

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 3 OF 2017

BETWEEN: **VETAIA BARI RALULU** for and on behalf of himself and on behalf of the members of Mataqali Tilivasewa of Yavusa bila of Tavua, Farmer

PLAINTIFF

AND: **ITAUKEI LAND TRUST BOARD** a statutory body established under the Itaukei Land Trust Act of Vitoria Parade, Suva

FIRST DEFENDANT

AND: **THE ADMINISTRATOR/ADMINISTRATIX OF THE ESTATE OF RATU NACANIELI UQEUQE, TEVITA RALULU & JOPE UQEUQE, deceased, Civil Servant and Farmer respectively, all of Tavua Village as the FORMER DIRECTORS OF TILIVASEWA ESSENCE PTE LTD**

SECOND DEFENDANT

AND: **THE ADMINISTRATOR/ADMINISTRATIX OF THE ESTATE OF RATU NACANIELI UQEUQE, deceased, Former Tui Tavua, Tavua Village.**

THIRD DEFENDANT

AND: **THE TRUSTEES OF MATAQALI TILIVASEWA** established under Deed of Trust dated 1st November 2016, :
THE ADMINISTRATOR/ADMINISTRATIX OF THE ESTATE OF RATU NACANIELI UQEUQE (VKB 147/184), RATU OVINI BOKINI (VKB 77/4), MELI KAUVADRA (VKB 194/184), JONE KUWE ESIRA CAKAU VKB 258/184), SIKELI RALULU (353/184), RATU SAVENACA DOVIBA (VKB 29/185), VILIAME RAVATO (VKB 95/185A), EPELI KAUTOGA all the Mataqali Tilivasewa, Tavua.

FOURTH DEFENDANTS

BEFORE : Hon. A.M. Mohamed Mackie-J.

COUNSEL : Mr. M. Degei – For the Plaintiff.

: Mr. Ratule – For the 1st Defendant.

: 2nd to 4th Defendants absent and unrepresented.

W. SUBMISSIONS : No written submissions filed.

DATE OF HEARING: 18th March 2024.

DATE OF RULING : 11th July 2025.

RULING

A. INTRODUCTION:

1. Before me is a Summons under Order 33 Rule (3) of the High Court Rules 1988, preferred by the plaintiff on 7th February 2023, which was subsequently amended on 16th May 2023, seeking to have the following QUESTIONS OF LAW determined as a preliminary point before the trial of this matter;
 - 1) *Whether or not Regulations 11 of the iTaukei Land Trust (Leases and Licenses) Regulations as amended (of 2010) vest ownership on each Mataqali member of his/her equal share?*
 - 2) *Whether or not the 1st Defendant or any other person can assign or pay that equal share to anyone without the consent of the owner?*
 - 3) *Any other orders that this Honorable Court may deem just.*
2. The summons is supported by the Affidavit of the Plaintiff **VETAIA BARI RALULU** sworn and filed on 23rd February 2023. The 1st Defendant filed its Affidavit in opposition on 20th November 2023 sworn by one **SOLOVENI MASI**, the Regional Manager of the 1st Defendant. No affidavit in reply thereto was filed by the Plaintiff.

B. BACKGROUND:

3. The Plaintiff on 13th January 2017 filed his Writ of Summons and the Statement of Claim (SOC) against the Defendants, seeking the following substantive reliefs.
 1. **A DECLARATION** *that the Defendants acted unlawfully by their failure to distribute income equally to the Plaintiff's members.*
 2. **FOR AN ORDER** *the Defendant pay to the Plaintiff members the sum of \$370,000.00.*
3. **COSTS**
4. It was when the Pleadings had been closed, PTC formalities attended and the matter stood fixed for trial for **13th to 15th February 2023**, the Solicitors for the Plaintiff opted to file the SUMMONS in hand on 7th February 2023 under Order 33 rule (3) of the High Court Rule 1988 calling upon this Court to decide on the said preliminary issues.
5. Having attended to some miscellaneous applications in relation to substitution and service of the application in hand on the 2nd to 4th Defendants, the hearing was taken up before me on 18th March 2024, however in the absence of the 2nd to 4th Defendants, despite the notice of this Summons had been served on them.

6. Though, the Ruling was fixed for 19th July 2024, due to my being away from Fiji, the same could not be delivered. However, when the matter was mentioned before me on 15th October 2024, as the parties were said to be attempting a settlement, a long mention date was granted, and when the matter was mentioned finally on 28th March 2025, both parties agreed to have the Ruling pronounced as they had decided to consider the settlement, if any, after this Ruling. Hence this Ruling is pronounced on the summons in hand under Order 33 (3) of the HCR.

C. HEARING:

7. At the hearing held on 18th March 2024, Counsel for the Plaintiff and the 1st Defendant made their respective oral submissions. Though the parties were left at the liberty of filing written submissions, none of them have filed the same.

D. DISCUSSION:

8. Order 33 (3) of the High Court Rules 1988 makes provision as follows;

Time, etc. of trial of questions or issues (O.33, r.3)

3. (3). *The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.*
9. I have carefully perused the contents of the oral submissions made by both the Counsels in relation to the matter in hand. Learned Counsel for the 1st Defendant does not dispute that this Court has power under order 33 (3) to determine the questions raised hereof in terms of the Summons in hand.
10. What the Plaintiff is principally seeking by way of this Summons is ***“Whether or not Regulations 11 of the iTaukei Land Trust (Leases and Licenses) Regulations as amended (of 2010) vest ownership on each Mataqali member of his/her equal share?”***
11. The substantive relief sought by the Plaintiff/s as per paragraph 1 of the prayer to the Statement of Claim is ***“A DECLARATION that the Defendants acted unlawfully by their failure to distribute income equally to the Plaintiff’s members.”***
12. For this exercise under Order 33 (3) of the HCR to become productive at the end of it, this Court has to be satisfied that answering of the issue/s raised above will fully and finally dispose the substantive matter in hand covering all the issues therein, leaving no room for the necessity of the substantive trial.
13. There cannot be any issue or argument in relation to the powers of the 1st Defendant Board, in relation to the control of iTaukei lands and the distribution of rents and purchase monies, as provided under the iTaukei Land Trust Act of 1940.

The Section 4 of the Act provides as follows:

4. (1) *The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the Fijian owners or for the benefit of the Native Fijians.'*

The Section 14 of the Act provides as follows:

14.(1) *Subject to the other provisions of this section, rents and premiums received in respect of leases or licences in respect of native land shall be subject to a deduction of such amount as the Board may from time to time determine not exceeding 25 per cent of such rent or premium, which shall be payable to the Board as and for the expenses of collection and administration, and the balance thereof shall be distributed in the manner prescribed.*

(2) *Subject to the other provisions of this section, the purchase money received in respect of a sale or other disposition of native land, shall, after deduction therefrom of any expenses incurred by the Board in respect of such sale or other disposition, be either distributed in the manner prescribed or invested and the proceeds so distributed as the Board may decide.*

(3) *Before any balance shall be distributed pursuant to the provisions of subsections (1) and (2) the Board shall discharge out of the moneys received—*

(a) *any statutory obligation in relation to the land, which by reason of any order of a Court the Fijian owners have been adjudged liable to discharge and have failed to discharge;*

(b) *any payment which the Fijian owners, in consequence of such an order as aforesaid have become liable to make in respect of the land, whether by way of payment for works carried out by any statutory body or other competent authority, or otherwise;*

(c) *any amount due and unpaid in respect of any drainage rates payable under the provisions of the Drainage Act on the land or on any other native land belonging to the same native owners;*

(d) *Any amount due and unpaid in respect of any land rates payable by or under the provisions of the Fijian Affairs Act on the land or on any other native land belonging to the same Fijian owners.*

(e) *With the **consent of the Fijian owners** whether given before or after 4 December 1970, **which consent shall operate as an assignment of rents irrevocable** until the total amount is paid, any amount due and unpaid in connection with any scheme approved by the Minister for the benefit of the Fijian owners. (Emphasis mine)*

14. The Regulation 11, which was amended in 2010 to come into effect from 1st January 2011 provides as follows;

11(i) *After deduction of any sums in accordance with section 14 of the Act, the balance of any monies received by the Board by way of rents and premiums in respect of iTaukei land, including any monies received by the Board but not yet distributed at date of commencement of the iTaukei Land Trust (Leases and Licenses) (Amendment) Regulations 2010, shall be distributed by the Board to all living members of the proprietary unit, registered in the Register of iTaukei Landowners known as Vola ni Kawa Bula, in equal proportion. (Emphasis added).*

15. The intention of the amendment to the Regulation 11 brought in 2010, was succinctly mentioned in the Court of Appeal Judgment in **Civil Appeal No-ABU 0044 of 2019**, on an Appeal in a similar matter, namely, **HBT Action No- 02 of 2017 Mereoni Nabewa v I-Taukei Land Trust Board & others**, which, *inter alia*, states as follows.

“[41] In my view the amendment of Regulation 11 in 2010 (which became effective from 1 January 2011), relates to the proportion of distribution, and not the mode by which the monies are to be distributed. It is obvious that the amended Regulations intended to bring about a change in the proportion of distribution of monies. That is why the Regulation provides for equal distribution, and not individual distribution. Equal proportion is not synonymous with individual distribution. In other words, even the amended Regulation did not require the Appellant to distribute monies individually. What was intended to be changed, was the proportions that each person was entitled to, not the mode of distribution. This is clear from a comparison of the 1984 Regulations with the 2010 Regulations”.

16. Being mindful of the existing provision and the law in relation to the control of the iTaukei Lands and the Distribution of the monies received in the form rental and other income, the task before the Court now, as alluded to in paragraph 6 of the Affidavit in opposition filed by the 1st Defendant on 20th November 2023, is to decide **Whether or not the Plaintiff and/or the persons**, on whose behalf the Plaintiff claiming to be acting on the purported authority given in the form of Statutory Declarations in support, **are members of the Mataqali Tilivasewa?**
17. If a person is to be recognized as an iTaukei or a member of a land-owning unit, his or her name has to appear in the “Vola Ni Kawa Bula (VKB), which is with the Native Lands Fisheries Commission and comes under Sections 8, 9 and 10 of the iTaukei Land Trust Act.
18. There is no sufficient evidentiary material before the Court, except for the mere stereo-type Statutory Declarations and the Birth Certificates of the persons who are claiming to be sailing with the Plaintiff, to satisfy this Court that they are **members of Mataqali Tiliwasewa.**
19. There should be an authorization, Certificate or VKB records that would speak for the plaintiff and other 196 members he claims to be representing to confirm that they are the members of the relevant land-owning unit. In the absence of such an authorization or a Certificate from the relevant institution or authority, or confirmation through oral evidence, the Court cannot accept and act solely upon such Statutory Declarations and the Birth Certificates.
20. Thus, a formal trial, wherein the Plaintiff and the relevant witnesses will be subjected to examinations in chief, cross examination and the re-examination processes, is needed, falling in line with the relevant provisions of the Civil Evidence Act, for the Court to arrive at the most justifiable decision on the issue.
21. At the end of the day, what happens is the distribution of the monies according to the wishes of the majority members of the Mataqali. For the Court to appraise and satisfy

that the majority members have given their consent, there has to be a formal trial to find answers to such issues. When the locus-standi of the Plaintiff and other 196 persons is challenged in this manner, the Court cannot rely on the mechanism under Order 33 Rule (3) of the HCR.

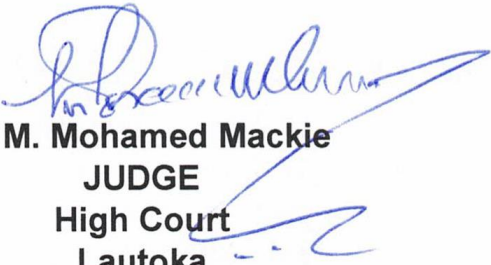
22. Considering the circumstances, I find that the imposition of a reasonable sum as summarily assessed cost in favor of the 1st Defendant is justifiable, to be paid in 28 day from the date of this Ruling.

E. FINAL ORDERS:

- a. The Plaintiff's Summons fails.
- b. The Amended summons preferred by the Plaintiff, on 16th May 2023 pursuant to Order 33 (3) of the High Court Rules 1988, is hereby struck out.
- c. The Plaintiff shall pay the 1st Defendant a sum of \$750.00 (Seven hundred and Fifty Fiji Dollars), being the summarily assessed costs of this Application within 28 days.

On this 11th Day of July 2025 at the Civil High Court of Lautoka.




A. M. Mohamed Mackie
JUDGE
High Court
Lautoka

SOLICITORS:

Messrs. FORTIS LAWYERS AND CONSULTANTS- Barristers & Solicitors -For the Plaintiff.

INHOUSE SOLICITORS of the 1st Defendant- For the 1st Defendant.