

IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION

JUDICIAL REVIEW NO. HBJ 7 OF 2018

**BETWEEN** : **RATU KALIOVA DAWAI** of Narewa Village, Nadi  
**APPLICANT**

**AND** : **ITAUKEI LANDS APPEALS TRIBUNAL**, a statutory body set up by law  
of 87 Queens Elizabeth Drive, Nasese, Suva  
**1<sup>ST</sup> RESPONDENT**

**AND** : **THE ITAUKEI LANDS AND FISHERIES COMMISSION** a statutory body  
set up by law of Carnavon Street, Suva.  
**2<sup>ND</sup> RESPONDENT**

**AND** : **THE ATTORNEY GENERAL OF FIJI** Level 7, Suvavou House, Victoria  
Parade, Suva  
**3<sup>RD</sup> RESPONDENT**

**AND** : **RATU VUNIANI NAVUNIUCI** of Narewa Village, Nadi  
**4<sup>TH</sup> RESPONDENT**

**BEFORE** : Mr. A.M. Mohamed Mackie-J.

**APPEARANCES** : Mr. Fa, for the intended Applicant  
Mr. Mainavolau for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.  
Mr. Valenitabua for the 4<sup>th</sup> Respondent

**DATE OF HEARING** : 20<sup>th</sup> September, 2022.

**DATE OF JUDGMENT** : 23<sup>rd</sup> January, 2023

**Ruling**

**(On Substitution)**

**A. INTRODUCTION:**

1. Before me is an Inter-partes Summons filed on behalf of the Applicant (the intended Applicant) on 14<sup>th</sup> October, 2020 and supported on 29<sup>th</sup> October, 2020, seeking for him to be substituted in place of the original Applicant (now deceased) in order to proceed with the pending substantial matter, which is an Application for Judicial Review.
2. The deceased Applicant had sought, *inter-alia*, to review the 1<sup>st</sup> Respondent's decision dated 1<sup>st</sup> June, 2018 and that of the 2<sup>nd</sup> Respondent dated 5<sup>th</sup> December 2017 made declaring the 4<sup>th</sup> Respondent to be the rightful Tui Nadi, and the same decision to be quashed.
3. The Application for leave to institute Judicial review being heard before the then presiding Judge, Mr. Mohamed Ajmeer, as he then was, the Ruling on it has been pronounced on 21<sup>st</sup>

August, 2019 granting leave, which operates as a stay of the proceedings, to which this application relates.

4. However, on or about 06<sup>th</sup> September, 2020, before the substantive matter could be heard, the Original Applicant, namely, RATU KALIOVA DAWAI (**KALIOVA**) died, as a result of which the intended Applicant, namely, RATU ASIVENI DAWAI (**ASIVENI**) has made this Application in hand seeking for him to be substituted / made a party to the substantial matter, in order to proceed with the same.
5. The Application is made pursuant to Order 15 Rule 8 (1) and (2) of the High Court Rules 1988, which reads as follows.

*“8.-(1) where a party to an action dies or becomes bankrupt but the cause of action survives; the action shall not abate by reason of the death or bankruptcy.*

*(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.*

*An application for an order under this paragraph may be made ex parte”.*

6. The Application is supported by the Affidavit of the intended- Applicant, ASIWENI, sworn and filed on 14<sup>th</sup> October, 2020. The 3<sup>rd</sup> Respondent Attorney General on his behalf and on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> Respondents opposes the Application by filing the Affidavit in opposition by one, ANASE TAWAKE, sworn on 15<sup>th</sup> December, 2020 and filed on 3<sup>rd</sup> February, 2021. The 4<sup>th</sup> Respondent hereof, namely, **RATU VUNIANI NAVUNIUSI (VUNIANI)** also, through his Solicitors, opposes this Application by filing his Affidavit sworn on 12<sup>th</sup> November, 2020.

## **B. BACKGROUND:**

7. The Deceased Applicant’s installation as Tui Nadi was **not** confirmed by the 2<sup>nd</sup> Respondent due to the opposition of some members of the iTokatoka Nakuruvakarua, and the 4<sup>th</sup> Respondent hereof was declared to be the holder of the Title Turaga Tui Nadi, by the 2<sup>nd</sup> Respondent on 5<sup>th</sup> June, 2017. The said decision of the 2<sup>nd</sup> Respondent was confirmed by the 1<sup>st</sup> Respondent on 1<sup>st</sup> June, 2018. Accordingly, the Original Applicant, KALIOVA, on 31<sup>st</sup> August, 2019 applied for Judicial Review of the Decisions seeking for the following reliefs.

- a) *AN ORDER FOR CERTIORARI to remove into the High Court the said decisions of the 1<sup>st</sup> Respondent dated the 1<sup>st</sup> of June 2018 and that of the 2<sup>nd</sup> Respondent dated 5<sup>th</sup> December 2017 declaring the 4<sup>th</sup> Respondent to be the rightful Tui Nadi and that the same be quashed;*
- b) *A DECLARATION that the decision of the 1<sup>st</sup> Respondent of the 1<sup>st</sup> June 2018 and of the 2<sup>nd</sup> Respondent dated 5<sup>th</sup> December 2017 is unlawful, void and of no effect.*
- c) *A DECLARATION that the decision of the 1<sup>st</sup> Respondent dated 1<sup>st</sup> June 2018 and that of the 2<sup>nd</sup> Respondent dated 5<sup>th</sup> December 2017 declaring the 4<sup>th</sup> Respondent to be the rightful Tui Nadi is unreasonable in the Wednesbury sense and as such the decision is unlawful;*

- d) A DECLARATION that the 1<sup>st</sup> Respondent had acted in bad faith and in a manner which was unfair to the Applicant by proceeding to hear the upholding the decision of the 2<sup>nd</sup> Respondent that the 4<sup>th</sup> Respondent is the holder of the title of Tui Nadi when at the relevant time there was a lawful order of this court that was made on the 12<sup>th</sup> of May 2005 that prevented the 2<sup>nd</sup> Respondent from undertaking an inquiry into the rightful holder of the title of the Tui Nadi and a further order of this court of 27<sup>th</sup> January 2007 that clearly set out the composition of the Commission and also a required terms of reference;
- e) A DECLARATION that the 1<sup>st</sup> Respondent's declaration of the 4<sup>th</sup> Respondent as the rightful holder of the title of Tui Nadi is irregular, void and of no effect.
- f) An Order for damages and costs;
- g) SUCH FURTHER DECLARATION and other reliefs as to the court may seem just.

**8. The grounds upon which reliefs sought were;**

- a. That the decision by the 1<sup>st</sup> Respondent to declare the 4<sup>th</sup> Respondent to be the Tui Nadi pursuant to their Ruling of the 1<sup>st</sup> June, 2018, and pursuant to the Ruling of the 2<sup>nd</sup> Respondent dated 5<sup>th</sup> December, 2017 was in breach of the rules of natural justice, in that amongst other matters; the Applicant was denied a fair hearing in that the 1<sup>st</sup> Respondent failed to address the illegality of the proceedings before the 2<sup>nd</sup> Respondent:-
- b. That the 2<sup>nd</sup> Respondent failed to provide a terms of reference for the Commission of inquiry into the Tui Nadi dispute pursuant to the Orders of the High court of the 27<sup>th</sup> January, 2007;
- c. That the 2<sup>nd</sup> Respondent failed to appoint an independent Commission for the Commission of Inquiry of the 22<sup>nd</sup> of November 2011 to determine the Tui Nadi dispute in accordance with Orders of the High Court of the 27<sup>th</sup> January, 2007;
- d. THAT THE 2<sup>ND</sup> Respondent was biased against the Applicant in that the 1<sup>st</sup> – 3<sup>rd</sup> Respondents failed to provide the Applicant with a terms of reference that the Commission of inquiry would base its inquiry into, and
- e. That the 2<sup>nd</sup> Respondent had taken into account as evidence in the inquiry matters which were not placed before it;
- f. That the 1<sup>st</sup> Respondent being aware of the above proceeded to accept the 2<sup>nd</sup> Respondent's decision without addressing the same.
- g. That the decisions 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent were decisions that were made on evidence of the customs and traditions of the Vanua of Nadi and of section 17 of the Native Land act that was discredited and rejected by the High court of Fiji in the case of **Ratu Isireli Rokomatu v Josefa Saronicava Waqairatu & 5 Ors: HBJ 0021 of 1997L:**
- h. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents had made a predetermination in arriving at their decisions to declare the 4<sup>th</sup> Respondent to be the Tui Nadi as it was aware that the procedures set out by the High Court in consent Orders of the 24<sup>th</sup> of January, 2007 to ensure fairness and compliance with the rules of natural justice was complied with yet refused to comply with these procedures.
- i. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in arriving at their decisions had :-
- j. Taken into account irrelevant considerations and matters, by failing to comply with the consent orders of the High Court of the 24<sup>th</sup> January 2007 which are set out below:
- k. That each party nominate a member for appointment as Commissioners;
- l. The Minister is to appoint the Chairman of the Commission who is to be qualified for appointment as a judge or otherwise suitable by qualification and experience;

- m. *The term of reference for the Commission is to be determined in accordance with the custom of Vanua of Nadi as to who should be the holder of the title Tui Nadi.*
- n. *Each party is to given natural justice;*
- o. *Adjourn to 23<sup>rd</sup> February, 2007 for resolution of Commissioners;*
- p. *Failing to take into account the relevant custom and traditions of the Vanua of Nadi that the succession to the chiefly title of Tui Nadi is by way of election from the members of the iTokatoka Nakuruvakarua of the Mataqali Navatulevu of the Vanua of Nadi;*
- q. *Failing to take into account that the majority of the members of the itokatoka Nakuruvakarua of the mataqali Navatulevu of the Yavusa Navatuevu had elected Ratu Kaliova Dawai to be the holder of the title of Tui Nadi.*
- r. *Acted in breach of the rules of natural justice, by failing to comply with the consent orders of the High Court of the 24<sup>th</sup> of January 2007 which are mentioned (i) to (v) above ;*
- s. *Acted illegally , unlawfully and in a unreasonable manner by:*
- t. *Failing to comply with the consent orders of the High Court of the 24<sup>th</sup> January 2007 which are set out in (i) to ( v) above;*
- u. *Failing to take into account ;*
- v. *The relevant customs and traditions of the Vanua of Nadi that the succession to the chiefly title of Tui Nadi is by way of election from the members of the itokatoka Nakuruakarua of the Mataqali Navatulevu , Yavuasa Navatulevu of the Vanua of Nadi,*
- w. *ii. That the majority of the Members of the itokatoka Nakuruakarua of the Mataqali Navatulevu of the Yavusa Navatulevu had elected Ratu Kaliova Dawai to be the holder of the title of Tui Nadi.*
- x. *That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were estopped in law from proceeding to conduct an inquiry in to the rightful holder of the Tui nadi Title contrary to the Consent Orders of the Court dated 24<sup>th</sup> January, 2007.*
- y. *That the Applicant had legitimate Expectation that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents , in undertaking the Commission of Inquiry into the Tui Nadi dispute, would comply with the Consent Orders of the 24<sup>th</sup> of January 2007 mentioned from (i) to (v) in paragraph (d) ( 1 ) above.*
- z. *That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents breached the Applicant's legitimate expectation by proceeding to conduct the Commission of Inquiry into the rightful holder of the Tui Nadi title by failing to comply with the consent Orders of the Court dated 24<sup>th</sup> January 2007.*
- aa. *That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents breached the applicant's legitimate expectation by proceeding to determine the rightful holder of the title of Tui Nadi contrary to the customs and traditions of the Vanua of Nadi tjhat succession to the title is by election from the members of the itokatoka Nakuruakarua and that the members thereof had elected the applicant to the title of Tui Nadi.*

**C. THE LAW ON SUBSTITUTION:**

9. The intended Applicant relies on Order 15 Rule 8 (1) – (5) of the High court Rules. The learned Counsel for the intended Applicant also draws my attention Sections (1) 2(1) , (3) and (4) of the Law Reforms ( Miscellaneous Provisions) (Death and Interest) Act 1935 , which highlights the causes of actions that survive death of a party.

Learned Counsel also has drawn my attention to the decided case of **Tirikula V Trikula [2011] FJHC 133; HBC 374-2008 (3<sup>rd</sup> March, 2011)** where the Court discussed on the action that survives and the action that does not survive following the death of a party. The Court said:

*“10. According to the section 2(1) Law Reform (Miscellaneous Provisions) (death and Interest ) Act (benefit of his Estate, subject to the provisions of that section.. The exempted causes of action are defamation Chapter 27) all causes of action subsisting against or vested in that person shall survive for the, srduction, inducing one spouse to leave or remain apart from the other , claim under section 32 of the Matrimonial Causes Act for damages on the ground of adultery”*

**D. THE HEARING:**

10. At the hearing held before me on 20<sup>th</sup> September, 2022, Counsel for the intended Applicant, 1<sup>st</sup> to 3<sup>rd</sup> Respondents and the 4<sup>th</sup> Respondent made extensive oral submissions. They also filed their respective written submissions, for which I am thankful to them.

Though, the task before me, for the time being, is limited to the question of substitution, I have narrated the history in relation to the substantive matter, for the purpose of clarity and easy comprehension.

11. Learned Counsel for the intended Applicant submitted that:

- a. The intended Applicant’s Father, Rokomatu, (now deceased) had filed the Judicial Review Application No. HBJ 21 of 1997, owing to the dispute, like in the present one, centered around the question as to the appropriate custom applicable to determine the rightful Tui Nadi.
- b. That the dispute is between 2 families, namely within the Tokatoka Nakubukubu family of which the present applicant’s late Father, ROKOMATU ,his late brother KALIOVA, the original Applicant, and the intended applicant are members, and the Nawaitaci Family of which VUNIYANI , the 4<sup>th</sup> Respondent is a member.
- c. That upon the death of the intended Applicant’s Uncle, KALIOVA, he is the only surviving male from the Nakubukubu family as an eligible candidate for the Tui Nadi title.
- d. That, therefore it is only appropriate that he be substituted as the Applicant in place of his uncle KALIOVA in these proceedings as he has privity of blood , title and interest to the title of Tui Nadi .
- e. That it is the present Applicant’s interest and the interest of the Tokatoka Nakuruvakarua that any determination by the 2<sup>nd</sup> Respondent be carried out in accordance with the Consent Orders delivered by Cannors J on 24<sup>th</sup> January, 2007 for the reasons above mentioned.
- f. That upon the installation of the intended Applicant’s late Father, namely, ROKOMATU, to the title of Tui Nadi by the Vanua of Nadi on 21<sup>st</sup> December, 2004, a rival group installed RATU NAPOLIONI NAULIA RAGIGIA DAWAI to be the Tui Nadi and the then Native Land and Fisheries Commission, now iTauki Land Fisheries Commission (ILFC), the 2<sup>nd</sup> Respondent recognized him as the Tui Nadi.
- g. That the present Applicant’s late Father, ROKOMATU, challenged the decision of then NLFC in Court by action No. HBJ 21 of 1997, whereby Townsley J at the High Court of Lautoka in his decision of 16<sup>th</sup> March, 2000, by making certain findings and observations as per paragraph 16

of the Applicant's written submissions, quashed the decision of the NLFC, which had recognized said Ratu Napolini Naulia Dawai to be the Tui Nadi.

- h. That in the Month of March 2004, the intended Applicant's Father, ROKOMATU, passed away and on or about 19<sup>th</sup> October, 2004 the Vanua of Nadi installed the present Applicant's Father's Younger brother, the late Ratu Kaliova Dawai (the original Applicant), to the title of Tui Nadi and the relevant Government Officials were informed by the Vanua.
- i. That on or about April 2005, the NLFC gave a public Notice that it would be convening a Commission of Inquiry at Narewa Village to determine the Tui Nadi dispute, without taking into account the following Court directions delivered on 4<sup>th</sup> December, 1995:
  - a. Independent Commissioners at least one (1) to be nominated by each party to the dispute to sit and decide the dispute.
  - b. That the term of reference for the dispute should be drawn up to ensure fairness in the decision – making process.
- j. That on 11<sup>th</sup> May 2005, the intended Applicant's uncle Kaliova filed the action No; HBJ 04 of 2005 for which Connors –J on 12<sup>th</sup> May, 2005 gave leave and stay. Subsequently, on 24<sup>th</sup> January, 1997, parties consented to the Orders shown in paragraph 8 (d) (1) (i) to (v) above.
- k. That after the said consent Orders were made, the NLFC took no action to convene a Commission of Inquiry in accordance with the Consent Orders.
- l. That the said Consent Orders are binding on the NLFC and the Government of Fiji. They are also binding on Ratu Napolini Naulia Dawai and his Male family members, which includes his Cousin, Ratu Sailosi Dawai, now deceased, and Ratu Vuniyani Vavuciuci , the 4<sup>th</sup> Respondent, as their claims are made on the same basis as Ratu Napolini Noulia Dawai as there is a privity of blood, title and interest within their families on their claim to the Tui Nadi title.
- m. That the same privity of blood, title and interest to their claim to the Tui Nadi title applies to the intended Applicant Asiveni and his family as the claim of his father, Rokomatu, binds the claim of the intended Applicant's uncle Kaliova, and any Male member of the intended Applicant's family.
- n. That upon the passing away of Ratu Napolini Naulia Dawai on 3<sup>rd</sup> October, 2008, the 2<sup>nd</sup> Respondent instead of complying with the Consent Orders of 24<sup>th</sup> January, 2007, proceeded to convene a Commission of Inquiry on 9<sup>th</sup> December, 2011 and declared Ratu Sailosi Dawai to be the Tui Nadi.
- o. That the late Kaliova challenged this finding in the High Court and the matter is pending in the Court of Appeal. However, on or about 2016, Ratu Sailosi Dawai passed away and the 2<sup>nd</sup> Respondent declared his (Sailosi's) younger brother, Ratu Vuniyani Navuniuci, the 4<sup>th</sup> Respondent hereof to the position of Tui Nadi, which decision is challenged by the intended Applicant's Uncle Kaliova in the current substantial proceedings.
- p. That the claim by 4<sup>th</sup> Respondent to the title of Tui Nadi is made on the same basis as that of Ratu Sailosi Dawai, the 4<sup>th</sup> Respondent in HBJ 04 of 2013 and by Ratu Napolini Dawai , the Respondent in JR No. 04 of 2005 and the Respondent in HBJ 0021 of 1997L .

q. That intended Applicant's claim to the Tui Nadi title is also made on the same basis as that of his Father, Rokomatu, the Applicant in HBJ 0021 of 1997, as they being the same family in the itokatoka Nakuruakarua the chiefly family in the Yavusa Navatulevu.

12. The intended Applicant's position is that he seeks for substitution on the principle of privity of blood, title, and interest. My attention has also been drawn to some decided authorities, namely, *Joni Salueirogo Satala v Viliame Bouvalu; CBV No. 0005 of 2006 and Ramasi v Native Lands Commission [2019] FJSC 14; CBV 0014.2018 (25 April 2019)*.

Submissions by the Counsel for the 1st to 3rd Respondents.

13. That this action is not a representative action and the Applicant has to exhaust the process provided under the iTaukei Lands Act 1905 to deal with the disputes on headships. The original Applicant has challenged the decision of the 1<sup>st</sup> Respondent which endorsed the 4<sup>th</sup> Respondent as Tui Nadi only in his personal capacity, and when unsuccessful had taken it further by lodging his Notice & Grounds of Appeal to the Appeal Tribunal and he was unsuccessful before filing this review matter.
14. That there is no pending Court of Appeal case, though leave had been given to appeal out of time, the Court of Appeal refused the 2<sup>nd</sup> Application for the enlargement of time and same being refused, and though it being appealed to the Supreme Court, under CBV 12 of 2019, same was withdrawn by the Applicant and the Respondent had afforded due process to the Applicant.
15. That the action hereof is not a representative action and when the original Applicant died, his case dies with him as his claim is centered on him being the rightful heir to the "Tui Nadi" and not the 4<sup>th</sup> Respondent. That the Respondents had acted within the jurisdiction in determining the matter and there was no element of *ultra-vires* on the part of the Respondents in exercising the power over the matter. The present Applicant has no *locus-standi* in these proceedings and if he so wishes to challenge the decision of the 1<sup>st</sup>-2<sup>nd</sup> Respondents, should and ought to make a reversion to the 2<sup>nd</sup> Respondent and institute Appeal proceedings under the Itaukei Lands Act.

Submissions on behalf of the 4<sup>th</sup> Respondent:

16. That Ratu Kaliova was never installed as Tui Nadi, although he had laid a claim to it, therefore he had no interest as a previous holder of the title of Tui Nadi. That the previous cases referred to do not apply to this Application by Ratu Asiveni. Additionally, the consent Order referred to by Ratu Asiveni, was an unlawful order and of no effect as was also decided in a previous case by Inkoe J and referred to and applied by Nawana-J in Judicial Review no.02 of 2012.
17. That Ratu Kaliova, must have assigned or transmitted or devolved up on Ratu Aviseni a right or interest. In this case the interest would be the title of Tui Nadi. Ratu Kaliova's interest was his claim to the title. Ratu Asiveni has not adduced any evidence to show that Ratu Kaliova had transmitted or assigned it to him.
18. That Kaliova disputed the installation of Vuniaci as Tui nadi in his own name before the 2<sup>nd</sup> and 1<sup>st</sup> Respondents respectively, and the decision by them against Ratu Kaliova, was personal. Ratu Kaliova, instituted the substantial proceedings in his personal name and not for an on behalf of his family members. No express transfer or assignment, therefore cannot rely on Order 15 Rule 8(2).
19. That the Consent order, which, Ratu Asiveni, continues to raise and rely on was and is unlawful and was and is invalid. Previous cases were decided on their own facts. They are not applicable to the

current proceedings. The dispute between Kaliova and Vuniani was a new dispute arising after Vuniani was appointed to the title of Tui Nadi by his king makers. The 2<sup>nd</sup> and the 1<sup>st</sup> Respondents respectively decided the matter on new evidence and both decided that Ratu Vuniani was to be the holder of the Tui Nadi title.

**E. DISCUSSION:**

20. The only issue before the Court, for the time being, is with regard to the substitution of the intended Applicant in place of the deceased Applicant. In this regard, the first question that begs answer is whether on the death of the original Applicant, the cause of action survives or not. If the cause of action, after the death of the original Applicant, is found to be surviving, then the action can proceed unabated as per the Order 15 Rule (8) (1) of the HCR 1988. Parties are not at variance on this position.
21. For the cause of action to survive, after the death of the original Applicant, the action has to be a representative action and not a personal action. If it is found to be a personal one, undoubtedly, the action also is meant to be dead, with the death of the person concerned, warranting the discontinuation of the action.
22. Much has been said on behalf of the Respondents to convince this Court that the action by the deceased Applicant was personal and not a representative one. Counsel for the intended Applicant has left no stone unturned to show that the cause of action of the deceased Applicant was not a personal one, and argued that he came to Court only in his representative capacity on behalf of **Tokatoka Nakubukubu** family, of which the present Applicant, his late Father **Rokomatu**, and the latter's deceased Brother, **Kaliova Dawai**, are claiming to be the members within the same privity of blood. This claim is not disputed by the Respondents.
23. On perusal of the submissions made and the other contents of the record, it is clear that the only dispute that seeks final adjudication through the substantial matter is with regard to the appropriate method that is applicable in determining or choosing as to who should succeed to the title of Tui Nadi.
24. It is also apparent that the tussle hereof is between two (2) families, the first one being the **Tokatoka Nakubukubu**, out of which the deceased Applicant **Kaliova**, his deceased elder brother, **Rokomatu**, and the intended Applicant, being Rokomatu's Son, undisputedly, hail from. The other one is the Nawaitaci Family, out of which the 4<sup>th</sup> Respondent hereof, namely, Vuniani Navuniuci, hails from. This fight for supremacy between two families said to be continuing for last 28 years.
25. The facts that the intended Applicant, Asiveni, is the Son of said Rokomatu, who was the Applicant in the former Action No HBJ-21 of 1997 and the step son of the deceased Applicant hereof, namely, Kaliova Dawai, are also not in dispute. Another argument of the intended Applicant is that like the 4<sup>th</sup> Respondent claim to be the holder of the title for Tui Nadi through his Privity of blood of his family, he (the intended Applicant) too should be able to claim under the Privity to blood of his family.



26. The deceased Applicant hereof, namely, Kaliova Dawai, in his Application before this Court, neither pleaded nor prayed for a relief that he should have been or should be declared as the Tui Nadi. (Vide the reliefs prayed for). All what he wanted was the due procedure be followed and the consent judgment in the former action be adhered to in the process of electing the Tui Nadi.
27. The deceased Applicant's main allegation was that the 1<sup>st</sup> Respondent had failed to address the illegality of the proceedings before the 2<sup>nd</sup> Respondent, where the 2<sup>nd</sup> Respondent, inter-alia, is alleged to have failed to provide a Terms of Reference, Failed to appoint independent Commissioners, had taken into account irrelevant considerations, acted in breach of the Rules of Natural Justice, acted illegally and unlawfully, willfully breached the Court Orders and the legal rights of the Applicant, by failing to comply with the consent Orders made on 24<sup>th</sup> January, 2007 in previous Application No. HBJ- 21 of 1997.
28. This shows that the Original Applicant's Application for Judicial Review in hand does not solely rely on the facts and circumstances confined to the deceased Applicant or his personal affairs alone, but inter-woven with various other matters that have unfolded before the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and before the High Court in former actions during the last 28 years of laborious litigation concerning the very issue as to the mode of succession to the title of Tui Nadi. This cannot be viewed or considered as a matter personal or limited to the Original Applicant alone.
29. The deceased Applicant, Kaliova Dawai, and his own Brother, Rokomatu ,have struggled all these years by instituting number of Applications in court to finally see that a proper mechanism is in place with regard to the mode of succession for the title of the Tui Nadi, which clearly appears to be, not for their own benefit , but for that of the community they claimed to have represented. The intended Applicant, who enjoys the same privity of blood, should be able to continue with the action from the point where the deceased Applicant left, in order to obtain a final decision as to the correct mode of succession to the title of Tui Nadi once and for all.
30. However, a final decision in the substantial matter hereof is not going to award the disputed title to the intended Applicant on a platter or vindicate or declare any right personal to him. All what will result at the end of the day, if the Application becomes successful, is a ruling on the most appropriate mode of selection for the succession of the said title, through which process a person from either of the families could be selected or elected to hold the title.
31. The determination of the Court on the current issue once and for all, not only will bind the present claimants to the Tui Nadi title, but also will bring finality to the issues between the Nawaitaci Family and the Nakubukubu Family on the issue of succession to the Tui Nadi title for the future as well.
32. If the substitution is not effected and the matter is not proceeded with, the issue will persist and the question will remain unanswered as to what is the correct method for succession to the title of Tui Nadi, as to whether it is by way of election and seniority as claimed by the Applicant or by way of succession to the title according to the Customs and Traditions of Nawaitaci Family?

33. The next question is whether the Orders of the High Court dated 12<sup>th</sup> May, 2005 and 24<sup>th</sup> January, 2007 are to be observed in breach which confer rights to the Applicant and those who are privy to the blood, title and interest and binding on the Respondents including the 4<sup>th</sup> Respondent and his family?. The High Court Orders and the Terms of settlement still remain intact and those have not been set aside or altered so far by a competent Court.
34. The intended Applicant cannot now be asked to go before the Appeal Tribunal. The deceased Applicant was properly before this Court and was granted leave to proceed with his matter.
35. Further, I find that the action in hand is not personal to the deceased Applicant and it survives his death in terms of the Law Reforms (Miscellaneous) Provisions (Death and Interest) Act of 1935, and accordingly the substantial action can be continued with the due substitution being effected.

**F. CONCLUSION:**

36. For the reasons adumbrated above, this Court decides to overrule the objections raised on behalf of the Respondents for the substitution of the intended Applicant in place of the deceased Applicant. I allow the substitution of the present Applicant and reserve the Order on Costs.

**G. FINAL ORDERS:**

- a. The Application for the substitution is allowed.
- b. The objection raised on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Respondents for the substitution is overruled.
- c. The intended Applicant shall be substituted in place of the deceased Applicant.
- d. The caption shall be amended accordingly.
- e. Order on costs reserved.



**A.M. Mohamed Mackie**  
Judge



At High Court Lautoka, on this 23<sup>rd</sup> day of January, 2023.

**SOLICITORS:**

**For the Applicant:**

**For the 1<sup>st</sup> – 3<sup>rd</sup> Respondents:**

**For the 4<sup>th</sup> Respondent:**

Fa & Company for

Office of the Attorney General

Valenitabua & Associates