

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 35 of 2018

BETWEEN : CECILIA LAISANI BIBI KEIL

PLAINTIFF

AND : MOSESE KOMAIWAI, SUSANA BROWN, LUI
QALOVAKARUA, KALARA KOMAIWAI, IOWANE and
EPELI LUI

DEFENDANTS

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. N. Nawaikula & Mr. R. Vakalalabure for the plaintiff.
: Defendants unrepresented.

Date of Hearing : 4 June 2020

Date of Judgment : 12 December 2022

JUDGMENT

PROPERTY LAW

Native Land – Gift of rights to occupy and use native land as an act of reciprocation by the Tui Vuna – Gift under custom of Qusi ni loaloa – Declaration of rights and order for eviction - Section 3, iTaukei Lands Act 1905

1. The plaintiff filed action on behalf of herself and other descendants of Josefa Manawalala and Laisani Caukilai Bibi seeking declarations that the plaintiff and the other descendants are entitled to the occupation and usage of a native land known as Navolivoli, that the plaintiff and those she represents have rights to the property under the traditional custom of Qusi ni loaloa, that under this custom, the plaintiff and the other descendants were given rights to occupy and use the property until they cease such occupation and usage and that the defendants are occupying the land unlawfully and trespassing over the rights of the plaintiff. The plaintiff also sought an order directing the defendants to vacate the land and for punitive and exemplary damages. The action is not defended.
2. The plaintiff pleaded that she and the others she represents are all direct descendants of her parents, Josefa Manawalala and Laisani Caukilai Bibi. The plaintiff's parents were usual residents at Ellery Steet in Suva. They retired and spent the remainder of their lives on the subject land. Before retirement in or about 1940, the plaintiff pleaded, her parents received a request from the Turaga Tui Vuna at the time for assistance to look after his son, Ratu Rakai Rageci and to facilitate his education in Suva. Her parents agreed and became guardians to Ratu Rakai Rageci. He was admitted to Marist Brother School in Suva. In reciprocation, the Turaga Tui Vuna Ratu Avorosa Rageci presented to her parents and their children the subject land under the customary process known as "Qusi ni loaloa". The chief's son died of illness on 14 June 1947. After his burial was over, the Turaga Tui Vuna summoned her parents' elder son Josefa Sabai Bibi and requested him to occupy the land on behalf of her parents and their heirs. Thereafter, the plaintiff, her siblings and their parents occupied the land in the 1950 s. The plaintiff pleaded that after her family came to occupy the land, another traditional ceremony was held at the Turaga Tui Vuna's house to present the land to her parents. The plaintiff states that under section 3 of the iTaukei Lands Act 1905, customary dealings over native land is recognized and

protected. The plaintiff said that the rights given to her parents will exist until their heirs cease occupation and cultivation of the land. The plaintiff states that the defendants have entered into and occupy parts of the subject land and that the plaintiff has given them notice to quit the land as their occupation is unlawful. This is the plaintiff's case.

3. As the action was not defended, the plaintiff filed summons on 21 January 2019 to enter judgment against the defendants. Affidavits of service of the summons to enter judgment and the supporting affidavit were filed in court. On 28 January 2019, the court has recorded that the first defendant was present in court and intimated the wish to seek legal representation. The second to sixth defendants did not appear in court. The first defendant again appeared on 11 March 2019. Thereafter, there does not seem to have been a representation for any of the defendants. The master dealt with the plaintiff's application for summary judgment under Order 14 and the application to enter default judgment under Order 13 Rule 6 (1), and dismissed those applications. Thereafter, the plaintiff filed summons for directions, which was served on all defendants. The matter was then fixed for trial.
4. The plaintiff and two other witnesses gave evidence on behalf of the plaintiff. The defendants were unrepresented. They were served summons for directions and given notice of the trial. The plaintiff said in her testimony that Josefa Manawalala Bibi is her father and that Laisani Caukilai Bibi is her mother. She was 78 years old at the time of giving evidence. She was representing a group of 33 close relatives comprising 19 males and 13 females. They were descendants of the Bibi family, and have customary rights to a land called Navolivoli. The defendants, she said were trespassing on the land, with some of them having built houses.
5. The plaintiff said that the land was gifted for the use of her parents and their descendants, as her parents had looked after the son of the Tui Vuna and provided him education and accommodation in Suva. After the death of the chief's son following an illness, his parents took care of his burial. She said that a customary ceremony called Qusi ni loaloa was held at the Tui Vuna's house in Vuna village to present the land to her parents. The custom is a traditional way

to thank a person in reciprocation by giving a gift. She was not aware of the date on which the ceremony took place. She knew of the ceremony and the presentation of the land as her mother had told her about the chief's son and the way in which the land came to be occupied by her family. The plaintiff said that the land was given for occupation and usage by her parents and their descendants. She said that according to Fijian custom, occupation is usually subject to acknowledging and performing customary obligations to the donor until occupation ceased. She said that many of those who were aware of the ceremony and the gifting of the land to her parents had died. The plaintiff said that in addition to the Navolivoli land, a house in the Vuna village called Valeniniu (copra shed) was also given to her parents as a customary gift. That house is now called Raviravi after her grandmother's mataqali Raviravi. That property is not a subject of this action.

6. The plaintiff said that the Tui Vuna told her older brother, Josefa Savai Bibi, to take care of the land for her parents. Josefa, had planted coconut trees on the land. He remained on the land until about 2 years before his death when he went to Vanua Levu. Josefa gave her the right to look after the land by a letter written on 25 May 2011. Another older brother, Ratu Peni Mataitini, had also occupied the land and cultivated. The plaintiff's brothers took charge of the land when they were about 15 – 16 years of age. She says she is unable to develop the land while the defendants were in occupation.
7. The plaintiff said that her lawyers wrote to the Turaga Tui Vuna by letter dated 8 July 2015 by letter dated 1 April 2016 asking him to investigate the traditional gift and to prevent trespass of the land as it continued to be occupied, cultivated and used by the descendants of the late Josefa and Laisani Bibi. She also wrote to the Turaga ni Mataqali in Navesi. The letters pointed out that once land is given under Qusi ni loalola or through other traditional customs there is no interference with occupation. The letter called upon them to relocate the defendants.
8. The plaintiff said her lawyers wrote to all the trespassers by letter dated 14 September 2017 and asked them to vacate the land. She wrote to the iTaukei Land Trust Board on 15 January 2018 saying that she and her siblings have a

common interest over the land given to her parents under a traditional tenure. Notices to vacate the land were sent to the defendants on 5 April 2018. The plaintiff said none of the defendants vacated the land, and that the trespassers are distant relatives who have their own Mataqali land.

9. The plaintiff produced several written statements from persons she said were familiar with the grant of rights to her parents to occupy and use the Navolivoli land. One of these was a letter written on 30 October 2019 by Iosefo Baba. He was the son of the Turaga ni Mataqali, which owned the Navolivoli land. The letter confirms the account given by the plaintiff. She also produced several statutory declarations. The first such declaration was from Lusia Toga from Vuna in Taveuni. The plaintiff said that Lusia Toga was one of the people who knew the history of the land. She was 84 years old when she made the declaration. Lusia confirmed that the land was given to the plaintiff's parents under the Fijian custom of Qusi ni loaloa. She was familiar with the land known as Navolivoli and its boundaries. Attached to the declaration, was a letter dated 22 November 2019 that Lusia Toga had previously written in the iTaukei language stating what she knew of the Navolivoli land. The plaintiff said that Lusia was too old to attend court and give evidence. Therefore, she had issued a declaration in terms of the Statutory Declaration Ordinance of 1970. The second statutory declaration was by Ratu Elia Vodo Qalo of Nakorovou village. At the time of the declaration he was 80 years old and lived in Taveuni. He stated that the Navolivoli land was given to thank the family of Joseva Manawalala Bibi and Adi Laisani Caukilai Bibi in reciprocation for looking after the son of the Tui Vuna. His declaration confirms the contents of a letter that he wrote in the iTaukei language on 20 November 2019. The plaintiff said that the declarant found it difficult to travel to court to give evidence and, therefore, issued a statutory declaration. Another statutory declaration was issued by Ratu Savena Pio Tuole of Nakorovou village in Vuna Taveuni. He was 92 years at the time of making the declaration in January 2020. He confirmed the plaintiff's account regarding the circumstances in which the Navolivoli land was given at a Qusi ni loaloa ceremony to the plaintiff's parents and their descendants. Similarly, the plaintiff produced a declaration from Samuela Tuikiligana of Nakorovou Vuna village in Taveuni. He also confirmed the circumstances in which the Navolivoli land was given to the plaintiff's parents.

10. Ratu Emosi Tolevu, a subsistence farmer residing in Vuna village in Taveuni gave evidence on behalf of the plaintiff. He belonged to the clan known as the Mataqali Vusaratu. He was 63 years old at the time of giving evidence. The witness was of the belief that the Navolivoli land was given to the plaintiff's parents in the early 1940s. Mr. Tolevu said that the chief who gave the Navolivoli land to the plaintiff's parents, Ratu Aporosa Regeci, was his grandfather. He was made aware that a man by the name of Josefa Manawalala and his wife, Laisani Daukilai lived in Suva and looked after the chief's son and arranged for his education. They had also taken care of his funeral services. The witness said that in reciprocation of the plaintiff's parents looking after the chief's son, his grandfather gave a land through the custom of Qusi ni loaloa. The witness was aware that the land was called Navolivoli. He confirmed that the plaintiff's elder brother had cultivated the land. Mr. Tolevu said he came to know that the defendants – whom he knew personally – were trespassing on the land though they did not have rights to the land given to the plaintiff's parents.
11. The witness said that the word Qusi ni loaloa meant a traditional gift awarded to members of the community by the chief of a clan as an act of reciprocation. Mr. Tolevu said that when a gift is made, custom demands that the decision of the chief is final and everyone in the community is expected to honour the decision. Once a land is gifted for occupation, the recipient's family could use it for generations, the witness said. The recipient would decide whether he wants to continue occupation of the land for any length of time or return it to the chief. During such occupation, the land would continue to belong to the chief. The witness said he was familiar with the traditional decision making of the chiefs. He said custom was followed in settling matters, and that traditions were honoured within the community. The land was given orally, and not in writing. The witness said he had learned of the land and the gift in reciprocation made by his grandfather through the community and also from his parents.
12. The plaintiff's next witness, Sevenaca Tuole was 96 years old at the time he gave evidence. He had worked in Suva in the 1980s. He was aware that a ceremony called the Qusi ni loaloa was held in regards to Tuivuna's son attending school in Suva. He said that the plaintiff's mother was a school teacher at the time. He

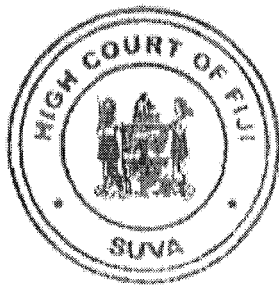
could not recall the year in which the ceremony took place. He confirmed that that the chief's son fell ill and died while residing in Suva.

13. The defendants did not acknowledge service of the writ or defend the action. The court accepts the evidence given on behalf of the plaintiff. The evidence given by the other witnesses – who showed an understanding of the customs of their clan – is consistent with the plaintiff's claim. Although the conveyance of rights to the property is not registered or recorded in writing, the court is competent to consider whether those rights could accrue by way of custom. Section 3 of the iTaukei Lands Act 1905 allows the court to do so. iTaukei lands can be held according to iTaukei custom as evidenced by usage and tradition. The plaintiff has satisfied court that the Navolivoli land was given to be occupied and used by her parents and their descendants, under the customary Qusi ni loloa. The plaintiff is entitled to the declarations in her statement of claim. There was no evidence concerning financial losses, and, therefore, no orders are made in respect of damages. The plaintiff is entitled to costs to be paid by the defendants.

ORDER

- A. The declarations sought in the plaintiff's statement of claim are granted.
- B. The defendants are ordered to vacate the subject land immediately.
- C. The defendants are directed to pay the plaintiff costs summarily assessed in an aggregate sum of \$1,800.00 within 21 days of this judgment.

Delivered at Suva this 12th day of December, 2022



M. Javed Mansoor
Judge