

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 72 of 2020**

**IN THE MATTER OF THE PROPERTY LAW ACT**  
**AND IN THE MATTER OF AN APPLICATION** under section 105(2)  
by lessee for relief against forfeiture of lease

BETWEEN

**YADUA ISLAND (FIJI) LIMITED** a limited liability company having its  
registered office at 51-55 Foster Road, Walu Bay Suva.

**PLAINTIFF**

AND

**iTAUKEI LAND TRUST BOARD** a statutory body having its  
registered office at 431 Victoria Parade, Suva.

**DEFENDANT**

AND

**YAVUSA LEWEIMOTU TRUST**

**INTERESTED PARTY**

**Counsel** : Ms Prasad S. for the Plaintiff  
Ms Vokanavanua Q. for the Defendant  
Mr Tuifagalele N. for the Interested Party

**Date of Hearing** : 22<sup>nd</sup> October 2020

**Date of Ruling** : 19<sup>th</sup> November 2020

## **RULING**

*(On the Application for Transfer)*

- [1] The defendant filed this summons pursuant to Order 4 rules 1(1) and 1(4) and Order 32 (1)(2) of the High Court rules 1988 seeking to have this matter transferred to the High Court of Lautoka.
- [2] The defendant seeks to transfer this matter to the High Court of Lautoka on the following grounds:
1. The plaintiff's Tourism Lease NL 28062 is located at Yadua Island in the District of Tikina of Malolo at Nadroga province which is part of Western Division.
  2. The Tourism Department is located in Nadi which handles all the Tourism files on all iTaukei land in Fiji.
- [3] Order 4 rule 1(1) of the High Court Rules 1988 provides that proceedings must ordinarily be commence in the High Court Registry in the Division in which the cause of action arises. Order 4 rule 1(4) provides that any action commenced in the High Court may be transferred by the Court from one High Court Registry to another or to a Magistrate's Court.
- [4] The registered offices of both the plaintiff and the defendant are situated in the city of Suva. The plaintiff instituted these proceedings against the defendant seeking an order for reinstatement of the Native Leas that was forfeited by the defendant. Forfeiture of a lease is an administrative matter which is done in the office of the defendant.

Therefore, the defendant cannot say that the cause of action arose outside the jurisdiction of this court.

[5] **Deo v Patel [1993] FJHC 16; Hbc0282d.92s (19 February 1993) –**

In my considered view the principles that guide the Court in the exercise of its discretion to transfer cases are conveniently set out in **Halsbury's Laws of England (4th edition) Vol.37 at para.63** which reads:

*"The Court's power to transfer proceedings from one Court to another is a useful corrective to ensure that proceedings, wherever begun or whatever forum the plaintiff has initially chosen, should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings ... the Court will have regard to the nature and character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power which will be exercised having regard to all the circumstances of the case."*

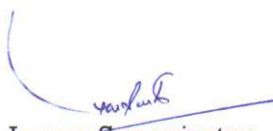
[6] The fact that the files relevant to this matter are kept in Nadi alone is not a ground to transfer the matter to the High Court of Lautoka.

#### **ORDERS**

1. The application to transfer this matter of the High Court of Lautoka is refused.
2. The parties will bear their own costs of this application.



19<sup>th</sup> November 2020

  
Lyone Seneviratne

**JUDGE**