

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. 7 of 2018

BETWEEN: USAIA ROKONAI for and on behalf of himself and on behalf of the members of Mataqali Niukeakea of Drama Village, Bua.

Plaintiff

A N D: ITAUKEI LAND TRUST BOARD of 341 Victoria Parade, Suva a body corporate established under the iTaukei Land Trust Act.

First Defendant

AND: FIJI PINE LIMITED a body corporate of Vakabuli Village Road, Drasa, Lautoka.

Second Defendant

Counsel : **Plaintiff:** Mr. Nawaikula. N

1st Defendant: Mr. Ratule. K

2nd Defendant: Mr. Haniff. F

Date of Hearing : 10 & 11 July, 2019

Date of Decision : 13.3.2020

JUDGMENT

INTRODUCTION

1. Plaintiff is seeking declarations regarding an iTaukei lease iTLTB Ref No 4/2/2047 (The Land). This land is planted with Pine trees by second Defendant and or its agents and or servants. Second Defendant is a company that plant and harvest Pine as its business. This land was first leased to a third party but subsequently through a mortgagee sale second Defendant obtained it and this transaction was consented by first Defendant. The Land is subject to provisions of Agricultural Landlord and Tenant Act 1966 (ALTA) and in terms of Section 13 (1) of ALTA there is statutory obligation to grant twenty year extension of tenancy subject to the ALTA. Initial term of lease granted to third party was for thirty years from the date 1.7.1972 and there is undisputed fact that land was cultivated by second Defendant, hence there was a right to another extension of twenty years of tenancy to the Land in terms of ALTA. First Defendant had granted instrument of tenancy for twenty years commencing from 2002 and this instrument of tenancy was registered on 24.9.2018. First Defendant had collected rentals from second Defendant for the Land, but due to administrative reasons it was not entered against the Land in their information system. There was

evidence that first Defendant had offered to second Defendant twenty year tenancy and it was unconditionally accepted by second Defendant promptly. So statutory tenancy in terms of Section 13 of ALTA was created in 2002. The instrument of tenancy entered on 24.9.2018 only confirms that position and regularized said tenancy of second Defendant. Plaintiff and or his land owning unit cannot claim Pine Plantation, on the land.

FACTS

2. Following facts are agreed:

- i. First defendant is a statutory body established under iTaukei Land Trust Act and responsible for the leasing of iTaukei land for the benefit of its owners.
 - ii. Second Defendant is a company in the business of planting and harvesting pine.
 - iii. Subject matter of this action is iTaukei Lease iTLTB Ref No 4/2/2047, iTaukei land known as Nalovokalou containing an area of about 60,7027 ha NLC Lot 9 on map E/9,1 part of (The Land).
 - iv. On 16.10.1998 first Defendant iTLTB consented to transfer the lease by way of mortgagee sale from Krishna Palani to the second Defendant Fiji Pine Limited.
 - v. On 24.9.2018, the first Defendant issues to the second Defendant an instrument of Tenancy No 1477 over the Land.
3. For the Plaintiff there were three witnesses called. Their evidence was that they had first approached first Defendant to find out whether there was any Pine trees outside the Land.
4. Plaintiffs admitted engaging them in plantation of Pine seedlings and also husbandry of the plantation for some period till the plants are big enough to grow on their own.
5. For the first Defendant three witnesses were called and they explained the procedure in the collection and payment of rentals.
6. All the parties submitted written submissions.

ANALYSIS

7. First Defendant is vested control of all iTaukei land. Section 4 of the TLTB Act says:

4.-(1) The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the iTaukei owners or for the benefit of the iTaukei.

8. The Land was initially leased to third party, for thirty years from 1.7.1972. The lease was transferred to Krishna Palani in 1995 and this was mortgaged to a financial institution, and though mortgagee sale second Defendant obtained it.
9. On 16.10.1998 first Defendant consented to transfer the lease of the Land by way of mortgagee sale from Mr Krishna Palani to second Defendant, this was evidenced from Plaintiffs document marked as P11.
10. There is no evidence of this being registered. Second Defendant after obtaining the Land from mortgagee sale had engaged the members of land owning unit to clear the land and also to plant it with seedlings of Pine.
11. Members of land owning unit were engaged in this agricultural land till seedlings matured for a period more than two years. At this time plants were not competing for sunlight and they were allowed to grow freely.
12. The lease granted initially and subsequently transferred to second Defendant through mortgagee sale expired on 30.6.2002. By this time land was cultivated with Pine trees thus it was an 'Agricultural Land' in terms of Section 2 of ALTA which reads;

"agricultural land" means land, together with any buildings thereon, used or proposed to be used predominantly for the growing of crops, dairy farming, fruit farming, forestry, horticulture, bee keeping, poultry keeping or breeding or the breeding, rearing or keeping of livestock;"

13. First Defendant who was the 'landlord' in terms of Section 2 of ALTA having examined the land and the nature of the plantation had informed second Defendant their right in terms of Section 13(1) of ALTA through a letter dated 28.11.2002. This letter was marked as 'P4'.
14. Section 13 of ALTA reads:

"Extension of contract of tenancy

13.-(1) Subject to the provisions of this Act relating to the termination of a contract of tenancy, a tenant holding under a contract of tenancy created before or extended pursuant to the provisions of this Act in force before the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976, shall be entitled to be granted a single extension (or a further extension,

as the case may be) of his contract of tenancy for a period of twenty years, unless-

(a) during the term of such contract the tenant has failed to cultivate the land in a manner consistent with the practice of good husbandry; or

(b) the contract of tenancy was created before the commencement of this Act and has at the commencement of the Agricultural Landlord and Tenant (Amendment) Act, 1976 an unexpired term of more than thirty years:

Provided that, notwithstanding the provisions of section 14, a premium equivalent to one year's rent shall be payable in full in advance on the first day of the first year and of the eleventh year of such extension.

(2) For the purposes of this Act, the expression "practice of good husbandry" means having regard to the character and location of an agricultural holding-

(a) the maintenance in good order of such terraces, drains, barriers, bunds and hedges and the carrying out of such measures of contour cultivation and cropping as the Permanent Secretary for Agriculture or his nominee shall consider to be the minimum standard necessary for the protection and conservation of the soil;

(b) the cultivation of the land in a husbandlike manner and the maintenance of the fertility of the agricultural holding to the minimum standard considered necessary by the Permanent Secretary for Agriculture or his nominee;

(c) the avoidance of any practice commonly known to have an effect harmful to the soil or which may lead to a reduction in the fertility of the agricultural holding;

(d) the control of pests, diseases and noxious weeds to the minimum standard considered necessary by the Permanent Secretary for Agriculture or his nominee;

(e) the maintenance and clearing of ditches, and of drains other than those specified in paragraph (a);

(f) the maintenance and repair of buildings, fences, walls, gates, windbreaks and hedges other than those specified in paragraph (a);

(g) such other practices as may be prescribed:

Provided that the foregoing definition shall not imply an obligation on the part of the tenant to carry out work described in paragraphs (e) and (f) unless such work is required to be done by him under the provisions of his contract of tenancy.

(3) Where the landlord has notice of a mortgage or charge affecting an agricultural holding, he shall serve upon the mortgagee or the chargee, as the case may be, a copy of any notice served upon the tenant in accordance with the provisions of this section."

15. In terms of Section 13 of ALTA first Defendant being the landlord is obliged to offer an instrument of tenancy for twenty years to second Defendant, subject to the provisions of ALTA.

16. In *Arjun v Director of Lands* (Civil Appeal No. 48 of 2011, decided on 30.11.2012) Court of Appeal held,

"In terms of the above Section 13(1) of the Agricultural Landlord and Tenant Act, a tenant to an existing tenancy is entitled to have an extension of the contract of tenancy for another period of twenty years provided the matters referred to in sub sections (a) and (b) in that section do not exist."

17. There is no evidence that there were any disqualification as to granting of instrument of tenancy with effect from 1.7.2002. So through 'P4' an offer was made to second Defendant who had planted and maintained the Land with a plantation of Pine.

18. It should be noted that this offer was made after expiration of lease as statutorily first Defendant was obliged to offer an extension of tenancy of at least twenty years and this was done by letter of 28.11.2002. Said letter further stated that if second Defendant required an extension of tenancy to the Land, it should 'immediately' pay 'first premium' of \$814.

19. Said letter also stated if the offer is not accepted first Defendant would take steps to repossess the Land. To date there is no action taken in this regard by first Defendant. First Defendant accept tenancy of second Defendant, through acceptance of cheque for 'first premium' and also subsequent payments of rentals.

20. This offer was accepted and payment was made through a cheque drawn in favour of first Defendant. Both cheque and the letter of acceptance were marked P9 and they were dated as 11.12.2002.

21. This cheque was accepted by first Defendant but due to expiration of lease and not activation of relevant file in the information system this payment and all subsequent

payments relating to the Land after 2002 had been credited to suspense account or dummy account, with first Defendant.

22. First Defendant's witnesses confirmed the receipt of money from second Defendant who had number of leases regarding Pine plantation with respective references including Pine plantation on the Land. Since there was no activation of relevant reference number in the information system the payments made since 2002 had not been captured in the system and this had resulted Plaintiff claiming Pine cultivation.
23. The letter 'P4' which offered twenty year tenancy period to second Defendant also stated that if that offer was not accepted, first Defendant would take action to re-possess the land and this had not happened though nearly fifteen years had passed since then.
24. Second Defendant's tenancy is statutorily guaranteed, subject to the conditions contained in ALTA. So non execution of instrument of tenancy at that time will not revert Pine plantation to land owning unit.
25. First Defendant had executed an instrument of tenancy over the Land on 24.9.2018. There is nothing to make that instrument illegal, as it was statutory right of second Defendant to obtain an extension of tenancy to the land they had planted with Pine prior to 2002.
26. When the offer was made in 2002 promptly it was accepted and payment was made, hence twenty year tenancy in terms of Section 13 of ALTA created.
27. First Defendant is estopped from denying their offer and acceptance and subsequent payment of rent by second Defendant. The absence of written instrument of tenancy till 2018 will not change the rights obtained statutorily in terms of ALTA.
28. Plaintiff's position is that since there was no instrument of tenancy land owning unit was entitled to harvest Pine Planation. Plaintiff had not considered provisions of ALTA and undeniable evidence of plantation of the land by second Defendant with the help of members of the land owning unit.
29. There is no illegality of instrument of tenancy which was entered in 2018. Said instrument granted tenancy from 2002.

CONCLUSION

30. The lease granted by first Defendant in regard to the Land was for thirty years from 1.7.1972 and it had expired on 30.6.2002 before expiration of said lease, second Defendant had obtained the said lease through a mortgagee sale with the consent of

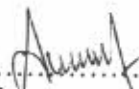
first Defendant in 1998. Second Defendant had planted the Land with Pine and land owning unit was paid for their labour and they had participated in the said plantation of seedlings and also taking care of the plantation till it could grow on its own. After 30.6.2002, first Defendant had inspected the land and had offered statutory tenancy to second Defendant in terms of Section 13 of ALTA by its letter dated 28.11.2002.(P4). This offer was accepted unconditionally by second Defendant through their letter and payment dated 11.12.2002 (P9). Second Defendant is the tenant of the Land and Pine plantation belongs to it. Second Defendant had made rentals for the Land, but unfortunately it was not credited to the correct account. This will not change the rights of the parties to this action. Plaintiffs cannot claim for Pine plantation as there is a tenancy in operation till 2022. Second Defendant in the statement of defence had not sought costs, but first Defendant had sought costs. Considering circumstances of case no costs awarded.

FINAL ORDERS

- a. The lease issued by first Defendant to second Defendant had expired on 30.6.2002.
- b. Since land was planted with Pine by second Defendant, before expiration of lease the Land had come under ALTA. A statutory tenancy of twenty years created in terms of Section 13 of ALTA and this was informed to second Defendant by first Defendant through an offer and it was accepted unconditionally. So, there was no room for renewal of lease that expired on 30.6.2002.
- c. Ownership of Pine plantation on the Land subject to the expired lease and current tenancy (which was formalized by execution of instrument of tenancy on 24.9.2018) is with second Defendant.
- d. Considering the circumstances of the case, each party to bear their own costs.

Dated at Suva this 13th day of March, 2020.




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Justice Deepthi Amaratunga
High Court, Suva