

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

CIVIL ACTION NO.: HBC 302 of 2019

**BETWEEN : NAVUANIWI INVESTMENT
PLAINTIFF**

**AND : VUTA OSBORNE
FIRST DEFENDANT**

**: SUSAN EVENING
SECOND DEFENDANT**

**: JALE ERONI WAKANA
THIRD DEFENDANT**

**: VARAUNI VUETA
FOURTH DEFENDANT**

**: JOSAIIA NAITAU
FIFTH DEFENDANT**

**: ASINATE LIKU
SIXTH DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. N. Tuifagalele [Tuifagalele Legal]

**FIRST & SECOND
DEFENDANTS : No Appearance made [Law Solutions]**

THIRD DEFENDANT : No Appearance Entered

FOURTH DEFENDANT: No Appearance Entered

FIFTH DEFENDANT : No Appearance Entered

SIXTH DEFENDANT : Mr. N Nawaikula with Ms. S. Ratu [Nawaikula Esquire]

RULING BY : Master Ms Vandhana Lal

DELIVERED ON : 15 August 2023

JUDGMENT

1. The Plaintiff has brought the proceeding pursuant to section 169 of the Land Transfer Act asking the Defendants to show cause why they should not give up possession of property described as Agreement for lease for Development purpose being ITLTB ref no. 4/16/3060 known as Uluniwai (part of).
2. The Plaintiff is running a business under the name of Nikotimo Daunirukua which is a land development and real estate consultancy.
3. The property in question is located at Kaunitoni Street, Delainavesi, Lami and the Plaintiff holds an agreement for lease for development purpose.

According to the Plaintiff, the Defendants are squatting on the land and have been served with notice to quit.

The Defendants have failed to vacate the property.

4. The First; Second and Sixth Defendants have filed their opposition to the application which is summarized as follows:

First Defendant

She denies she is a trespasser and states she is on the land by virtue of customs and traditions. According to her, in accordance with the iTaukei customs and traditions, upon presentation of the whale's tooth and kerosene to the landowner and upon acceptance of the presentations, the parcel of land allocated by the landowner remains with the family in perpetuity.

Her husband John Osborne lived on the property for over 70 years and she came to live there upon marrying him in 1972.

The land owner passed away some 10 years ago without give her any proper lease or consent to lease.

The registered proprietor of the land is Yavusa Naulumatua, Nayavumata and Vatuwaqa of the village of Suvavou.

Second Defendant

The Plaintiff is not the registered proprietor and cannot claim to be one by virtue of being issued with an Agreement to lease.

Her husband and she had traditionally approached the land owners bearing gifts of whales tooth and other things for a piece of land to build their house.

This was accepted by the landowners and hence they were allocated the land and they have been living on it for 50 years.

They were never informed by the landlords that the land was earmarked for development.

They paid \$10 per month to assist with the fencing of coconut trees, payment of land rates. The Second Defendant claims to have a letter dated 13th August 2019 giving the second Defendant and her husband leave over the piece of land she and her husband were occupying.

Sixth Defendant

According to the Sixth Defendant, her husband and the children are member of the land owing unit, Yavusa Nauluvatu, Nayavumata and Vatuwaqa and are registered AI VOLA NI KAWA.

She and her family are occupying the land since 1996.

That ITLTB is forbidden by law to grant lease to land beneficially occupied.

Her lawyer on 08th March 2019 wrote to ITLTB to get conformation how the land was leased to the Plaintiff and seeking the Board's intervention.

The Turaga Ni Yavusa Nauluvatu, Turaga and Turaga ni Mataqali have given a letter of conformation of residency.

Determination

5. The I-Taukei Lands Act deals with i-Taukei lands and in particular Section 3 of the Act deals with the tenure of the i-Taukei lands by i-Taukei Affairs Board and it reads:

"i-Taukei lands shall be held by i-Taukei according to i-Taukei custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by i-Taukei as amongst themselves according to them i-Taukei customs and subject to any regulations made by the i-Taukei Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst i-Taukei is relevant all courts of law shall decide such disputes according to such regulation or i-Taukei custom and usage which shall be ascertained as a matter of facts by examination of witnesses capable of throwing light thereupon".

6. Pursuant to Section 4 of the i-Taukei Land Trust Act the control of all i-Taukei land shall be vested with the i-Taukei Land Trust Board and the land shall be administered by the Board for the benefit of the i-Taukei owners or for the benefit of the i-Taukei.
7. Pursuant to Section 9 of the i-Taukei Land Trust Act:

8. *“No i-Taukei land shall be dealt with by way of lease or license under the provision of this Act unless the Board is satisfied that the land proposed to be made the subject of such lease or license is not being beneficially occupied by the i-Taukei owners, and is not likely during the currency of such lease or license to be required by the i-Taukei owners for their use, maintenance or support”.*
9. This application is brought under Section 169 of the Land Transfer Act.
10. Subsection A allows the last registered proprietor to summon a person to show cause.
11. The Plaintiff relies upon an agreement for lease for development purpose.
12. Is the Plaintiff the last registered proprietor of the subject piece of land?
13. Section 10(1) of the iTaukei Land Trust Act requires for leases *“to be recorded in a register to be kept by the Registrar of Titles.”*
14. And under subsection (2) when a lease has been registered it shall be subject to the provision of the Land Transfer Act.
15. In the current proceeding the said lease has not been registered with the Registrar of Titles. Hence the provision of Section 169 cannot be applied.
16. Furthermore, I do not find it proper that the issues can be heard and resolved on the originating summon and affidavit evidence.
17. There are issues that need to be dealt pursuant to Section 3 of i-Taukei Land Act after examination if capable witnesses or the Plaintiff can exercise its right under Section 4 of the said Act.
18. The application for eviction is struck off.

19. Parties to bear own costs.



.....
Vandhana Lal [Ms]
Master
At Suva.

15 August 2023

TO:

1. **Suva High Court Civil File No. HBC 302 of 2019;**
2. **Tuifagalele Legal, Solicitors for the Plaintiff;**
3. **Law Solutions, Solicitors for the First & Second Defendants;**
4. **The above named Third; Fourth and Fifth Defendants;**
5. **Nawaikula Esquire, Solicitors for the Sixth Defendant.**