

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. 167 of 2021

BETWEEN

SIKELI NAITALIA NAVUSO, AKUILA MERE, VASITI QASIWALE, PENAIYA TABUA,
JOPE RAKAUTOGA RAVIA, JOSEVA RAVIA, SAKIUSA BAICULACULA, EMELE
VUREIMATA & MALAKAI DAVUIQALITA SALAVAKALIA as Trustees of MATAQALI
LOMANIKORO of Duanuku, Colo-i-Suva Village.

PLAINTIFF

AND

SAVENACA TUIVAGA of Batinivatu Uluibeka Settlement, Colo-i-Suva.

1st DEFENDANT

AND

iTAUKEI LAND COMMISSION a statutory organization established under

iTaukei Lands Act 1905

2nd DEFENDANT

Counsel : Mr. M. Young for the Plaintiff
Mr. J. Vulakouvaki. for the 1st Defendant
Ms. G. Naigulevu for the 2nd Defendant

Date of Hearing : 04th November 2022

Date of Judgment : 24th May 2023

JUDGMENT

- [1] The Plaintiff filed this Originating Summons seeking following declarations and orders.
- a. That Mataqali Lomanikoro is the customary owners of the Land known as Batinivatu also known as Uluibeka.
 - b. That the Defendant has illegally built a home on land belonging to the Mataqali Lomanikoro.
 - c. Costs on indemnity basis.
 - d. Any other orders Court deems fit.
- [2] There had been an earlier application by the Plaintiff for an interim injunction which the Court had refused.
- [3] The affidavit of Jope Rakautoga Tabualawa Ravia states that he is one of the nine trustees of the Plaintiff. According to him the 1st Defendant illegally occupying a land within Uluibeka settlement also known as Batinivatu owned by Mataqali Lomanikoro. Mataqali Lomanoikoro are the customary owners of 530 acres of iTaukei land in Colo-i-Suva. Tokatoka Lomanikoro and Tokatoka Nalawe are the two sub clans that made up the land owning unit of Mataqali Lomanikoro. Plaintiff states that any developments or activities on the said land must be done with the consent of the Mataqali as a whole. The 1st Defendant is not a registered member of Mataqali Lomanikoro. His forefathers have asked the Head of Mataqali to reside on the land for the purpose of work and education. The

Plaintiff states that they should move out now as those intentions have been fulfilled and that Mataqali Lomanikoro has limited reserve land left for their future generations.

- [4] The 1st Defendant's construction on the land has caused disharmony amongst the members of the community. The Plaintiff has issued a Notice to Stop Work to the 1st Defendant on or about 24th April 2021. Subsequently on 26th July 2021 the Plaintiff has issued a 'Notice to Quit' to the 1st Defendant through their Solicitors.
- [5] The 1st Defendant in his affidavit in opposition avers that he has been residing on the said land all his life as his grandfather was the first to arrive and resided in the settlement since 1940. He further states that Tokatoka Nalawe has given him the permission to build his property.
- [6] The Chairman of the iTaukei Lands and Fisheries Commission on behalf of the 2nd Defendant states that Mataqali Lomanikoro has been the proprietary land owning unit of the land known as Batiniyatu. The 2nd Defendant's position is that any development in any iTaukei Land falls outside the scope of the statutory duties of them.

Locus Standi of the Plaintiff

- [7] The 1st Defendant claims that the Plaintiff doesn't have *locus standi* to institute these proceedings. In their affidavit in reply to the affidavit in opposition of the 1st Defendant, the Plaintiff provides a Trust Deed of the Mataqali Lomanikoro dated 06th January 2021. The Court notes that the said Trust Deed provides the Trustees, authority to deal with any financial matters relating to Mataqali. It does not specify whether legal actions such as this current application can be instituted by the Trustees relying on the authority given under the Trust Deed. Without expressed authority, I am of the view that the Plaintiff is unable to depend on the Trust Deed to institute this action.
- [8] There is another letter dated 03rd July 2021 together with a list of signatories provided in the affidavit in support of the Plaintiff. The letter specifically states that the 'Mataqali

Lomanikoro beneficiaries' have given their consent for the Trust to institute legal proceedings against the 1st Defendant for building a house in concrete structure without the consent of the majority members of Mataqali. The attachment carries names and signatures of 39 individuals with a stamp of the 2nd Defendant certifying the details of VKB register. According to the certification there are 80 surviving members and out of them 67 are over the age of 18. It is to be noted that the affidavit in support of the initial injunction application too has the same attachment certified a day after the certification of the earlier mentioned certificate. It has 41 signatories.

- [9] As I have mentioned earlier Mataqali Lomanikoro is made up of two Tokatoka (sub clans). Tokatoka Lomanikoro and Tokatoka Nalawe. According to the copies of the registrations of the two Tokatoka, the Plaintiff has only provided majority consent signatures of Tokatoka Lomanikoro. The authorization to institute the current proceedings is therefore given by the members of the Tokatoka Lomanikoro and without the majority consent of Tokatoka Nalawe, it cannot be considered as consent of Mataqali Lomanikoro.
- [10] His Lordship Rooney J in **Bavadra v Native Land Trust Board** Civil Action 421 of 1986 held that individual members of a Mataqali or other Fijian landowning unit have no right to institute proceedings in Court. "This was so held in the case of **Meli Kaliavu & Others v. Native Land Trust Board** 5 FLR 17. That decision was re-affirmed recently in **Namisio Dikau v. N.L.T.B.** (801/1984, unreported). Even if the Plaintiff could show that he had the support of the majority of the adult members of the landholding unit this would not necessarily give him or the people he represents the right to sue. That depends on the nature of a Fijian landholding unit. As I said in the Dikau case (supra) "a Mataqali cannot be equated with any institution known and recognised by common law or statute of general application. The composition, function and management of a Mataqali and the regulation of the rights of members in relation to each other and to persons and things

outside it are governed by a customary law separate from and independent of the general law administered in this Court".

- [11] In **Vunisa v Director of Lands** [2001] 2 FLR 343 the Byrne J held "**Ro Alivereti Lagamu Tuisawau and Others v Fiji Industries Limited** HBC164 of 1997 in my unreported judgment of the 9th of July 1998 following *Meli Kaliavu* and *Bavadra* I ruled that individual members of a Mataqali who cannot produce evidence of consent from other members of the Mataqali to act on their behalf did not have locus to commence proceedings. This simply means that each member of the Mataqali has equal rights and their consent needs to be obtained before any action is taken on their behalf".
- [12] Therefore it is clear that the Plaintiff has only obtained consent of almost half of one Tokatoka and it cannot be considered as consent by Mataqali Lomanikoro to institute this legal proceedings against the 1st Defendant.
- [13] The fate of this action could be determined on this point alone.

Declaratory Orders sought

- [14] The Plaintiff has sought a declaratory order to the effect that Mataqali Lomanikoro is the customary owners of the land known as Batinivatu. The 1st Defendant has no dispute on this fact. In fact he has expressly admitted this in his affidavit in opposition. Therefore Court sees no reason to make a separate declaration.
- [15] Secondly the Plaintiff wants the Court to declare that the 1st Defendant has illegally built a home on the said land.
- [16] In **Anisminic Limited v The Foreign Compensation Commission** (1968) 2 QB 862 AT 910 Diplock L.J. (as he then was) said:
"The jurisdiction to give declaratory judgments is limited to declaring the existence of legally enforceable rights or liabilities."

- [17] In **Malone v Metropolitan Police Commissioner** (1979) 2 All ER 620 at 627 Megarry V.C. held that the Court's power to make declaratory judgments or orders is confined to matters justiciable in the Courts, meaning legal or equitable rights and not moral, social or even political matters.
- [18] In **Mutasa v Attorney-General** (1980) QB 114 the Court refused declaratory relief on the ground that the matter before it involved only an imperfect obligation.
- [19] The legislature relating to iTaukei land rights identifies 'Land Owning Units' as opposed to individuals. As I have mentioned earlier the Plaintiff of this action is a group of individuals in a sub clan of the main land owning unit. If the Court recognises rights vested on a larger unit to smaller groups or individuals that would in my view defeat the intentions of the legislature.
- [20] Therefore I am of the view that the group of individuals in this action do not have an enforceable right before the Court. Accordingly the Court makes following orders.

ORDERS

1. The Originating Summons of the Plaintiff is hereby dismissed.
2. Parties to bear cost.



A handwritten signature in black ink, appearing to read 'Yohan Liyanage'.

Yohan Liyanage

JUDGE

At Suva on 24th May 2023