

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBJ 03 of 2019

Susan Shiu Mati

Applicant

v

Central Agricultural Tribunal

First respondent

iTaukei Land Trust Board

Second respondent

Ex parte The State

Counsel: Mr A. Bale for the applicant
Ms K. Suveinakama for the second respondent
Ms M. Ali for the State

RULING

1. This is a summons for leave for judicial review of a decision of the first respondent, the Central Agricultural Tribunal of 30th January, 2019.

2. The applicant seeks the following reliefs:
 - a. A declaration that the first respondent acted ultra vires its powers in allowing the appeal by failure to take into account relevant considerations and taking into account irrelevant considerations and therefore wrongly interpreting the law.
 - b. Certiorari quashing the decision of the first respondent.
 - c. A mandamus restoring the decision of the Agricultural Tribunal Reference No. WD 03 of 2016 of 2nd March, 2018.
 - d. Costs on an indemnity basis.

3. The grounds upon which relief is sought are as follows:
 - i. The first respondent erred in law and in fact in wrongly construing and interpreting Regulation 13 and section 22(i)(k) of the Agricultural Landlord and Tenant Act,(ALTA) and finding that the Agricultural Tribunal,(Tribunal) lacked jurisdiction.
 - ii. The first respondent erred in law and in fact in failing to consider that the application was made under section 4 of the Act and all its requirements were proved.

4. The applicant, in her supporting affidavit states that she applied to the AT for a declaration of tenancy. Roshni Lata and iTLTB were named as respondents. AT granted her tenancy over 11 acres of the land described in the Instrument of Tenancy No.10422 and held that Roshni Lata would remain the registered lease of the other half of the land. Roshni Lata was ordered to surrender the Instrument of Tenancy to iTLTB, which was ordered to issue a new Instrument of Tenancy to the applicant. The first respondent allowed the appeal of Roshni Lata and set aside the judgment of the AT.

5. The second respondent, in the affidavit in opposition filed on its behalf states that the applicant has failed to name Roshni Lata, as a party in this application. She is directly affected. The applicant has not showed that they have an arguable case. She has not provided any evidence to show sufficient interest. She was an Executor of the estate of the late Ram Rattan and not a tenant under ALTA.

The determination

6. I note at the outset that the applicant has not complied with the mandatory requirements of Or 53, r 3(3)(i), which requires copies of the application and affidavit in support for leave to be served on "*all persons directly affected by the application*".
7. The applicant filed an application against Roshni Lata and iTLTB in the AT. Roshni Lata appealed the decision of the AT to the first respondent.
8. In my view, the applicant was required to make her a party in this application, as she is a person directly affected.
9. The first and second grounds of review contend that first respondent wrongly construed the provisions of ALTA and reached a finding that the AT lacked jurisdiction.
10. Section 13 of the ALTA Regulations provides that notwithstanding the regulations, the AT may make any order which it considers necessary for to do justice, although no express request has been made.
11. Section 22 (1)(k) of the Act provides that the AT may "*exercise any other power or duty conferred or imposed by or under the provisions of this Act*".
12. In my view, the stated provisions do not confer jurisdiction on the AT to disregard the other provisions of the Act.
13. The ultimate ground contends that the applicant established the ingredients of section 4.
14. Section 4 provides that a tenancy shall be presumed to exist, if a person has occupied and cultivated an agricultural holding for a period of not less than 3 years and the landlord has taken no steps to evict him, unless the landlord has proved that the occupation was without his consent.
15. Section 5(1) states that a person may apply to a tribunal for a declaration that he is a tenant if the landlord refuses to accept him thus.

16. The impugned judgment held that the applicant does not come within the purview of section 4(1) for the reasons that it *“is common ground that there was no tenancy created between the appellant and the respondent.The 1st respondent’s own evidence is that this was a family arrangement and she cultivated part of the land”*.
17. The applicant seeks a declaration that the first respondent acted ultra vires its powers in allowing the appeal.
18. The applicant has not substantiated her contention that the first respondent exceeded its powers. At the hearing before me, Mr Bale, counsel for the applicant submitted that he has no instructions in that regard.
19. In my view, the applicant has failed to demonstrate an arguable case.
20. In *Maisamoa v Chief Executive Officer for Health*, [2008] FJCA 41; ABU0080.2007S (10 July 2008) the judgment of the Court stated:

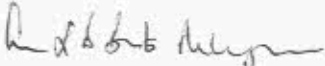
...All that needs to be demonstrated at the leave stage is that there is an arguable case. In State v Connors, ex parte Shah [2008] FJHC 64 Scutt J correctly observed about the process at the leave stage:

At this stage a full review of the facts is unnecessary. Nonetheless, a court is obliged to sufficiently pursue the material provide to determine whether an applicant raises an issue arguably involving an error in law, a serious error in fact; a violation of natural justice or procedural fairness, or an excess of jurisdiction by the decision-maker the subject of the application. (emphasis added)

21. **Orders**

- a. The application for leave to apply for judicial review is declined.
- b. The applicant shall pay the second respondent costs summarily assessed in a sum of \$ 2000.




A.L.B. Brito-Mutunayagam
JUDGE
17th July, 2020