

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

CIVIL ACTION NO. HBJ 2 of 2023

IN THE MATTER of an Application by ANIL DEO for a Judicial Review under Order 53, of the High Court Rules 1988

IN THE MATTER of the Decision of the CENTRAL AGRICULTURAL TRIBUNAL dated 16th January 2023 in Central Agricultural Tribunal Reference No. 1 of 2022

BETWEEN : **ANIL DEO** formerly of Raviravi, Ba but now 11/113 Wallace Road, Papatoetoe, Auckland, New Zealand.

FIRST APPLICANT

AND : **PRAVIN DEO** of Raviravi, Ba, Mechanic

SECOND APPLICANT

AND : **SALWINDRA KALI NAIDU** of Raviravi, Ba, Legal Clerk

FIRST RESPONDENT

AND : **DIRECTOR OF LANDS**, Tavewa Avenue, Lautoka

SECOND RESPONDENT

AND : **AGRICULTURAL TRIBUNAL**

THIRD RESPONDENT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. Padarath N. with Ms. Singh, for the Applicants
Mr. Daveta F. on instructions, for the 1st Respondent
Mr. Kant S., for the 2nd Respondent
Ms. Raman J., for the 3rd Respondent

WRITTEN SUBMISSIONS: Filed on 9th November 2023 by both the Applicants
Filed on 3rd November 2023 by the First Respondent

HEARING : 2nd November, 2023.

DATE OF DECISION : 21st February, 2024

RULING

A. INTRODUCTION:

1. Before me is an Application by the First and Second named Applicants hereof, namely, ANIL DEO and PRAVIN DEO, preferred pursuant to Order 53 Rule 3 (2) of the High Court Rule.

2. By their Application dated and filed on 14th April 2023 the Applicants are seeking , inter alia, leave to apply for judicial review of the decision of the Central Agricultural Tribunal (the third Respondent)in Appeal No-01 of 2022, pronounced on 16th January 2023 making the following orders;
 - a. *The appeal of the appellants is dismissed.*
 - b. *The matter is referred back to the Agricultural Tribunal.*
 - c. *The appellants are ordered to pay \$2000.00 (\$1000.00 to each respondents) as costs of this appeal.*
3. The Application is supported by an Affidavit sworn by **Pravin Deo**, the 2nd named Applicant, on behalf of the first named Applicant, claiming to be his Power of Attorney Holder.
4. The leave for judicial review sought is pursuant to Order 53 Rule 3 (2) of the High Court Rules, as amended (HCR). The Applicants in their Inter parte Summons also moved for the stay of the proceedings of Reference No-WD 11 of 2018 in the Agricultural Tribunal until final determination of this judicial review.
5. Opposing the Application, the first Respondent, namely, SALVENDRA KALI NAIUDU filed an Affidavit sworn on 12th May 2023, together with annexures marked as “SKN-1” to “SKN-6”. He opposes the application on the grounds that:
 - i. The Power of Attorney does not authorize Pravin Deo to institute or defend any action in a Court of Law on behalf of the first Applicant.
 - ii. The 2nd Applicant Pravin Deo has no *locus standi* to litigate in regard to the former State Lease No-9453 on the basis of the attached Power of Attorney as the said lease expired on 25th September 2011, while the Power of Attorney was registered on 21st August 2012.
 - iii. The first Respondent Anil Deo is a non-Resident of Fiji and lived outside Fiji from the year 2003 and never worked in the Farm in question and he intended to divest himself of the said Lease, hence the sale to him in 2010 and cultivation.
 - iv. His (1st Respondent’s) occupation and cultivation of it is on his own right and he had obtained injunctive orders in order to preserve the status quo.
 - v. That the second Applicant was made a party since he started to obstruct first Respondent’s pathway to the cane-field in question.
6. Learned Counsel for the Second Respondent indicated that he will not be filing any Affidavit. Instead of naming the “Central Agricultural Tribunal” as the third Respondent, inadvertently, the “Agricultural Tribunal” was named as the third

Respondent. This error stood corrected as the Applicants' Counsel pleaded it as a typing error.

7. It is to be observed that neither the First nor the Second Applicants filed any reply Affidavit to the Affidavit in opposition filed by the First Respondent.
8. When the matter came up for hearing on 02nd November 2023, counsel for the Applicants and the first Respondent moved to dispose the hearing by way of written submissions. Accordingly, both counsel have filed their respective written submissions as stated above.

B. BACKGROUND:

9. On 17th December 2021, the Agricultural Tribunal in Lautoka, dismissed an Application made by the Applicants hereof to strike out the Application for declaration of Tenancy that had been filed by the first Respondent.
10. The said Application to strike out the Application for declaration of Tenancy (Reference No- WD 11 of 2018), was made on the following grounds;
 1. The first Respondent has not been in continuous occupation and cultivation for a period of 3 years of Lot 1 BA 2406 (part of) Raviravi and Crown Lease No- 9453 –LD 4/7/1560.
 2. The first Respondent had previously filed an Agricultural Tribunal Reference being Tribunal Reference Number WD 9 of 2012 in relation to the above Lease and Land. This reference was decided on merits and the Tribunal had denied the Applicant a declaration of Tenancy.
 3. The current application before the Tribunal is in relation to the same land and lease stated above and has the same issues. The current Application is an abuse of process as the issues to be decided on have already been determined in Tribunal Reference No- WD 9 of 2012.
11. The Applicant appealed the decision of the Agricultural Tribunal to the Central Agricultural Tribunal on the following grounds.
 - a. *The Tribunal erred in law at paragraph 10 by indicating that the reference before the tribunal required adjudication on Section 3 of the Agricultural Landlord and Tenant Act, when the only presumption to determine is under Section 4 of the Agricultural Landlord and Tenant Act, wherein the relevant issue of the occupation under Section 4 was determined in WD 09 of 2012.*
 - b. *The Tribunal erred in law and in fact when it identified at paragraph 10 that the Tribunal did not make any determination on Section 4 and Section 5 of the Agricultural Landlord and Tenant Act when the Tribunal in WD 09 of 2012 made a declaration that no presumption of tenancy was established under Section 4 and 5 of the Agricultural Landlord and Tenant Act.*

- c. *The Tribunal erred in law by not giving adequate reasons and failed in its duty to adequately address the principle of Res judicata when the reference and the fact relayed on were identical to WD 09 of 2012.*
 - d. *The Tribunal erred in law and in fact by not taking notice of the Court orders which allowed the Frist Respondent to cultivate only until final determination of WD 09 of 2012 where in such orders came to an end upon determined in WD 09 of 2012*
12. On 16th January 2023, the Central Agricultural Tribunal dismissed the said Appeal by agreeing with the decision of the Agricultural Tribunal, in particular that the previous matter (WD 09 of 2012) had not been decided on its merits as such the principles of Res Judicata could not be applied.
13. Now the Applicant seeks leave from this Court to judicially review the said decision on the grounds that the third Respondent Central Agricultural Tribunal erred in law and went beyond its jurisdiction and ultra vires.

C. THE RELIEF SOUGHT:

14. The Applicant seeks the following reliefs:
- a. AN ORDER OR CERTIORARI to remove the said decision of the third Respondent AGRICULTURAL TRIBUNAL made on the 16th January 2023 into this Honorable Court and that the same be quashed.
 - b. AN ORDER OF MANDAMUS directing the CENTRAL AGRICULTURAL TRIBUNAL to allow the Appeal of the Applicants from the Agricultural Tribunal and to :-
 - a. Order that the Application for Declaration of the first Respondent bearing reference number WD 11 of 2018 be dismissed.
 - b. That the first Respondent is not a tenant of the Applicants and is not entitled to a presumption of Tenancy under the Agricultural Landlord and Tenancy Act.
 - c. Further declaration or other reliefs as to this Honorable Court may deem just.
 - d. Costs of this Action.

D. THE GROUNDS ON WHICH RELIEF IS SOUGHT:

- 15.1 The Central Agricultural Tribunal erred in law and went beyond its jurisdiction and acted ultra vires when it dismissed the appeal of the Applicant and failed to apply the principles of Res Judicata especially when the facts relied on by the first Respondent were identical in reference number WD 09 of 2012.
- 15.2 The Central Agricultural Tribunal erred in law by not giving adequate consideration to the provisions of the Agricultural Landlord and Tenancy Act, especially that the

presumption of tenancy required cultivation of 3 years, which consideration is not a preliminary issue of law, but rather a fundamental requirement under the Act.

E. THE LAW:

16 The relevant law in relation to leave for judicial review is found under HCR O.53, r. 3 (2), and which provides:

'Grant of leave to apply for judicial review (O.53, r.3)

- 3.-(1) *No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.*
- (2) *An application for leave must be made upon filing in the Registry: a notice in Form 32 in the Appendix hereunder containing statement of-*
- (i) Particulars of the judgment order, decision or other proceedings in respect of which judicial review is being sought;*
 - (ii) the relief sought and the grounds upon which it is sought;*
 - (iii) the name and description of the applicant;*
 - (iv) the name and address of applicant's Solicitors (if any); and*

 - (v) the applicant address for service;*
 - (vi) an affidavit which verifies the facts relied on.*
- (3) (i) *Copies of the application for leave and the affidavit in support must be served on all persons directly affected by the application.*
- (ii) *The Court may determine the application without a hearing and where a hearing is considered necessary the Court shall hear and determine the application inter partes.*
- (iii) *Notice of hearing of the application shall be notified in writing to the parties by Registrar.*
- (iv) *Where the Court determines the application without a hearing the Registrar shall serve a copy of the order of the Court on the applicant.*
- (4) *Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the relief sought and the grounds thereof to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.*
- (5) *The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. (Emphasis provided)*
- (6) *Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may*

adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where leave to apply for judicial review is granted, then-

(a)if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b)if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

(9)Upon granting leave the Court may, if satisfied that such a course is justified, direct that the grant shall operate either forthwith or conditionally as an entry of motion under rule 5 (4) and may then proceed to Judgment on the application for judicial review or may give such further directions as may be warranted in the circumstances.'

F. DISCUSSION:

- 17 The Applicants seek leave to apply for judicial review of the third Respondent's decision made on 16th January 2023.
- 18 The Applicants have filed a statement of the particulars of the decision in respect of which judicial review is being sought. The Applicants seek , inter alia, orders in the nature of CERTIORARI (quashing orders) and MANDAMUS (Mandatory order) directing the CENTRAL AGRICULTURAL TRIBUNAL to allow the Appeal of the Applicants from the Agricultural Tribunal and for other ancillary orders thereunder.
- 19 The Application gives name, description and address of the Applicants. The Application provides all the details as required in O.53, r.3 (2) (a) of the HCR. The Application in my view is in order. Parties were not at variance with regard to the formality of the Application.
- 20 The Applicants have filed an Affidavit verifying the facts relied on pursuant to O.53, r.3 (2) (b) of the HCR. The Affidavit is sworn by the Second named Applicant Pravin Deo for and on behalf of the first named Applicant Anil Deo by relying on the purported authority given by the disputed Power of Attorney. The Power of Attorney is marked as "PD -1" and filed along with it.
- 21 The first Respondent challenges the Application on the basis that the impugned Power of Attorney does not authorize Pravin Deo to institute or defend any action in a Court of Law on behalf of the first Applicant.

- 22 It is also observed that the Affidavit in support has been sworn by the second named Applicant Pravin Deo for and on behalf of the first named Applicant Anil Deo without any authority to swear an Affidavit on his behalf. I don't find even any other form of authority given to swear the Affidavit in support, other than the disputed Power of Attorney.
- 23 Upon perusal of the said Power of Attorney, said to have been given by the first named Applicant, it is obvious that the said Power of Attorney does not give any authority to file and prosecute or to defend any action in any Court of law or Tribunal. If the first named Applicant was so desirous and keen to maintain the proceedings at the Tribunal and/or at any Court in relation to the property for which he claims interest, he could very well have given an updated Power of Attorney inclusive of necessary authority for the purpose of this action as well, than relying on the impugned Power of Attorney given way back in the year 2012.
- 24 There is no evidence to show that the said Power of Attorney is still in force without being revoked, by swearing an Affidavit by the First and/or the Second Applicant to the effect that his Power of Attorney is still in force. This Power of Attorney was given in the year 2012 for the only purpose of managing the Sugar Cane Cultivation and to deal with the Fiji sugar Corporation.
- 25 In the absence of any evidence for the validity and existence of the power of Attorney in question, the inference that can be safely arrived at is that the Second Applicant is in an attempt to use this Power of attorney in order to achieve an ulterior motive.
- 26 There is no any explanation on the part of the Applicants (in paragraph 19 of the disputed Affidavit in support) as to why the 2nd named Applicant was made a party to this Application rather than allowing him to remain as the Power of Attorney holder of the first named Applicant, provided the said Power of Attorney serves the purpose. No evidence whatsoever was adduced to show that the Second named Applicant has any interest in the subject matter land. It is only the First Respondent in paragraph 8 of his Affidavit in response states that the second named Applicant is made a party as he had obstructed the First Respondent's pathway to the canfield in question.
- 27 Discretion and personal knowledge is needed to swear an Affidavit. It is also observed that no any form authority has been given to the second named Applicant by the first named Applicant to swear the impugned Affidavit.
- 28 I therefore accept the argument advanced on behalf of the first Respondent that the second Applicant has no authority to represent the First named Applicant to prosecute and proceed with this matter or to swear an Affidavit in support on behalf of the first named Applicant. The impugned Power of Attorney does not authorize the Second name Applicant, who is the deponent of the Affidavit in support, to conduct legal proceedings in a Court of law for and on behalf of Anil Deo, the first named Applicant.

- 29 The impugned decision was delivered on 16th January 2023 by the third Respondent, Central Agricultural Tribunal. The Applicants have filed this Application on 14th April 2023. The Applicants are well within the time frame.
- 30 Another threshold the Applicants have to meet pursuant to O.53, r. 3 (5) is 'standing'. According to this rule the court will not grant leave unless it considers that the Applicant/s has a sufficient interest in the matter to which the Application relates.
- 31 The first Respondent contended that the first named Applicant Ani Deo is a non-Resident of Fiji and lives outside Fiji from the year 2003 and never worked in the farm in question. No evidence to show that the First or the Second Applicants at this point in time have any legal right or interest over Crown Lease No. 9453. The lease, admittedly, remain expired. All rights and interests have reverted back to the State and this Court at this juncture should not interfere with the functions of the Second Respondent Director of Land or in that of the Agricultural Tribunal, which is yet to hear and determine the Application before it under section 4 and 5 of the ALTA.
- 32 Neither the first named Applicant nor the Second named Applicant has a valid lease, and the same stands expired and there is nothing on the record to suggest that the First or the Second named Applicant has applied for renewal. In the circumstances, in my view, the Applicants cannot say that personal rights are affected by the decision sought to be reviewed judicially.
- 33 The Court shall not grant leave unless it considers that the Applicant has a sufficient interest in the matter to which the Application relates (O.53, r.3 (5)).
- 34 The phrase 'sufficient interest' has been given wide interpretation by the courts. They will assess the extent of the claimant's interest against the factual and legal circumstances of the claim. The test for deciding whether a claimant has sufficient interest was considered by the House of Lords in R v Inland Revenue Commissioners, ex parte National Federation of Self-Self-Employed and Small Business Ltd[1981] UKHL 2; [1982] AC 617. The court held:
- 'That not only was standing a ground in itself upon which permission could be granted, it should also be considered at the substantive hearing after the relevant law and facts were examined in full.'*
- 35 The impugned decision made by the third Respondent CAT, which is sought to be reviewed does not warrant any intervention by this Court in the form of judicial Review. The impugned Ruling by the third Respondent was not the end of the matter. The Matter will proceed before the Agricultural Tribunal, which will make its finding as per the applicable law. The Applicants have not demonstrated any tangible interest. The lease of the property for which the first applicant was the proprietor has expired.

G. CONCLUSION:

36 The Affidavit that verifies the facts relied on by the Applicants has not been sworn by the first Applicant, but his attorney without apparent authority. As such, there is no proper verifying Affidavit. Moreover, the lease granted to the first named Applicant has expired. As a result of it, all rights and interest have reverted back to the State. The decision to be reviewed is made in respect of the land covered by the expired lease. There is nothing on the record to show that the first named Applicant has applied for renewal of the same. In the circumstances, the Applicants fail to establish that they have sufficient interest in the matter to which the Application relates. The Applicants have not exhausted their remedy before the Agricultural Tribunal. I would therefore refuse to grant leave to apply for judicial review. Considering the circumstances, I would order the Applicants to jointly and severally pay a summarily assessed costs of \$500.00 to the first Respondent.

H. FINAL OUTCOME:

- A. Application seeking leave to apply for judicial review refused.
- B. Applicants shall pay unto the 1st Respondent a summarily assessed costs of \$500.00.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 21st day of February, 2024.

SOLICITORS:

For the Applicants:	Samuel Ram Lawyers, Barrister and Solicitor
For the 1st Respondent:	Messrs Fazilat Shah Legal, Barristers & Solicitors
For the 2nd Respondent:	Attorney General's Chambers.