that the defendant would be vicariously liable for his acts and representation.
5. The first plaintiff states that he has been carrying on farming on the land. There is a breach of the constitutional right of the plaintiffs in section 15 (2) of the Constitution of Fiji, which guarantees resolution of civil disputes by an independent and impartial tribunal and section 39, which guarantees freedom from arbitrary eviction from his home, without an order of Court.


The determination

6. The first plaintiff states that he had a legitimate expectation that a lease would be issued to him, as Jimilai Waqabaca, an Estate Assistant of the defendant, approached him with the head of the Yavusa Kalabu, Paula Rawiriwiri and said that if he wanted a lease of the land, he would have to pay goodwill in the sum of \$15,600 to Paula Rawiriwiri, for the benefit of Mataqali of Naitasiri, Yavusa Matanikorovatu. He paid \$ 15600/ as goodwill to the “*head of the YAVUSA KALABU namely PAULA RAWIRIWI*”, member of “*Mataqali of Naitasiri, Yavusa Matanikorovatu*” for the benefit of “*Mataqali of Naitasiri, Yavusa Matanikorovatu*”, and he secured approval of 60% of members of the mataqali.
7. The affidavit in opposition filed on behalf of the defendant Board states that the plaintiff’s dealing was with another landowning unit, which has no authority to deal with the land. Paula Rawiriwiri is a member of the Yavusa Matanikorovatu. The dealing was illegal and made without the Board’s knowledge.

8. The Instrument of Tenancy, as produced by the first plaintiff provides that the land is in the Tikina of Naitasiri and owned by “*MATAQALI TUIRARA*”.
9. In any event, clearly an Estate Assistant has no authority to create a tenancy nor can he purport to represent or bind the defendant Board.
10. Individual members of a mataqali or other landowning unit have no right to grant a lease of native land. The control of all native land is vested and administered by the defendant Board for the benefit of the Fijian owners under section 4 of the iTauekei Land Trust Act. The Act provides that iTauekei land shall not be alienated by iTaueki owners without the consent of the Board.
11. The plaintiff state that they have statutory protection under the provisions of the Agriculture Land and Tenant Act,1966,(ALTA) .
12. Section 4 of the ALTA provides that where “*a person in occupation of, and is cultivating, an agriculture holding and such occupation and cultivation as continued before or after 29th December, 67 for the period of not less than 3 years and the landlord has taken no steps to evict him or her, the onus shall be on the landlord to prove that such occupation was without his or her consent and if the landlord fails to satisfy such onus of proof a tenancy shall be presumed to exist.*”.(emphasis added)
13. In the present case, the defendant has taken steps to evict the plaintiffs in the Magistrates’ Court and High Court, as stated in the statement of claim. The defendant Board issued notices of unlawful occupation on both plaintiffs on 10th January, 2013, 25th June,2013, and 6th December, 2017, stating that they hold no title or consent from the Board to be in occupation. There is no arbitrary eviction.
14. Mr Maharaj relied on a default judgment entered against Jimilai Waqabaca and Paula Rawiriwiri on 7th April,2014, in the Nasinu Magistrate Court. But that action was struck out subsequently on 31st July,2017, by that Court on the ground that the Court had no jurisdiction to adjudicate the claim.

15. The plaintiffs have not shown a legal right to remain in possession of the land. In my view, there is no serious issue to be tried.
16. In any event, if the plaintiffs were to be successful at the trial, their remedy is in damages. The first plaintiff, in his affidavit states that he gives his “*usual undertaking of damages*”, but has not disclosed his assets. As opposed to the plaintiffs, the defendant is capable of compensating the plaintiffs in damages.
17. In my view, there is more damage caused to the landowners.
18. The affidavit in opposition states that on 30th October,2012, the defendant has leased the land by an Agreement for Lease to Rohit Dass, a developer for a term of 10 years from 1st January,2013, after an open tender. The continuous occupation by the plaintiffs have caused a major halt to the million dollar proposal and development, which will be a major benefit to the landowners and all interested parties.
19. In considering the applicable principles, I dissolve the ex parte injunction I granted on 7th February, 2020.
20. **Orders**
 - a. The ex parte injunction granted on 7th February, 2020, is dissolved.
 - b. Costs in the cause




A.L.B. Brito-Mutunayagam
JUDGE
25th February,2020