

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

**Civil Action No. 100 of 2017**

**BETWEEN** : **RAJENDRA NARAYAN** and **KALYANI** both of Nasoso, Nadi, Self Employed and Domestic Duties respectively.

**PLAINTIFFS**

**AND** : **i-TAUKEILAND TRUST BOARD** a statutory body established under the *i-Taukei Land Trust Act Cap 134* having its registered office at 431 Victoria Parade, Suva.

**DEFENDANT**

Appearances : Mr. Lutumailagi S for the Plaintiffs  
Mr. Cati J for the Defendant

Date of Trial : 18 August 2022  
Date of Ruling : 02 August 2024

## **J U D G M E N T**

### **INTRODUCTION**

1. This matter was tried on 18 August 2022. For the plaintiffs' case, Rajendra Narayan (**PW1**) was the only witness who was called to give evidence. The defendant called the following witnesses:

- |      |  |  |             |
|------|--|--|-------------|
| (i)  | Anil Kumar (63 years)                  | 33 Anstey Street 2325 Cessnock, NSW<br>Austraia,<br>Winery Worker. | <b>DW1.</b> |
| (ii) | Suliasi Tauyavu Sereiwai<br>(53 years) | Estate Assistant   | <b>DW2</b>  |

## **BACKGROUND**

2. The plaintiffs, Rajendra Narayan (**PW1**) and Kalyani are husband and wife. They are aggrieved by *i*-TLTB's action in consenting to, and in facilitating the transfer and the registration of a certain lease in favour of one Anil Kumar ("**Anil**" - **DW1**).
3. **DW1** is actually **PW1**'s brother.
4. The lease in question is legally described as Native Lease No: 500 34824 Sanasana (pt. of) Lot 1 in Province of Ba in District of Nadi comprised of 784 square meters.
5. The land which is comprised in the lease is situated in Nasoso in Nadi ("**Nasoso property**").

### ***Early Life in Lomawai***

6. This is a case of a family arrangement which went wrong. The arrangement involved Rajendra Narayan (**PW1**) and his two brothers Anil (**DW1**) and Parmendra.
7. Rajendra, Anil and Parmendra all lived with their parents on a piece of agricultural lease in Lomawai near Sigatoka ("**Lomawai lease**"). At some point in time, Anil left Fiji and emigrated to Australia where he now lives and works with his family.
8. Rajendra, as he admitted in cross-examination, did not keep a steady job. He received a very a modest amount in wages whenever he was engaged in some form of paid labour.
9. By all accounts, the brothers were very close. They loved their mother dearly.

### ***Expiring Lomawai Lease***

10. On or about 2006, the Lomawai lease was set to expire. The brothers were concerned about the well-being of their ailing mother. Accordingly, the brothers then entered into an arrangement.

### ***Family Arrangement***

11. The arrangement was between Anil (**DW1**) and Rajendra (**PW1**). As stated above, Anil was already living and working in Australia at the time the Lomawai lease was expiring. Rajendra

then lived in Lomawai with his wife Kalyani (2<sup>nd</sup> plaintiff) and his children, including Ashveen (only son).

12. The arrangement was that Anil would send money from Australia to his brothers in Fiji to:
  - (i) secure the purchase of another piece of land, and
  - (ii) build a house on that piece of land.
13. As Rajendra was mostly unemployed, his job was simply to assist in getting things done here in Fiji.

#### ***Finding Nasoso Property***

14. As it turned out, Rajendra's (**PW1**) wife, Kalyani (2<sup>nd</sup> plaintiff) had, in her family, the Nasoso property.
15. Kalyani's brother is Vinod. Vinod's mother-in-law, Latchmi, was the registered proprietor of the *i*-TLTB lease over the Nasoso property. At the time, the Nasoso property was just a vacant piece of land. There was no improvement on this block of land.
16. An arrangement was then reached for the lease over the Nasoso property to be transferred from Latchmi to Rajendra and Kalyani in consideration of \$12,000. To this end, a sale and purchase agreement was drawn up.
17. However, before that transaction was completed, Latchmi died in 2005.

#### ***Construction on Nasoso Property***

18. Meanwhile, before the Lomawai lease in Sigatoka had expired, and while the conveyance of the Nasoso property was being pursued, Rajendra was also pursuing arrangements for the construction of a dwelling house on the vacant Nasoso plot.
19. Rajendra did so based on the brothers' agreement, and following talks between Rajendra and Munsami and the late Latchmi's family.
20. It was understood that the process of the conveyance of the Nasoso property would be happening while the application for the obtaining of the permit for the building was being

pursued. The idea was to minimize delay so that, once the transfer of the lease to the brothers happened, construction would then start immediately as all regulatory approvals would then be in place.

21. In time, Rajendra did secure the approval of *i*-TLTB's and all other planning authorities on a building plan.
22. As it happened, construction of a four-bedroom dwelling house began and was completed in 2006. At the point of completion, conveyance was still yet to be completed and formalized.
23. The main cause of the delay in completing the conveyance was because, for one reason or another, it took long to formalize the granting of probate over the Latchmi estate.

***Probate over Latchmi Estate - Munsami***

24. In time, probate was granted to one Munsami. Notably, the sole beneficiary over the Latchmi estate was one Nitya. – who is the brother-in-law of Rajendra (**PW1**, first plaintiff).

***Souring Relationship between Anil & Rajendra***

25. It appears that, all the while, Anil had been sending monies from Australia to Rajendra through Parmendra (the three brothers). Parmendra would receive the monies here in Fiji and then he would hand it over to Rajendra to be applied towards their family arrangement – that is, for the purpose of facilitating the acquisition of the Nasoso property and to build a house thereon.
26. At some point, the relationship between Rajendra (**PW1**) and his brothers (Anil and Parmendra) and Ashveen (PW1's son), began to sour. This happened when Anil became unhappy about the lack of proper accounting by Rajendra of all the monies which Anil had sent him from Australia and the delay in the process.

***Deed of Consent for Beneficiary to Sell (Nitya & Rajendra)***

27. It appears that, in the midst of the soured relationship between Anil and Rajendra, Rajendra did try to enter into an arrangement with Nitya for Nitya to sell to Rajendra the Nasoso property.

28. Accordingly, Nitya did execute (with Rajendra) a *Deed of Consent for Beneficiary to Sell*. Pursuant to this *Deed*, at some point in 2009, Nitya and Rajendra then lodged an application with the *i*-TLTB for consent to the transfer of the Nasoso property to Rajendra for a consideration of \$12,000 – 00 (twelve thousand dollars only).

***i-TLTB Rejects Application for Consent***

29. However, the *i*-TLTB did not process this application for consent which Nitya and Rajendra had lodged in 2009. There were two main reasons for this.
30. Firstly, it was because no *Transmission by Death* (of Latchmi) had been registered. The second reason is that there were arrears on the lease.

***2010 Application for Consent & Transfer of Lease to Anil***

31. In 2010, Anil entered into a Sale and Purchase Agreement with Munsami, the Executor and Trustee of the Latchmi estate. They then applied for consent to transfer the lease over the Nasoso property to Anil.
32. According to the evidence of **DW2**, at this point:
- (i) the *i*-TLTB had been properly appraised of what had transpired in respect of the arrangement between Rajendra, Nitya and Parmendra.
  - (ii) the transmission by death had been registered and
  - (iii) there was a commitment by Anil to settle the arrears on the lease.
  - (iv) there was a renunciation by Nitya to allow the sale of the property directly to Anil.
- Accordingly, the Board granted consent to the transfer to Anil.
33. The transfer from Munsami to Anil was registered in December 2010. All this time, Rajendra and Kalyani were also rushing to get a transfer registered in their favor.

***Anil Transfers Nasoso Lease to Ashveen***

34. In 2016, Anil transferred the lease to his nephew Ashveen, by way of love and affection. Ashveen, as stated above, is the biological son of the plaintiffs.

35. This transfer was done on the understanding that Ashveen would at least keep the peace at their home and look after their ailing mother (Ashveen's paternal grandmother).

### **PLAINTIFF'S GRIEVANCE**

36. The main assertion of fact upon which the plaintiffs case is built is that 'they had constructed a substantive dwelling house on the Nasoso property.
37. Before they began construction, they had lodged the construction plans and had sought the approval and consent of the *i*-TLTB. These were duly granted by the *i*-TLTB in their names.
38. However, when they later applied in 2009 for consent to the transfer of the Nasoso lease to their names, the *i*-TLTB refused this.
39. It is that refusal by the *i*-TLTB which they say is prejudicial to their interests.
40. In other words, they had spent a lot of money completing the construction of a substantial dwelling house on the Nasoso land, with the approval of the *i*-TLTB, with the full expectation that the *i*-TLTB would approve the transfer of the lease to their names.
41. According to the plaintiffs, for *i*-TLTB to approve Anil's application in 2010 while their 2009 application was still pending, was a rather neglectful conduct.

### ***Particulars of Negligence Alleged***

42. At paragraph 10 (a) to (f) of the Amended Statement of Claim filed on 30 October 2020, the plaintiffs plead the following particulars of negligence they allege:

The Defendant was negligent in the discharge of its statutory duty regarding the processing of the Plaintiff's transfer of the said lease.

- a) Approving the transfer of Agreement for lease pursuant to iTLTB reference No. 50034824, Sanasana (PT of) Lot 1 in the Tikina of Nadi province of Ba and having an area of 784m<sup>2</sup> to one Anil Kumar whilst the Plaintiff's application for consent to transfer was first in time and still under process.
- b) Allowing the Plaintiff's to build at a substantial cost on the said lease and then consenting to transfer to the said Anil Kumar.

- c) Failing to exercise due diligence when granting consent to transfer of the said lease to Anil Kumar.
- d) Failing to respond to enquiry by the Plaintiff's for the reasons for the delay in processing the Plaintiff's application for transfer.
- e) Doing an-arbitrary act to the detriment of the Plaintiffs namely allowing the said Anil Kumar to unjustly enrich himself.
- f) Putting the Plaintiffs at the risk of being summarily ejected from the said lease.

### ***Relief Sought***

43. At paragraph 11 of the Statement of Claim, the plaintiffs plead the following relief:
- a) The sum of \$250,000.00 (Two Hundred and Fifty Thousand Dollars) being the loss of the said lease together with all improvements thereon.
  - b) General and exemplary damages for wilful and wrongful conduct.
  - c) Costs on a Solicitor/client indemnity basis.

### **WHO BUILT THE HOUSE?**

44. The four-bedroom dwelling house on the Nasoso property is currently being occupied jointly by the plaintiffs and their son Ashveen. The plaintiffs occupy three (3) of the rooms. Ashveen occupies the fourth room.
45. The evidence strongly suggests that this house was built on monies sent from Australia by Anil.
46. I do note that Rajendra appears to assert that he did pay for the house and the land.
47. As stated above, Rajendra's own evidence is that he did not hold a permanent job and had an irregular income. Whatever he received whenever he was able to find a part-time job, was rather modest in amount.
48. The preponderance of the evidence would tend to support a finding that it was Anil who paid for the vacant land comprised in the lease over the Nasoso property and that it was also Anil who financed the construction of the dwelling house which now sits on the property and which is currently occupied by the plaintiffs and their son, Ashveen.

## COMMENTS

49. The *i*-TLTB is a body corporate constituted by the Native Land Trust Act (Cap. 134). It is a statutory body. Section 4 (1) of the Act vests the administration and control of all native land in the *i*-TLTB for the benefit of the *i*-taukei owners.
50. Under section 8 of the Act<sup>i</sup>, the *i* -TLTB may grant leases and licenses over *i*-taukei land not subject to a native reserve. Section 12 (1) prohibits dealings with leaseholds of *i*-taukei land without the *i* -TLTB's prior consent.
51. The second limb of section 12 (1) provides as follows:
- The granting or withholding of consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be null and void.....***
52. The basic question which arises from this is whether or not the *i* -TLTB owes a duty of care to any person or entity applying for a lease to have their application processed, and granted.
53. Notably, the plaintiffs' claim is NOT based on any allegation of a breach of statutory duty. Rather, it appears to be based on a common law claim on negligence.
54. The plaintiffs' claim is premised ultimately on their assertion that it is they who ought to have been the registered lessees of the Nasoso property. This assertion is based on the following:
- (i) that it was they who had applied to the *i*-TLTB for approval to build on the Nasoso property. Pursuant to the approval granted by the *i*-TLTB, they had then commenced building. They in fact completed building in 2006.
  - (ii) that it was they who had entered into a Deed with the beneficiary Nitya, for the sale and transfer to them of the Nasoso property
  - (iii) that it was they who had applied first in 2009 for consent to have the Nasoso property transferred to them for the consideration of \$12,000 to be paid to Nitya.



(iv) that their application actually preceded the 2010 application for consent to transfer by Anil.

55. On the basis of all the above, the *i*-TLTB knew of their equitable interest in the Nasoso property. Despite that knowledge, the *i*-TLTB slighted the plaintiffs' *first-in-time* application for consent to transfer in favour of the Anil's *second-in-time* 2010 application.

### **WHAT PLAINTIFFS MUST ESTABLISH**

56. To succeed in this action, the first thing which the plaintiffs must establish is that they have an equitable claim in the Nasoso property which must prevail over the legal interest of Ashveen.

57. Only after that is established, can this court really begin to seriously consider the question as to whether or not the *i*-TLTB owed the plaintiffs any duty of care to process their application and grant them a lease.

58. One of the main difficulties the plaintiffs have in establishing their equitable claim to the Nasoso property is that they have not bothered to add their son, Ashveen, who is now the registered proprietor of the Nasoso property and whose interest in the property is being challenged.

59. As the registered owner of the Nasoso property, Ashveen has a significant interest which could be negatively impacted by any decision of the court. The onus then was on the plaintiffs to join their son, Ashveen, as a party. They did not see the need to do so.

60. Having said that, even if, assuming, the plaintiffs were to, somehow, be able to convince this Court that their equitable claim in the Nasoso property must prevail over Ashveen's interest, the plaintiffs must then convince the Court that the *i*-TLTB owed them a duty of care to process their application for a lease, and to grant them the lease, considering:

- (a) their equitable interest in the Nasoso property, and
- (b) that they had lodged their application for a lease before Anil did

### **DO THE PLAINTIFFS HAVE AN EQUITABLE INTEREST IN THE NASOSO PROPERTY?**

61. An equitable proprietary claim over a piece of property may arise either by express trust or by constructive trust. Since there is no express document at issue in this case, the only question

is whether or not a constructive trust should be found in favour of the plaintiffs at the time when they were applying to the *i*-TLTB for a lease.

62. There is no clear evidence that the plaintiffs did contribute financially to the purchase of the Nasoso property or in the construction of the house. The evidence is strong that all the monies for the acquisition of the Nasoso property and for the construction of the four-bedroom house, was sent to Rajendra by Anil from Australia.
63. In receiving the funds, and in applying it to construct the house, Rajendra was essentially placed in a relationship of trust for Anil.
64. Anil is his brother. They had a family arrangement. In the circumstances, Anil was reasonably entitled to repose and did in fact repose trust and confidence in Rajendra in terms of their family arrangement.
65. It follows that, even if the *i*-TLTB had processed Rajendra's application in 2009, and had consented to the transfer of the Nasoso property to Rajendra, the property including the house would have been acquired and held by Rajendra on trust for Anil.
66. In that light, Rajendra's claim that the Nasoso property ought to have been registered in his name, is rather misguided.
67. In any event, I am of the view that if the plaintiffs were really adamant about asserting their equitable claim, then they ought to have filed a claim against Anil and Ashveen and joined the *i*-TLTB as a nominal defendant.

#### **DOES *i* - TLTB OWE A DUTY OF CARE TO THE PLAINTIFFS**

68. As I have pointed out above, under section 12 of the Act, the granting or withholding of consent (and *ipso facto*, of a lease) is entirely at the discretion of the *i*-TLTB.
69. While I agree that the exercise of that discretion must be done lawfully, it is not clear from the way the plaintiffs' counsel has theorized their case, as to how the exercise of that statutory discretion could possibly give rise to a common law duty of care on the part of the *i*-TLTB, to even process or give priority to the plaintiff's application for consent and for a lease.

70. The evidence is that the application for consent was not properly placed before the *i*-TLTB because it was based on an arrangement between Rajendra and Nitya. While Nitya was the sole beneficiary of the estate of Latchmi, he was not the executor/trustee of the estate. Furthermore, as stated, the *Transmission by Death* had not been registered. Accordingly, it would seem that the *i*-TLTB was entitled to refuse to process the application.
71. The plaintiff's application appears to be based on a *Deed of Consent for Beneficiary to Sell* which the *i*-TLTB refused for reasons stated above. That Deed was later renounced by Nitya.
72. *i*-TLTB's decision to process a lease in favour of Anil, based on the agreement with Munsamy (the executor/trustee of the Latchmi estate), based on the consideration of \$12,000 paid by Anil, and based on the renunciation of the *Deed of Consent for Beneficiary to Sell*, and based on the fact that the *Transmission by Death* had then been properly registered, and based on the undertaking by Anil to clear the arrears on the lease, does not seem to be an irregular exercise of any power.
73. If the plaintiffs are aggrieved by that decision because it undermines any equitable claim they might imagine they have, then they ought to have filed an injunction application to stop the granting of the lease in favour of Anil (later Ashveen) and/or to stop Anil/Ashveen from disposing of, or encumbering, the lease and support that with a claim asserting their purported equitable claim in the Nasoso property.

## CONCLUSION

74. I dismiss the plaintiffs' claim. Costs to the defendant which I summarily assess at \$1,000-00 only.



.....  
Anare Tuilevuka  
**JUDGE**

02 August 2024

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<sup>1</sup> Section 8 provides:

**8. (1)** Subject to the provisions of section 9, it shall be lawful for the Board to grant leases or licences of portions of native land not included in a native reserve for such purposes and subject to such terms and conditions as to renewals or otherwise as may be prescribed.

(2) Any lease of or licence in respect of land under the provisions of this Act shall be made out from and in the name of the Board and such lease or licence shall be executed under the seal of the Board.