

IN THE HIGH COURT OF FIJI

AT LABASA

CIVIL JURISDICTION

CASE NUMBER: HBC 35 of 2016

BETWEEN: **WAIQELE SAWMILLS LIMITED**
PLAINTIFF

AND: **MAULISIO SERU**
1st DEFENDANT

AND: **APOROSIO DRUNANAQIO, FABIANO VALEBOGI, AND**
RAFAELE JONETANI SAWAI
2nd DEFENDANTS

AND: **RAFAELE VUI**
3rd DEFENDANT

Appearances: Mr. A. Sen for the Plaintiff.

No Appearance of the 1st Defendant.

Mr. A. Kohli for the 2nd Defendants

Mr. A. Ram for the 3rd Defendant.

Date/Place of Judgment: Thursday 30 April 2020 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

A. Catchwords:

LOGGING CONTRACT – Harvesting pine - Mataqali Land – Whether contract entered into between proper persons– Proper procedure to follow when there is dispute as to headship of mataqali – contract not enforceable if entered into by persons not having the mandate to do so – refund of monies paid under the contract – unjust enrichment – principles of equity vs. the principle of loss lies

where it falls in an illegal contract- status quo maintained until the iTaukei Lands Commission identifies who are the official head of mataqali's to enter into dealings regarding the harvest of the pine.

B. References:

(i). Legislation:

- 1. iTaukei Lands Act 1905 ("ITLA"): s. 17.*
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A. Plaintiff's Claim

1. The plaintiff's claim concerns its logging rights on the mataqali land described as Lot 12 NLC 54 containing an area of 103.19 hectares, hereinafter referred to as, "*the land*".
2. By a writ action, the plaintiff seeks that all the defendants be restrained from interfering with its rights to log the pine trees from the said land. An order for special and general damages is also sought against all the defendant's.
3. The plaintiff says that it derives its rights from the agreement entered into between the plaintiff and the 1st and 2nd defendants. The agreement is dated 5 July 2013.
4. It is not disputed that the plaintiff had paid a sum of \$31,670 to the 2nd defendants in consideration of the right to log the pine trees over a period of 5 years. However it could not remove from the land a single pine tree as the 3rd defendant had gone ahead and obtained a logging licence in his name pursuant to which he had started harvesting the land.

5. The harvesting by the 3rd defendant came to a halt pursuant to an injunction granted by the court restraining all the parties from logging the land until such time this matter was determined.
6. The plaintiff's position is that it is a major supplier of timber in Vanua Levu. The pine, which it was permitted to harvest is planted on the land of mataqali Doidoi. The beneficial interest in the pine belongs to 5 mataqali's including Doidoi.
7. The 5 mataqali's are from the village of Natokalau. It is contended that the majority of the members of the 5 mataqali's had agreed for the plaintiff to harvest the pine and the agreement was entered into with proper representatives from the village of Natokalau. The agreement is thus binding on all the members of the mataqali.
8. The plaintiff contends that the 1st and 2nd defendants have breached the agreement by allowing other persons to log on the same property.
9. In respect of the 3rd defendant the plaintiff claims that despite having the knowledge of the agreement between the parties, he went ahead and obtained a forest license to remove the pine from the said property. This act is in breach of the plaintiff's rights under the agreement for which it has paid the consideration too.
10. The plaintiff says that he had requested the defendants to stop logging the land but since the logging continued an injunction was obtained.
11. According to the plaintiff, it has entered into contracts with other dealers to supply timber to them but due to the actions of the defendant's, it is not able to fulfill its obligations. The plaintiff says that it should be allowed to log the land pursuant to the

agreement and all the defendants be restrained from interfering with its rights to do so and pay to it the damages it has sustained for the breach of the said agreement.

B. 1st Defendant's Position

12. The first defendant has not filed a statement of defence or appeared in court to give evidence. He has not shown any interest in the matter. I was asked to enter default judgment against the 1st defendant which I refused.
13. The nature of the claim is such that it requires hearing of the evidence before any judgment is entered. A default judgment could bring the verdict to inconsistency if the findings are favorable to the 1st defendant.
14. More so, the claim is largely for restraining orders for which default judgment is not the correct procedure. I need to be certain that the plaintiff has an enforceable right for any restraining orders to issue.

C. 2nd Defendant's Position/ Counter-Claim

15. In answer to the plaintiff's claim, the 2nd defendant's say that after they entered into the agreement with the plaintiff, they did not allow any third party to harvest the pine. It is the 3rd defendant who obtained the forest licence in his name to log and thereafter started the logging operations.
16. It is alleged that the 3rd defendant has done this on his own volition without the mandate of Doidoi or the other 4 mataqali's from Natokalau village who have a beneficial right in the pine trees. They as the 2nd defendants have no control over the 3rd defendant's actions.

17. If the plaintiff has sustained any loss, it is due to the actions of the 3rd defendant which allowed third persons to harvest the pine and carry on the logging. In the event the 2nd defendants are held liable, the 3rd defendant has to indemnify them.
18. The 3rd defendant, it is contended, is channeling all the money or proceeds in his personal bank account and the members of the mataqali have no idea as to what has happened to the proceeds.
19. In response to the claim of the 3rd defendant that the contract has been entered with the wrong persons and that the 3rd defendant is the proper representative of Doidoi, the 2nd defendant's say that one Maulisio Bolalele was the Turaga ni Mataqali of Mataqali Doidoi.
20. After his death, the title was vacant. The first defendant Mr. Maulisio Seru became the representative of Doidoi. Mr. Maulisio Seru became the representative of Doidoi pursuant to a decision by the villagers for him to act on their behalf. There is however no official Turaga ni Mataqali for Doidoi and the 3rd defendant is not the official Turaga ni Mataqali.
21. It was in the meeting of 5 January 2012 where it was decided that Rafeale Jonetani Sawai will seek consent of all the members of Doidoi for harvesting the pine and the proceeds to be divided. The consent of the majority of the members of Doidoi was obtained by Rafeale Jonetani Sawai.
22. The 2nd defendants say that the plaintiff has the right to harvest the forest belonging to the 5 mataqali's. It is contended that Mr. Rafeale Jonetani Sawai is the Turaga ni Koro of Natokalou village. Rafeale Jonetani Sawai had written to Doidoi on 3

September 2012 and asked for their permission to harvest the pine trees. On 4 September 2012, the members of Doidoi gave their consent to harvest the trees. The 3rd defendant had also given his consent.

23. The 1st and 2nd defendant's say that the pine trees, although planted on the land of Doidoi was agreed to be for the benefit of 5 mataqali's being Doidoi and the 4 other mataqali's from the village of Natokalau. This was agreed in a meeting held on 5 January 2012. It was also agreed in that meeting that Doidoi was entitled to 1/3 of the earnings derived and the rest was to be given to the other 4 mataqali's.

24. On 7 February 2013, majority of the members of the villagers agreed to grant permission to Waiqele Sawmills to harvest the pine. The members of Doidoi also agreed to this. It was only after the majority consent that the agreement with the plaintiff was entered into.

25. By going against the scheme of arrangement which was initially consented to by Doidoi, the other 4 mataqali's are now losing financially too. They therefore claim against the 3rd defendant the following remedies:

- i. A declaration that the 5 mataqali's of Natokalau villagers are lawful beneficiaries of the pine plantation on the land of Doidoi.*
- ii. A declaration that the 3rd defendant has breached his fiduciary duty to the 5 mataqali's of Natokalau village and his claim to the pine plantation is null and void.*

- iii. *An injunction restraining the 3rd defendant either by himself, or through his employees, servants or agents, contractors or howsoever from harvesting and/or logging the pine trees on the said land.*
- iv. *An injunction restraining the 3rd defendant from uplifting any proceeds of sale of pine trees from the said land.*
- v. *An order directing the 3rd defendant to provide an account of the monies received and/or due and owing for pine trees harvested on the said land.*
- vi. *An order for 3rd defendant to indemnify the 2nd defendants against any judgment entered against them in favour of the plaintiff.*
- vii. *Damages for breach of contract.*
- viii. *Costs and an order for the 3rd defendant to indemnify the 2nd defendants on any order for costs obtained against them by the plaintiff.*

D. 3rd Defendant's Position/Counter-Claim

26. The 3rd defendant's position in regards the claim is that the plaintiff is misrepresenting the true facts. He says that at the relevant time in 2013, the Turaga ni Mataqali of Doidoi was Mr. Maulisio Bolalele. He was very old. When he became aware of the dealings with the plaintiff, he then authorized the 3rd defendant to intervene and represent Doidoi. This authority was given to him on 15 July 2013. He is thus the authorized representative of Doidoi. His official appointment has not be formalized.

27. When Mauliso Bolalele was alive, the plaintiff should have contacted him and contracted with him. Bolalele died in 2016. The contract was entered into in 2013. The 1st defendant is a different person and not the Turaga ni Mataqali or the authorized representative of Doidoi.
28. The 3rd defendant says that the 2nd defendants are not members of Doidoi but are members of Mataqali Niuvouvou. They live in Natokalau village and are not authorized to deal with the affairs of Doidoi.
29. The earnings from the pine trees belongs to the 5 mataqali's. He is therefore the right person to have entered into the contract on behalf of Doidoi and not Mauliso Seru. The claim cannot be maintained against Doidoi or him when a wrong person has contracted on their behalf. The agreement is not enforceable against Doidoi or him.
30. The alleged letters of 3 and 4 September 2012 is written by Rafaele Jonetani Sawai. He, the 3rd defendant says never signed the letters. He is not aware of the meeting of 7 February 2013. He knows that Doidoi never gave its consent to the 1st and 2nd defendant's to enter into the contract with the plaintiff.
31. The defendant agrees that there was a meeting of the Yavusa on 5 January 2012 which he attended as well. The 1 and 2 defendant's contention about what transpired in the meeting never happened.
32. The 3rd defendants says that the monies were paid by the plaintiff to the unauthorized people and when he discovered the same he informed the plaintiff of the same. That is when further payments to the other defendants were stopped by the plaintiff.

33. All the monies that have been paid so far has never been accounted for or paid to the members of Doidoi. The 2nd defendant's thus should refund the monies to the plaintiff.

34. Since he is the proper representative of Doidoi, he properly took out a forest licence to log the pine trees belonging to Doidoi. He was authorized by Doidoi to proceed with the harvest.

35. The 3rd defendant says that as a result of the plaintiff's illegal action, Doidoi has suffered damages. It could not log the fallen pine from the land and it decayed. The machinery was also on the land and lay idle.

36. The 3rd defendant therefore claims as follows:

- i. A declaration that Maulisio Seru is not the authorized representative of Mataqali Doidoi.*
- ii. A declaration that the agreement dated 5 July 2013 is illegal and unenforceable as against Doidoi and/or the 5 mataqali's of Natokalau village.*
- iii. An injunction restraining the plaintiff and the 1st defendant and 2nd defendants either by themselves, or through his employees, servants or agents, contractors or howsoever from harvesting and/or logging pine trees on the said land.*
- iv. An injunction restraining the 1st and 2nd defendant's from uplifting any proceeds of sale of pine trees from the said land.*
- v. An order for judgment against the 1st and 2nd defendants in the sum of \$10,555.67 if the agreement is found to be legal and an order for them to*

provide an account of the monies received and/or due and owing for the pine trees harvested from the land.

- vi. Loss of royalty per day from 20 July 2016 till revocation of injunction in the sum of \$1,800.*
- vii. Profits lost from logging per day in the sum of \$3,000 till removal of injunction. Downtime on machinery lying idle on land at the rate of \$3,000 per day amounting to \$42,000 in total.*
- viii. An order for indemnity against the judgment and costs if any is found against the 3rd defendant.*

E. Background – Proceedings

- 37. On 18 July 2016, Master Bull granted a restraining order against all parties from harvesting the pine from the subject land.
- 38. On 27 September 2017, the interim injunction was confirmed to be in place until the determination of the final action in the matter.

F. Agreed Issues to be tried

39. The parties have agreed that the following issues be tried:

- a. Is Mataqali Doidoi the rightful owner of all pine trees?*

- b. Did the 1st and 2nd defendants have any authority or mandate on behalf of Mataqali Doidoi to enter into the contract with the plaintiff?*
- c. Is the 3rd defendant the proper signatory for Mataqali Doidoi?*
- d. Is the agreement between the plaintiff and the 1st and 2nd defendants enforceable against the 3rd defendant?*
- e. Did the 1st and 2nd defendants have the authority to receive the monies on behalf of Mataqali Doidoi in respect of the pine trees?*
- f. Did the 3rd defendant advise the plaintiff that the 1st and 2nd defendants were not the authorized representatives of Mataqali Doidoi?*
- g. Was the Forest Rights Licence correctly issued to the 3rd defendant as the authorized representative of Mataqali Doidoi?*
- h. Are the 1st and 2nd defendant's interfering with the affairs of Mataqali Doidoi?*
- i. Is the plaintiff entitled to refund of the monies paid to the 1st and 2nd defendants?*
- j. Are the 2nd defendant's entitled for indemnity against the 3rd defendant?*
- k. Is the 3rd defendant entitled to have the injunction granted by the court dissolved?*
- l. Is the 3rd defendant entitled for the alleged losses as claimed?*

40. I must say that the counsel for all the parties have very well outlined the issues for the court to be tried. Although some of the issues can be answered together, the

identification of the specific questions to be answered sums up the conflict between the parties. To that end, I must say that all the counsel have given attention to their briefs and have not left any stones unturned to properly represent the interest of their clients. I can only be grateful to them for making the task of the court easier.

G. Evidence / Law / Analysis

41. It is convenient that I decide each issue under a separate head. This would provide a more clear and precise understanding of the reasons for the courts findings.

A. Is mataqali Doidoi the rightful owner of all pine trees?

42. There is no dispute that the pine trees which the plaintiff says it has the right to harvest is on the land that belongs to Doidoi. Doidoi is one of the mataqali's from the village of Natokalau. The village of Natokalau has 5 mataqali's including Doidoi.

43. Since the pine is planted on the land of Doidoi, it does have the legal interest in the same but the matter is not so simple. The issue that needs examination is whether Doidoi has the sole beneficial interest in the pine trees and the answer certainly is in the negative.

44. The evidence reveals and remains uncontested that Doidoi had 1/3 beneficial interest in the pine trees. The 2/3 interest was in favor of the other 4 mataqali's of the village of Natokalau. The 3rd defendant has admitted this in his pleadings as well as the evidence. I therefore do not find that there is any conflict in this regard requiring thorough examination of all the evidence and the exhibits.

45. Since all the 5 mataqali's had the beneficial interest in the pine trees, I find that the agreement that is on foot should have been entered into between the plaintiff and all the Turaga ni Mataqali's of the 5 mataqali's from the village of Natokalau and that too upon obtaining the consent of the majority of the people from their mataqali's.

46. The next question therefore obviously is in respect of Doidoi. Who was at the time of the agreement the rightful Turaga ni Mataqali to enter into the contract with the plaintiff and whether the Turaga ni Mataqali had the mandate of his members to agree to the plaintiff to proceed with the execution of the agreement and to harvest the land?

B. Did the 1st and the 2nd defendants have any authority or mandate on behalf of Doidoi to enter into the contract with the plaintiff?

47. The 2nd defendants' position is that Maulisio Seru was the authorized representative of Doidoi. The 3rd defendant contends that Maulisio Bolalele was the Turaga in Mataqali of Doidoi at the time when the agreement was executed. However due to his ill health, he appointed the 3rd defendant to represent Doidoi.

48. There is a lot of conflicting evidence as to who is the Turaga ni Mataqali or the proper representative for Doidoi. No one has shown me any official document or authority for me to make a conclusive finding in this regard when all of them know that there is a Register of Native Land Owners which is called the *I Vola Ni Kawa Bula* which would provide to this court with certainty as to the number of members each mataqali has and the Turaga ni Mataqali of each mataqali. The information could have been easily obtained and presented to the court.

49. People cannot just assume roles and presume responsibilities without being properly recognized by the members of the mataqali. If everyone was to presume to be the head or the representative then there will always be conflicts on who is the right person to carry out such tasks for the benefit of the members. This can lead to a lot of illegal dealings, personal and unjust gain and lots of conflicts in the community. That is why the law has bestowed upon the iTaukei Lands Commission to have records of proper members of each mataqali, the heads of each mataqali and also to resolve disputes when such issues arises.

50. I refer to the s. 17 of the ITLA. It is self - explanatory and reads:

Disputes as to headship of mataqali

“ 17 (1) in the event of any dispute arising between iTaukei as to the headship of any division or subdivision of the people having the customary right to occupy and use any iTaukei land, the Commission may inquire into such dispute and after hearing evidence and the claimants shall decide who is the proper head of such division or subdivision, and such person shall be the proper head of such division or subdivision, provided that if the claimants agree in writing in the presence of the chairperson of the commission as to who is the proper head of such division or subdivision it shall not be necessary for the Commission to hear the evidence or further evidence as the case may be”.

Underlining is Mine

51. In this case, I do not have any official document to rely upon to make a finding that Maulisio Seru, the 1st defendant is the head of the mataqali or the Turaga ni Mataqali.

In absence of any concrete evidence, I find that Mr. Maulisio Seru had no mandate to enter into the contract with the plaintiff to allow it to harvest the pine trees.

52. There is also dearth of evidence in relation to the number of mataqali members in Doidoi and how many therefore make up the majority to authorize Mr. Maulisio Seru to represent Doidoi.

53. Further, the evidence of Mr. Aborosio Drunanaqio, the 2nd defendant, indicates that Mr. Rafeale Vui, the 3rd defendant was supposed to be the representative of Doidoi but when he did not respond to their calls, he appointed Maulisio Seru to be the representative of Doidoi. He also testified that Doidoi had not chosen Maulisio Seru but he did. His evidence in cross- examination is relevant and appears in the following form:

Q: Rafeale Vui says he is the one who should be the representative?

A: Supposed to be but when we approached him to come he refused.

Q: Reason he gave for not coming?

A: Don't know the reason. We had told him to come.

Q: Did you personally go to him?

A: I did.

Q: Who appointed Maulisio Seru on behalf of Doidoi?

A: When Rafeale didn't come I looked for a member and then I met him Maulisio Jnr. And I chose him.

Q: According to Waiqele Sawmills members of Doidoi appointed Maulisio Seru as their rep?

A: They didn't choose him. Someone had to represent and Rafaele Vui refused to come.

54. Mr. Aborosio Drunanaqio is not even the member of Doidoi. How he derived the authority to appoint the representative of Doidoi is not clear and justified. An outsider, and I mean, a person who does not belong to a mataqali, does not have a right to choose who should represent the rightful members. Any appointment by Mr. Aborosio Drunanaqio is null and void.

55. Secondly, I have not been shown any consent from the majority of the members of Doidoi appointing any representative. The evidence of the 3rd defendant Rafaele Vui is that Doidoi has about 100 members and the majority would be 60 percent. That evidence is not disputed. If that is the case then where is the consent of 60 people to appoint anyone to represent Doidoi? There is none and in that regard again, Maulisio Seru had no mandate to represent the members of Doidoi.

56. I now turn to plaintiff's *exhibit number 3*. This is the minutes of the meeting of 5 January 2012 that the 2nd defendants say took place in which it was agreed that the pine should be harvested and the proceeds will be divided amongst Doidoi (1/3) and the rest of the mataqali's (2/3). This is the meeting that the 3rd defendant agrees took place but denies that whatever has been noted in the minutes was discussed in the meeting.

57. The document that was exhibited was a translation of the iTaukei minutes. The original minutes are not signed by any participant in the meeting. Leaving that aside, I wish to

stress on the part of the minute which says that the members of mataqali have selected Rafaele Vui to be their representative. This is the plaintiff's documentary evidence.

58. If it insists that that document is and cannot be controverted, then on its own evidence, Maulisio Seru cannot be the proper representative of Doidoi. The 2nd defendant's excuse that Maulisio was appointed because Rafaele Vui refused to come in the meetings is preposterous. The rule of law, *nemo dat quod non habet*, meaning no one gives what they do not have, applies.
59. The evidence that I have identified so far defies the 2nd defendant's position. I therefore do not find that Maulisio Seru is the proper representative or the Turaga ni Mataqali or that he had any authority to enter into the contract with the plaintiff.
60. The 2nd defendants of course are not members of Doidoi and they could not have made any representations on its behalf.
61. The agreement that the plaintiff entered into with Doidoi cannot be valid for want of a proper person executing the same on behalf of its majority members. The plaintiff should have made proper enquiries from the iTaukei Lands Commission about the proper persons to contract with before handing over any monies to the unauthorized persons. It has contracted with the wrong person, at least, so far as Doidoi is concerned and the agreement cannot be allowed to stand.
62. Since there is no proper agreement on foot, the plaintiff's right to seek an injunction against the defendants cannot be considered due to lack of standing. If anything, the 2nd defendants have a right to ask for the question of the injunction to be tried in relation to their claim that the 3rd defendant is also not the rightful head of the Doidoi to proceed to obtain a forest licence. I will consider this as the next issue.

63. Before I leave the issue in relation to Doidoi, let me deal with the 2nd defendants' rights to enter into the contract. I have not been shown any evidence that these 2nd defendants' are the Turaga ni Mataqali's of the remaining 4 mataqali's of Natokalou village. All the evidence shows is that they are members of mataqali Niuvouvou. If they all are the members of mataqali Niuvouvou then they are not representing the remaining 4 mataqali's.

64. The 4 mataqali's are not properly represented and thus the agreement is not valid. Further, there is no evidence that the majority of the members of the 4 mataqali's have consented to the deal and have agreed to what has transpired in the meeting of 5 January 2012. It has to be first shown to me that each mataqali has certain numbers and those that have agreed make the majority. I am bereft of such evidence and thus cannot make an affirmative finding that the majority of the members of the 5 mataqali's had agreed that the dealings with the plaintiff proceed.

C. Is the 3rd defendant the proper signatory for Doidoi?

65. I will come to the question of whether Rafaele Vui, the 3rd defendant, is the proper representative of Doidoi. I must say at this stage that the proverbial saying "***what is good for goose is good for gander***" applies here. I will repeat what I have said before in deciding whether the 1st defendant is the Turaga Ni Mataqali or the proper representative for Doidoi.

66. The 3rd defendant is not the official signatory of Doidoi. There is no records from the iTaukei Lands Commission confirming him to be the official Turaga ni Mataqali or the official representative of Doidoi.

67. The 3rd defendant says that he was appointed by the former Turaga ni Mataqali to represent Doidoi. If he had been appointed to represent Doidoi, then the 3rd defendant should have made this official for him to be able to enter into dealings on behalf of his mataqali. I was once again not shown any official record that Maulisio Bolalele was ever the Turaga ni Mataqali for Doidoi.
68. Further, I have also not seen the consent of the majority of the members of Doidoi appointing him to represent the mataqali. No one has given an accurate or official list of who the members of Doidoi are. I need to see the Register of iTaukei Land Owners or the *I Vola Ni Kawa Bula* evidencing this and in absence of any official documentation, I am not going to usurp the powers of the ITaukei Lands Commission to resolve this dispute.
69. The plaintiff's 2nd witness Mr. Paulo Suvaki who is 64 years old lives in a settlement 11 miles away from Natokalau village says that he is aware of the affairs of Doidoi but does not know that the 3rd defendant Rafeale Vui is the Turaga ni Mataqali or the authorized representative. If the elders do not know of this appointment then the village members will not take any directions from the person.
70. The evidence of Paulo Suvaki shows how there is a need for an official appointment to be made and known to everyone. In absence of any proper documentation, I do not find that even the 3rd defendant was the proper person to head or represent Doidoi.

D. Is the agreement between the plaintiff and the 1st and 2nd defendants enforceable against the 3rd defendant?

E. Did the 1st and 2nd defendants have the authority to receive the monies on behalf of Doidoi in respect of the pine trees?

71. The answer on the question of the enforceability of the contract is in the negative given my earlier findings that the 1st and the 2nd defendants had no mandate to enter into the contract with the plaintiff and that the plaintiff should have contracted with the right persons.

72. The evidence shows that all the monies were received by the 2nd defendant's. The vouchers kept by the plaintiff does not show that the 1st defendant received any monies from the plaintiff. Since I have already made a finding that there is no evidence that Doidoi authorized the dealing with the plaintiff, the 2nd defendants could not have received the monies on behalf of Doidoi.

73. In fact the 2nd defendant's only represent one mataqali if I were to assume that they had the mandate from Niuvouvou to proceed to act on their behalf. What about the rest of the mataqali's? Why was the monies not given to proper persons? Why was the dealing done in a haphazard manner?

F. Did the 3rd defendant advise the plaintiff that the 1st and 2nd defendants were not authorized representatives of Doidoi?

74. I find from the evidence of the plaintiff's witness and the 3rd defendant that the plaintiff was informed by the 3rd defendant, at least, after the monies were paid that they were not authorized representatives of Doidoi. This is what caused the plaintiff to hold any further payments which I find was the right course of action as any monies paid would be a waste.

75. I refer to the cross evidence of the plaintiff's witness Mr. Sanaila Rokotala in the following form that I have officially recorded:

Q: Isn't it true that Rafele Vui came to your company and told that the agreement was wrong and no further monies to be paid to these people?

A: Yes but after payment of \$6,670 was paid to in a meeting. I have receipts. To mataqali Doidoi.

76. As far as the 3rd defendant is concerned, he had done his part to make the plaintiff aware that it had contracted with the wrong parties. The 3rd defendant therefore cannot be held liable for the plaintiff's loss.

G. Was the Forest Rights Licence correctly issued to the 3rd defendant as the authorized representative of Doidoi?

77. I will reiterate that there is no official record or evidence of this for me to make a proper finding to this effect. I therefore find the answer in the negative. Mr. Rafele Vui, if he has the mandate of the members, should have had himself noted as the official representative of Doidoi or as the Turaga ni Mataqali. As it is, I do not find him to have sufficient standing to hold a forest licence in his name.

H. Are the 1st and 2nd defendant's interfering with the affairs of Doidoi?

78. I have already found that neither the 1st defendant nor the 2nd have the mandate to represent the members of Doidoi. They continue to insist that they should go ahead

with the harvesting agreement which I find is null and void. I therefore find that they are indeed interfering with the affairs of Doidoi.

1. Is the plaintiff entitled to refund of the monies paid to the 1st and 2nd defendant?

79. There is enough evidence as per plaintiff's exhibit 5 that the plaintiff has paid the following sums of monies to these people:

	<i>Date</i>	<i>Amount</i>	<i>Paid To</i>
<i>(i)</i>	<i>14.02.13</i>	<i>\$2000</i>	<i>Aborosio Drunanaqio</i>
<i>(ii)</i>	<i>19.02.13</i>	<i>\$2000</i>	<i>Aborosio Drunanaqio</i>
<i>(iii)</i>	<i>17.04.13</i>	<i>\$2000</i>	<i>Fabiano Valebogi and Rafaele Jonetani Sawai.</i>
<i>(iv)</i>	<i>09.07.13</i>	<i>\$25,000</i>	<i>Aborosio Drunanaqio</i>

80. Apart from the above monies being documented to have been paid, a further sum of \$670 was indisputably paid to the 2nd defendant's. This means that a total sum of \$31,670 has been paid by the plaintiff.

81. There is no credible evidence that the 2nd defendants have ever given the money for the benefit and use of the same to Doidoi or to the other 3 mataqali's. The plaintiff's 2nd witness Mr. Paulo Suvaki gave evidence that he heard that the monies were distributed to the members of Doidoi. I do not find this evidence acceptable. How much was given to the members of Doidoi should have been properly documented as this money concerns people's entitlement and any misuse can be questioned.

82. Mr. Aborosio Drunanaqio gave evidence that the initial \$6,000 was spent in the funeral. The \$670 was used in conducting a meeting and the \$25,000 was split into 6 parts. One sixth was given to each mataqali and the remaining one sixth was kept for the benefit of the village. If I were to accept this evidence, which I do not, then where is any acknowledgment of monies received by the other mataqali's?
83. Mr. Aboroiso Drunanaqio's evidence is that Doidoi was entitled to one third of the proceeds. If that is so then there is no evidence that Doidoi ever gave him the mandate to change that decision. The fact that he used \$6670 without any permission from Doidoi and only gave one sixth from the \$25,000 (*if I were to accept he did give that portion*) shows how he used the monies at his own whim and did whatever he liked to do with the same. There is no evidence of how he spent the money for the village projects. His this evidence is incredible.
84. Mr. Aborosio Drunanaqio said that Doidoi's share was given To Maulisio Seru, the 1st defendant and that he has lost all the receipts when cyclone Winston affected the country. All Mr. Aborosio was required to do was to summon the recipients of the monies to court or obtained their acknowledgment in writing. The fact that he took no initiative is indication of how his family has misused the money. The other second defendants are his family members.
85. There is also no evidence of any proper expenditure or investment of these monies. The inference I therefore draw is that these defendants have used the money for their personal gain and acted in positions without being properly authorized.
86. The question now is, should these monies be repaid by the 2nd defendants, or is it that the plaintiff cannot recover the monies because the contract is illegal? The contract

that is before the court is unenforceable and not valid as opposed to being illegal for want of compliance of a statutory requirement.

87. In the latter case, the question of *"the loss lies where it falls"* kicks in. This case is not about an illegal contract. The 2nd defendants have obtained the monies from the plaintiff's through erroneous procedure and through improper means. It is inequitable for them to be allowed to continue to have the advantage of their wrong. The monies that has been paid ought to be returned and I order the 2nd defendants to do so jointly and severally.

88. I do not find that the 1st defendant has gained financially in this dealing and therefore any order for him to pay these monies will be inequitable.

J. Is the 2nd defendant's entitled for indemnity against the 3rd defendant?

89. The question of indemnity does not arise as the contract is invalid and the plaintiff has no right to harvest the pine trees. It is entitled to refund of its monies and it is for the 2nd defendant's to make good the loss. The 3rd defendant has not received these monies or had any benefit of the same. In that regard there is no nexus for the question of indemnity to kick in.

K. Is the 3rd defendant entitled to have the injunction granted by the court dissolved?

90. I do not find that any of the defendants have established through the evidence that they have a right to enter into any form of contract or to represent the various mataqali's from the village of Natokalou.

91. It is important that they first find out who is the official Turaga ni Mataqali, have the official records updated and then a fresh meeting be called to resolve the issue about who shall harvest the pine and where the proceeds shall go.

92. In absence of the ITLC getting involved, and making an official finding about proper head of mataqali's, this matter will never be resolved. Whoever has the official capacity will then move the issue forward. Until then, it is important that the status quo is maintained and no one is allowed to harvest the pine. The pine is not a perishable item so there is no irreparable loss that will be suffered by the villagers. It is important that the matter be resolved properly.

L. Is the 3rd defendant entitled for the alleged losses as claimed?

93. I do not find that the 3rd defendant is entitled to any losses as claimed as he too does not have the right to obtain the forest licence in his name. He should first invoke proper procedures to be appointed as the official head of mataqali or the representative of Doidoi. For now, I do not find that he can even bring an action for the losses he claims has been sustained by Doidoi.

94. If anything the proper head can decide to bring an action for the losses sustained by the mataqali's. This is a matter for the Turaga ni Mataqali's of the Natokalou village.

95. What I however acknowledge is the 3rd defendant's act of investing the proceeds of the funds so far. He can continue to hold the funds in the same manner until such time the 5 heads decide as to when it should be distributed.

96. Whoever is the proper head of the mataqali's of Natokalou village shall be provided the proper accounts of the pine harvested and the proceeds from the same.

H. Final Orders

97. In the final analysis I make the following orders:

- a. *The plaintiff's claim against all the defendant's to restrain them from interfering with its rights to harvest the pine trees on the subject land is dismissed.*
- b. *The 2nd defendant's to jointly and severally refund the sum of \$31,670 to the plaintiff within a period of 3 months.*
- c. *The 1st and 2nd defendant's counterclaim against the 3rd defendant for declarations and injunctions is dismissed and so is the claim for any indemnity.*
- d. *The 3rd defendant's claim for loss and damages is dismissed.*
- e. *The parties are now to first consult the iTaukei Lands Commission to find out who the proper heads of mataqali's are and upon the finding they are at liberty to decide the proper way and persons to harvest the pine on the land. Until such time, neither of the parties are to harvest the same and an injunction to that effect is issued against all the parties. Any decision by the heads of the mataqali's shall be implemented notwithstanding the orders of this court.*
- f. *The monies invested by the 3rd defendant upon the sale of the pine so far are to remain in the same investment scheme and the heads of the 5 mataqali's of the village of Natokalou are to decide how it is to be distributed and the manner of the same.*

- g. The 3rd defendant is to provide to the 5 Turaga ni Mataqali's, an account of the pine that has been harvested and the earnings derived from the same. They are to be informed of the investment scheme that has been entered into.
- h. Each party is to bear their own costs of the legal proceedings.


.....
Hon. Madam Justice Anjala Wati

Judge

30. 04.2020



To:

1. *Maqbool & Company for the Plaintiff.*
2. *Maulisio Seru – 1st Defendant.*
3. *Messrs Kohli & Singh for the 2nd Defendant.*
4. *Messrs Gibson & Company for the 3rd Defendant.*
5. *File: Labasa HBC 35 of 2016.*