

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

Civil Action No. HBC 106 of 2022

BETWEEN: USAIA GAUNAVOU of Nakalawaca Village, Tailevu, Turaga ni Mataqali Bureniwau of the Yavusa Nasau suing for himself and on behalf of Yavusa and its members.

1st Plaintiff

AND: AMENA MARARUA of Nakalawace Village, Tailevu, Mataqali Bureniwau Representative suing for himself and on behalf of Yavusa Nasau and its members.

2nd Plaintiff

AND: MALELI SAVAI of Nakalawace Village, Tailevu, Mataqali Bureniwau Representative suing for himself and on behalf of Yavusa Nasau and its members.

3rd Plaintiff

AND: SEMISI ROKOTUILOMA of Veinuqa Village, Tailevu, Yavusa Navitilevu Representative suing on behalf of Yavusa and its members.

4th Plaintiff

AND: SEREMAIA TAMANI of Veinuqa Village, Tailevu, Yavusa Daviko Representative suing on behalf of Yavusa and its members.

5th Plaintiff

AND: MIKAELE KOLILEVU of Nakodu Village, Koro Island, Mataqali Nailikowai Representative in the Yavusa Nasau suing and on behalf of Yavusa Nasau and its members.

6th Plaintiff

AND: THE ATTORNEY GENERAL CHAMBERS AND MINISTER FOR JUSTICE sued on behalf of the Republic of Fiji Islands, through its Solicitor General responsible for legal advice to Minister for Lands and Mineral Resources, The Director of Lands and Surveyor General. The Registrar of Titles and Minister for Fijian Affairs pursuant to Section 12 of State Proceedings Act 1951.

1st Defendant

AND: ITAUKEI LANDS & FISHERIES COMMISSION a duly constituted body under the iTaukei Lands Act 1905 and the Fisheries Act 1941.

2nd Defendant

AND: ITAUKEI LANDS TRUST BOARD as a duly constituted body under the iTaukei Land Trust Act 1940.

3rd Defendant

Representation:

Plaintiffs: Mr. V. Kumar (Sunil Kumar Esquire).

1st Defendant & 2nd Defendant: Mr. Cagilaba, Ms. Nagiolevu & Mr. Nawaikula (AG's Chamber).

3rd Defendant: Mr. Tuicolo (*i*TLTB).

Date of Hearing: 28th November 2024.

Ruling

A. Introduction

[1] The Plaintiff's lawyers filed 2 Summons. The first one was an inter-parte summons filed on 13th August 2024 for leave to appeal out of time the decision of the Acting Master orally pronounced on 5th August 2024. The second summons was to refer the matter to the *i*Taukei Lands Commission. It was filed on 16th October 2024. This Ruling deals with the first summons for leave to appeal out of time. The other summons has not been heard.

B Brief History of the Matter

[2] Writ of summons with statement of claim was filed on 4th April 2022. The declarations sought by the Plaintiffs relate to native land. It is for land administration by the 2nd Defendant dating 1936. It claims breach of legal duty of care, fraud, breach of fiduciary duty of care and deceit. The Plaintiffs are seeking that the native title ownership of Yavusa Nasau. They are seeking damages, royalties and compensation.

[3] On 30th September 2022, the Plaintiffs filed Summons for leave to enter judgment. It was called on 18th October 2022 before Acting Master. Parties were given time to respond. It was fixed for hearing on 6th February 2023. On 6th February 2023, the matter was adjourned to be heard on 11th July 2023. It was called on 11th July 2023 and then on 22nd August 2023.

[4] On 5th September 2023, *i*TLTB filed summons to strike out the Plaintiffs claim. On 4th June 2024, Acting Master noted "*Orders by consent (on Sum dated 30/09/22 & 05/06/23)*

- (1) *P's summons for entering D/J against 1st and 2nd Defendant is hereby S/O & dismissed.*
- (2) *1st & 2nd D's given leave to file and serve S/O/D out of time & to be filed and served within 07 days, subject to costs – 13/06/24.*
- (3) *07 days to file and serve reply S/O/D – 24/06/24.*
- (4) *1st & 2nd D's shall pay cost of \$1000 as costs as costs of these proceedings to P's as summarily assessed."*

[5] The strike out application as dealt with by way of written submissions. Acting Master delivered a Ruling on 5th August 2024. The summons to strike out filed by *i*TLTB succeed. The Plaintiff's statement of claim against 3rd Defendant (*i*TLTB) was struck out pursuant to Order 18 Rule 18 (1) of the High Court Rules 1988. The Plaintiffs summons to enter default judgment against 3rd Defendant (*i*TLTB) was struck out and dismissed.

C. Determination

[6] The principles governing leave to appeal out of time are set out in **McCaig v Manu [2012] FJSC 18; CBV0002.2012 (27 August 2012)** as the factors to be considered are:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate court's consideration.
- (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged, will the Respondent be unfairly prejudiced?

[7] The reason for the failure to file the appeal in time is contained in an affidavit of the first Plaintiff. The delay is 1 day. The reason for the delay is that the order was obtained from the Registry on 7th August 2024. The written ruling was provided on 7th August 2024. The oral pronouncement was made on 5th August 2024. These reasons and the length of delay are not being challenged by the Defendants.

[8] The Plaintiffs draft grounds of appeal are contained in the summons for leave to appeal out of time. They have 6 grounds of appeal. Having perused the grounds of appeal and without going into any issues I find that the delay, the reasons and the grounds of appeal are not unreasonable. I would like to add that at this stage I have not gone on to scrutinize the grounds of appeal in its entirety. That is a matter for appeal. I find that if I grant leave to appeal out of time, it would not prejudice the Defendants.

[9] Leave granted to Plaintiff to appeal out of time. The Plaintiff is to file and serve the notice and grounds of appeal on the Defendants. Costs will be costs in cause.

[10] The other summon should be heard. I will give directives for the hearing of that summon. The decision of the Acting Master is stayed, pending determination of the appeal.

D. Court Orders

- a. Leave granted to Plaintiff to appeal the orders of the Learned Master of 5th August 2024.
- b. The time of filing and serving the notice of appeal be extended by 7 days from the date of grant of leave.
- c. The decision of the Acting Master is stayed pending the appeal.
- d. The costs of the summons be cost in cause.

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Chaitanya S. C. A. Lakshman
Puisne Judge

30th January 2025

