

IN THE HIGH COURT OF FIJI
AT SUVA CIVIL JURISDICTION

Civil Action No. 369 of 2017

BETWEEN : **LAGSEFURI KONGCHIU TAVO** of Australia.

1st PLAINTIFF

A N D : **MUA TAUHAVE** of Ahau, Rotuma in the Republic of Fiji,
Businessman

2nd PLAINTIFF

A N D : **HENRY ENASIO** of Ahau, Rotuma in the Republic of Fiji.

DEFENDANT

Before: Hon. Justice Mr. Justice Deepthi Amaratunga

Counsel: Mr V. Faktafon , Ms. Chowdhray M for the Plaintiffs
Ms. M. Rakai for Defendant

Date of Judgment: 23.09.2025

JUDGMENT

INTRODUCTION

- [1] The Plaintiffs commenced this action seeking, *inter alia*, a declaration that the land known as *Tariagava* belonged to their ancestor, late Susau Tavo,(Susau) as *hunua pau* as recorded in Land Register on 1.2.1960, and that her descendants hold a life interest in undivided shares in the said land.
- [2] According to Plaintiff, due to cyclone house of Defendant's mother had got destroyed and allowed her family to live in Susau's house till they rebuild the house destroyed by cyclone around 1972 , but after some time Defendant and his family refused to vacate the land. There was action for summary eviction

instituted and this was not successful, as Defendant is alleging fraud for the registration of Tariagava in the name of Susau.

- [3] So in this action by way of writ, Plaintiff's sought an order for the Defendant and his family to vacate *Tariagava* forthwith. According to the land register Tariagava land comprising an area stated in the register was exchanged with another land , between Susau and her father.
- [4] The Defendant in the amended statement of defence and Counter-Claim alleged fraud against District Officer and seeks to cancel the entry of the land exchange between Susau and her father Garagsau.
- [5] There is no proof of fraud and contemporaneous recordings prove that land area of 389 X413 square feet was exchanged with another land called Takakua and this transfer was recorded in the registry on 1.2.1960 and for that approval was given on 3.12.1959 by District Council.
- [6] There after Tariagava land and building was also leased for five years to a religious body in 1962 by Susau for a monthly sum stated therein, and for that again unanimous approval was granted by the District Council. If the transfer of the land was illegal why such a lease was allowed by other members in the Council? and why weren't other members of clan including Defendant and his family did not take any action to annul the alleged dealings at that time. Defendant admit that their family members as well as Garagsau was aware of the alleged fraud by 19.4.1960, two months after the registration of Tariagava land to Susau, but no action was instituted to annul while Garagsau was live and or even at the time of the lease of Tariagava and house to religious body for five years. There was no dispute about the land till Defendant and their family came in to occupation in Tariagava; in 1972. This was twelve years after registering of the land to Susau.
- [7] Defendant and his family are refusing to vacate the land they entered with permission and in order to remain in the possession making allegations in the statement of defence which were not proved on the analysis of evidence, shows that these were afterthoughts in order to remain in possession of land belonged to Susau and entered possession as licencees on humanitarian grounds.
- [8] A declaration is made that Tariagava having an area of 389X413 square feet as shown in the Plan marked as P6, belonged to Susau as hanua pau as recorded in the land register. Accordingly, her decedents including Plaintiffs have life interest for undivided share in it.
- [9] Defendant and or his authorized persons including any relatives, agents licencees etc are ordered to vacate the land Tariagava as shown in the plan

prepared in 1985 from an area of 389X 413 square feet as shown in document marked as P6 'Plan of Tariagava'

FACTS

[10] The parties have agreed to following facts in the Pretrial Conference minutes filed and they are

- a. First Plaintiff lives in Australia and was at all material times the son of Susau Tavo also known as Susau Fiu, now deceased (hereinafter referred to as "Susau").
- b. Defendant also lives in Australia and was at all material times a relative of the first and second Plaintiff.
- c. Defendant had moved into "*Tariagiava*" and continues to live on the property.
- d. Defendant was served with a Notice to vacate the property by the Plaintiffs on the 11.03. 2013.

[11] There is no dispute that Tariagava was registered in the land registry in the name of Susau and this was recorded as an exchange of two land parcels between Garagsau and his daughter Susau. The lands were Tariagava (area of 389X413 square feet) for another land called Takakua. (See P2 the Council minutes approving the exchange on 3.12.1959 and registration on P6, P7). This registration is further evidenced in documents marked P4,P5(Plan) and P8.

[12] Documents marked P9, P10 and P11 relate to registration of second Plaintiff's interest in Rotuma Lands Register and this is contingent interest on upon the proof of Susau's rights to Tariagava.

[13] According to Defendant the registration of the abovementioned exchange of lands in 1959 and registered on 1.2.1869, were fraudulent , hence seeks to cancellation of the registration of said land exchange between Susau and Garagsau as registered.

[14] For Plaintiff second Plaintiff gave evidence and Acting District Officer marked relevant documents including copies of District Council minutes where approvals sought and obtained for dealings of the land Tariagava. These are public documents hence achieved at National Archive of Fiji and certified copies provided.

[15] Plaintiff marked following documents

P1-Notice of Eviction

P2: Council Minutes (3 .12. 1959) approving exchange of lands between Garagsau and Susau exchange

P3: Council Minutes 14.6. 1962 approving Susau's lease of Tariagava to Seventh Day Adventists (£8 per month).

P4/P5: District Officer's Letter (22 .5. 1985) confirming extracts from the registration and plan P5.

P6: 'Rotuma Lands Ordinance 1917' registry entries (3rd/4th): Exchange approved 3 .12.1959, registered 1 Feb 1960 as gift.

P7: Native Land Dealings Register: Identical entry, Takakua ("hanua togi") for Tariagava ("hanua pau").

P8: Council Chairman Letter (31.10. 1985) to Ratusau Albert: Legal recording; Takakua as kainaga, Tariagava as hanua pau for Susau/descendants.

P9:and P10 Acting District Officer's Letter and Tupou Tukave's Consent to (3 .11. 2019) for registration of second Plaintiff the interest in land Tariagava

P 11Amended Register (14 .2. 2020): Lagsefuri Tavo and Mua Taukave (two Plaintiffs)

P12: family tree. (Defendant's Tab20)

[16] Defendant allege that both lands exchanged between Garagsau and Susau belonged to their clan so the transfer was fraudulent. Defendant is also alleging that District officer in 1959 and 1960 acted fraudulently to register the land exchange as hanua pau. On the Defendant's evidence marked D5 between 1959 and 1960 there were there were two District Officers and allegation was made only regarding only one . So there was ample opportunity to make a complaint if a fraud had happened. There was no such evidence..

Evidence and Analysis

[17] Defendant and his sister gave evidence and the documents were also produced by them including a hand writing expert report which had compared signatures of Garagsau with an registry entry made by an official in the land registry which is kept in District Office away from parties. So for obvious reasons the report on the hand writing had not compared signatures but compared two signatures with an entry made by an official in land registry, hence did not help the court for analysis of facts in dispute. This hand writing expert's report does not state he was asked to examine 'the handwriting on three land court annexure documents

and compare that hand writing with those on a Document of Register of Native Land Dealings'. So the expert's report was correct as directed but this does not prove any fraud as Registry entries were entered by the officials and not the parties to such land deals. So the conclusion in D4 is not a disputed fact and no expert evidence required for such a known fact.

- [18] The Court heard the evidence of second Plaintiff, nephew of the first Plaintiff and grandson of Susau, upon whom the Plaintiffs rely for their claim to Tariagava. He stated that Susau and the Defendant's mother were half-sisters, both daughters of Garagsau Albert (Garagsau). The witness recounted that in 1972, following Cyclone Bebe, the Defendant and his family sought permission from Susau to reside in her house at Tariagava until they could rebuild their own home that had been destroyed.
- [19] According to the witness, such permission was temporary in nature, but the Defendant's family remained and eventually built their own house on Tariagava without Susau's consent.
- [20] Despite notices to quit being served, the Defendant and his family have continued in occupation. The witness maintained that Tariagava belonged to Susau and that the Defendant's presence there is unlawful.
- [21] In cross-examination, the witness was challenged on his account of Susau's parentage. It was put to him that Susau was not the biological daughter of Garagsau, her name being absent from his death certificate. There were no names of issues of Garagsau stated in the death certificate marked as D3. It contained no names and only stated there were four children from marriage and under heading Deceased was Married stated "*Pepjei, Rotma -----Varomue Pasepa*".
- [22] He stated that there were more children than what was revealed in the death certificate of Garagsau as his former wife died and re married late Kijiana and that there were more than four children. This can be accepted as family tree shown in Tab 20 of Defendant's bundle of documents indicate that from marriage to Kajina there were five children from Garagsau. As Kijiana was the second wife and there was another third wife and a child from her as well. So Garagsau as the head of clan had more than four children from the three wives he had at the age of 89 when he died.
- [23] The witness insisted that the death certificate was incomplete, as Garagsau had more children than were recorded. Counsel for the Defendant suggested that Tariagava, formerly known as Mofmofa, was *hanua ne kainaga* or clan land belonging to the Aota Clan, but the witness denied this, asserting that Garagsau had given Tariagava to Susau in exchange for freehold land at Takakua. He accepted that much of what he knew of the family history was

learned during his upbringing but remained firm that the Defendant's family only came to Tariagava after Cyclone Bebe.

- [24] Defendant in D1 produce transfer of part of (1/46) land Takakua between Garagsau and Harriet Snow in 1949. This was also registered and shows that Garagsau could sell part of Takaua even as late as 1949 indicating that Takaua was not a clan land as alleged by Defendant from their own documents. This is contradiction per se.
- [25] Defendant in the counter claim also alleged destruction of their crops on the land by Plaintiffs. There was no evidence that first Plaintiff in this regard.
- [26] Second Plaintiff, denied involvement in the alleged destruction of crops on the land.
- [27] He rejected suggestion that Susau was not a biological daughter of Garagsau. The Albert Family Tree contained in Defendant's bundle of documents as well as death certificate of Garagsau indicate that he was married to twice and had four children from first marriage and another five from second marriage. See D3 and tab 20 of Defendant's bundle of documents. According to family tree there was a third wife and a child from her as well.
- [28] He agreed that the "pure" or head of a clan acted as trustee of clan land, but he resisted the proposition that this diminished Susau's ownership rights. Upon re-examination, the witness confirmed that his grandmother Susau had resided on Tariagava and that she was the biological daughter of Garagsau by his first wife. He reiterated that the Defendant's family had only been allowed temporary residence following the cyclone, and that their continued presence on the land is without lawful basis.
- [29] Aluesi Maria Tamanitoakula, who held the position of Acting District Officer of Rotuma at the time of hearing, gave evidence and marked and identified all the documents marked by Plaintiff from P2 to P11. She explained that land records, including Council minutes, are kept in the District Office at Ahau and cannot be removed, although copies are preserved in the National Archives in Suva. She outlined that land in Rotuma is classified as *hanua pau* (freehold land), *hanua togi* (purchased land), or *hanua ne kainaga* (clan land). According to the official registers, Tariagava, formerly known as Mofmofa, was owned by Garagsau Albert and classified as *hanua pau*.
- [30] She confirmed that according to contemporaneous records kept in her office, Tariagava was lawfully exchanged by Garagsau with his daughter Susau Tavo in return for Takakua, and that this transaction was approved by the Council on 3.12.1959 as evidenced from document marked P2 on fourth page of the

Council minutes, and exchange was recorded in the relevant registry documents marked P6 and P7.

- [31] So the exchange of lands between Susau and Garagsau was reflected in the registry with heading 'Rotuma Lands Ordinance 1917' and also, the 'Register of Native Land Dealings',
- [32] The Council minutes of 1962 marked as P3 indicates that it had even approved a lease of Tariagava by Susau to Seventh Day Adventist for eight pounds per month which was a substantial sum in 1960. Such a sum would not be allowed to be collected by Susau if she had no exclusive rights to Tariagava and the house on that. This also proves that this land was valuable even at that time and was in a state that could generate rental income and the building on it was considered by Seventh Day Adventist for their religious activities and can be considered in a good state. This also proves that it could withstand a natural disaster about ten years after the lease and the fact that this building survives such a natural disaster in 1972 and allowing Defendant's mother to stay on humanitarian ground, but then refused to move.
- [33] The lease of Tariagava in 1962 for five years was approved by the Council 'unanimously' and this shows that there was no dispute as to Susau's free will to deal with said land and this was not a clan land at that time.
- [34] Acting District Officer identified correspondence of her predecessors marked as P4 dated 22.5.1985 and even dated map of the land Tariagava. Defendant state that these plans were not made at the time of exchange and was made only in 1985. In 1959 in a place such as Rotuma one cannot insist a plan every time a land dealing happened. It is a tall order and subsequent plan confirms and identifies the land in dispute.
- [35] In my mind absence of plan at the time of land exchange in 1959 was not a reason to deny the rights deriving from the exchange of lands between Susau and her father Garagsau or to prove that the exchange was a fraud. In fact this proves opposite as parties never expected litigation regarding this transfer in 1960 and allegation against District Officer in 1960 by Defendant and his sister, was baseless, to say the lease.
- [36] The witness also confirmed that the Rotuma Lands Register was amended in 2020 to include second Plaintiff as a registered estate holder of Tariagava.
- [37] In cross-examination, the witness acknowledged that she had been subpoenaed but could not bring original records as they are not allowed to leave Rotuma. She confirmed that certain Council minutes bore no signatures of the Chairman or Secretary, though she maintained that they were genuine records forwarded to her office. She accepted that the book *Puku ne Fatogia e Rotuma* described Mofmofa as clan land of the Aota Clan, but she

maintained that official registers recorded it as freehold land. She agreed that if it were clan land, consent of clan members would have been required, but reiterated that the exchange was valid because both lands involved were freehold.

[38] The witness also confirmed that there was no written consent of the Aota Clan or a Deed of Gift signed by Garagsau or Susau preserved in the records. She acknowledged that it was not clear from the registers whether the second Plaintiff was now the registered owner, but maintained that subsequent Council correspondence and registers supported the Plaintiffs' position.

[39] In re-examination, the witness reaffirmed that Garagsau had the authority to transfer Tariagava to Susau in exchange for Takakua because both lands were freehold, and thus no clan consent was required for the transaction. The witness is a neutral public officer, currently the Acting District Officer of Rotuma, which lends institutional credibility to her evidence. She was subpoenaed to give evidence and relied primarily on official records rather than personal knowledge. She gave her evidence in a consistent and orderly manner and identified several contemporaneous documents which were tendered as exhibits.

[40] Josephine Gray, is a sister of the Defendant, gave evidence to challenge the legitimacy of a land transfer. She stated that the disputed lands, Moafmofa (now Tariagava) and Takakua, are communal clan lands (*hanua ne kainaga*) of the Aota Clan, held in trust by her grandfather, Garagsau Albert, as the clan chief. She asserted that he never had the individual authority to transfer these lands personally. This conflicts with D1 where Garagsau had sold undivided share of 1/46 of Takaua to a third party in 1949.

[41] She denied that her family came to the land at Tariagave with permission of Susau, but analysis of evidence show house and the land was leased in 1962 for five years by Susau and there was no objection to this at that time.

[42] The witness claims the 1960 transfer to Susau was fraudulent. She testified, that Susau was not the biological granddaughter of Garagsau. This is against Defendant's documents where family tree included three females and also land registry also had recorded the exchange of lands where Garagsau was referred to as father of Susau. This proves that Garagsau accepted her as his child and the transfer of the rights to Tariagava was not inheritance, but registration

[43] She in her evidence stated about a specific incident on 19.4.1960, where she and her brother witnessed the District Officer in 1960, Fred Ieli, physically eject their elderly grandfather (Garagsau) from his office when he tried to rectify the error. According to her Garagsau was assaulted by District Officer when he inquired about the alleged land exchange between him and Susau. At that time she was around nine years.

- [44] The core of her evidence is that the land rightfully belongs to the Aota Clan and that the transfer was invalid, as it was made without the clan's consent and through fraudulent means allegedly aided by an affair between Susau Tavo and the District Officer. She seeks to have the registration cancelled and the land returned to the clan.
- [45] Her evidence cannot be accepted as the incident she alleged on 19.4.1960 cannot be accepted as correct in the analysis of evidence, dealt later.
- [46] Defendant, in his evidence stated that a 1960 land transfer was fraudulent. He states that the disputed lands, Moafmofa (Tariagava) and Takakua, are communal property of the Aota Clan, held in trust by his grandfather, Garagsau. He alleged that the transfer to Susau, was not a biological relative but a step-daughter from his grandfather's relationship with a de facto relationship.
- [47] He also stated about incident on 19.4. 1960, where he and his sister, who gave evidence, witnessed the District Officer, Fred Ieli, physically assaulting their 87-year-old grandfather from his office for trying to reverse the registration. He alleges that the District Officer colluded with Susau, to facilitate the fraudulent transfer.
- [48] He stated the extensive personal animosity between the parties and impact of this long-running dispute. He claims the Plaintiffs and their family have repeatedly sued him, destroyed his crops, and subjected him and his wife to physical attacks and mental distress. He emphasizes that the case affects the entire Aota Clan, numbering over 2000 members, and seeks to have the registration declared null and void to return the land to the clan, as well as damages for legal costs and the harm he has suffered.
- [49] Though he stated entire clan was affected only he and his sister gave evidence at the trial.

Land Exchange

- [50] Interpretation provisions contained in Rotuman Lands Act 1959 defines "*hanua pau*", or freehold land as;

“**Hanua pau** means land which is **vested** in a **single individual** Rotuman by sale or gift with the intention of creating hanua pau, or by an instrument deposited with the District Officer as provided in section 26” (emphasis added)

- [51] It was evidenced in the land registry disputed land comprised of land called Tariagava with area of 413X 389 square feet was exchanged with Takaua land and this exchange was approved by council on 3.12.1959 and the exchange of land recorded on 1.2.1960(P5) and (P7).
- [52] Defendants admit that disputed land exchange was between Tariagava and Takakua between Garagsau and Susau. According to Defendant both these lands belonged to their clan and Garagsau could not sell or transfer as hanua pau. This is against their own document . Undivided share of 1/46 was earlier **sold** and bought back by Garagsau in document marked D1.(A certified copy was also provided in Tab 5 of Defendant's bundle of document where certified copied were provided).
- [53] So the Position of Defendant that Takakua and Tariagave were not hanua pau cannot be accepted.
- [54] Chairman of Council of Rouma in letter marked as P8 had confirmed that Tariagava was registered as *hanua pau*. In P8.Garagsau had exchanged the Tariagava with Takakua land registered to Susau Tavo and this is registered under 'Register of Native Land Dealings' (marked P7) This was also recorded in the land registry headed by ' Rotuma Lands Ordinance 1917' and Tab 8 of Defendant's bundle of documents). Rotuma Land Act 1959 commenced operation on 17.4.1959 and registers printed with old law can remain in printed registries for years but this does not invalidate actions and does not prove fraud
- [55] Rotuman Lands Act 1959 Section 10 confers an '*estate or interest*', upon registration as *hanua pau*, for an area of 413' X 389' (=160,657 square feet) land area (i.e approximately about 3.79 acres) of land called Tariagava. (See documents marked P4 and P6)
- [56] The Plan attached District Officer's latter that confirmed extract from the Registry of land dealing in Rotuma stated;
- " Tariagava 413'X389' .. Exchange with Takakua Garaganu Tukaganu Motusa Susau Tavo Ahu 1.2.60 Exchange approved by Council 3.12.59."
- [57] There is no dispute as to the existence of registration on the Register of the disputed land to Susau. Defendant's contention was that it was registered by fraud by District Officer in 1960, which will be dealt later in this judgment.

- [58] There is no dispute as to boundaries or the area between the parties and land was identified by a plan marked as P5 on 22.5.1985.. There was identification of the said area and Defendant was living near to this disputed land before the house on that land got destroyed from a cyclone around 1972.
- [59] This fact is disputed by Defendant, but on the balance of probability this fact is proved. So permission was given on humanitarian grounds after a natural disaster and Defendant is attempting to obtain Tariagava unlawfully.
- [60] Defendants are descendant's of late Susau's stepsister and the evidence show that she had even leased the building and land registered under her name to Seventh Day Adventist church for five years in 1962. This land dealing was also approved by the Council and the minutes are found in document marked P3 which reads
- “Suau Tavo wishes to lease her land and house Tariagava for five years to the (sic) Seven Day Adventist at eight pounds a month. This land is her own free hold’
- [61] This lease was passed as a motion in the Council and there were more than two officials involved other than the District Officer against whom Defendant alleged fraud. There was change of District Office during 1959 and 1960 and from 1964 new District Officers had assumed duties .So the allegation against one District Officer cannot hold water.
- [62] Section 10 of Rotuma Land Act 1959 states,

“[ROL 10] Estate or interest conferred by registration

10 (1) Registration of any land in the Register as hanua ne kainaga, hanua pau, hanua ne ‘on tore or unowned land shall vest in the persons registered as owners of such land (or in the case of unowned land in the State) such rights, privileges, powers and obligations in relation to such land as are in this Act specifically referred to or as are incidental to Rotuman native custom in so far as such custom is not inconsistent with the provisions of this Act.

(2) Registration of a lease in the Register shall vest in the lessee the land comprised in the lease for all the interest described therein together with expressed rights and appurtenances attached thereto and subject to all expressed liabilities therein, and together with and subject to all rights, liabilities and limitations laid down in relation to leases by the Land Transfer Act 1971.”

- [63] Defendant's sister who gave evidence admitted that her late maternal grandfather Garagsau who was the *Pure* or Chief knew about this registration of disputed land (Tariagava) being registered under Susau's name as hanua pau. Dispute is the manner of registration and classification the lands involved in the exchange as hanua pau.
- [64] According to her she along with her grandfather had gone to District Officer's building when she was around 8 or 9 years, on 19.4.1960 which was about two months from the registration of the exchange of lands . According to her the District Officer at that time was rude to her grandfather and had even assaulted him. She had not explained why such a complaint was not made when there was change of District Officers during 1959-1960.
- [65] It is also noted that from 1964, there were several District Officers who had functioned and if there was a fraud by one previous officer there were ample time to complain and there was no complaint made during this time.
- [66] It is also noteworthy to see why Aota clan members including relatives of Defendant did not make a single complaint about alleged fraudulent exchange of lands. It was only Defendant and his sister who is alleging fraud for converting clan land area as hanua pau. This proves that this action is a private dispute between Susau and her stepsister.
- [67] The evidence of District Officer being abusive to Garagsau on 19.4.1960 is improbable considering the hierarchical system in Rotuma and Garagsau was *pure* or head of the clan and considering his age in 1960 and his social status.
- [68] Garagsau had married thrice and had children from all according to family tree. He was head of clan and had a seat in the Council , the body in which land transfers were discussed and consent of all parties including District Office was given at that time. These minutes of Council were also approved by subsequent meeting, indicating absence of signatures on the copy held by District Officer of the minutes of the Council does not invalidate such evidence. Acting District Officer said that a copy of the minutes of that Council received by the District Office if there were land dealings discussed, only and such records were archived periodically .
- [69] It is also noted that none of the children even from his second wife and or third wife did not contest registration of Tariagava as hanua pau. So there is no dispute beyond private animosity due to refusal to vacate the land to which Defendants were invited by Susau.
- [70] The evidence that Garagsau was chased and evicted from District Office cannot be accepted for several reasons. Firstly, she as eight or nine year old

child , may not react in the manner if she was informed that her grandfather was assaulted by an official and had seen him eviction ,as a child of very tender age. She would react to sch a harrowing experience and will not wait playing outside as she stated, even if she heard District Officer was rude to her grandfather.

[71] Secondly, it was strange for Garagsau to take a small child to District Office and leave her outside to play, but if she saw her grandfather being treated badly she would have immediately reacted. How she remembered the date as 19.4.1960 is also remarkable considering the time passed between alleged incident and her evidence and the details she recounted.

[72] Thirdly, she was unable to recount the other events that happened during the period in cross examination and this shows her faded memory of the events happened in 1960

[73] Fourthly, it would be impossible for District Officer to treat a person of elderly leader in that manner. District Officer was the government official and he had to work closely with Pure or Chief of the Clans for his official duties. No sensible person with right mind would assault a Pure or Chief of clan as that would invariably expose such person to wrath of all Pure and or rest of the members of clan meaning small community of all Rotumans. This can create a very unfavorable and even life-threatening situation in far and remote place .

[74] Fifthly, no person with right mind would attack an elderly person of around 87-88 year old due to social and personal values of a person such as District Officer . Document marked D3 proves that Garagsau Tukagsau's death in 1.10.1962 and this was around two or three years after he became aware of the alleged fraudulent transfer of the land

[75] Last but not least during 1959 to 1962 period there were two District Officers and why a complaint was not made to the District Officer against whom there was no allegation ?

[76] Apart from the Document marked P3 proved that disputed land and building was leased to a religious organization for five years and they would have possessed it five years or more indicating Susau was not in that land at that time and all persons including Defendant was aware of that the disputed land was leased to religious organization. This gives a wide publicity that the land was privately owned by Susau , and the lease rentals were collected by Susau. If the land was not hers as alleged by Defendant, all the Clan members including Defendant would have taken action at that time as they were entitled for share of lease rentals.

- [77] It is improbable to think that if late Garagsau did not transfer the land in dispute which also had a house would remain there while he was alive without taking action beyond meeting with District Officer who had allegedly being rude and even assaulted an eighty eight year old person. He had lived more than two years and nine months after registration Tariagava as *hanua pau* and according to Defendant by 18.4.1960 Garagsau had also gone to District Office to ask about alleged fraudulent exchange.
- [78] When Garagsau could easily raised alleged fraud in the Council at highest level of administration in Rotuma why he selected to meet District Officer personally with two children also cannot be accepted as probable . Any allegation of fraud could have been raised in the Council meetings held during this period of two years and nine months and there was none.
- [79] This shows that evidence of Defendant's sister cannot be accepted and she as an interested party through her brother's was not truthful to the facts and had constructed evidence to suit her brother's position.
- [80] Even if I am wrong on above , hearsay admissible in civil proceedings (Civil Evidence Act 2002, section 3) but weighed per section 6: Contemporaneity, motive, multiple levels reduce reliability. of the evidence of childhood recollections (60+ years) and affair rumors involve multiple hearsay, non-contemporaneous statements, potential bias (familial stake), thus low probative value in the analysis of evidence.
- [81] Defendant' s mother who had come to possession due to natural disaster and their house getting destroyed as it was not built in the same manner as Susau's house which was vacant at that time. By that time lease to Seventh Day Adventist had expired and they would have left the property. So it is probable that on humanitarian grounds Susau allowed her stepsister to occupy the vacant land until she build the house that got destroyed and moved, but this had not happened and Susau had died. Defendant who is a son of Susau's stepsister is refusing to vacate and notice to vacate was served in 2013, for this action there were previous actions and latest was dismissed and directed by the court to institute an action by way of writ of summons.
- [82] Defendant had not proved that the land exchange between Susau and Garagsau was a fraud. On the balance of probability the exchange remains valid exchange.
- [83] This position was confirmed 2.5.1985 by then District Officer through the document marked P4 which was an extract of the land registry confirming the status of Tariagava as *hanua pau* (see P8)

Absence of signatures on the Council minutes;

- [84] In the evidence Acting District Officer said that minutes of Council meetings are not kept in their office but if there were land dealings approvals , the copied of such Council meetings are kept in the District Office. So these are copied of the minutes and may not contain signatures , but that does not prove any fraud or illegality. These are contemporaneous recordings and have a higher probative value than single document. In the analysis all evidence needs to be evaluated.
- [85] Defendant states that the absence of signature was the fraud of District Officer of the meeting held on 3.12.1959. This cannot be accepted as even on the minutes of 1962 had no signatures and there was no fraud at that time and one has to understand and evaluate the evidence as it happened in 1959 and not the standard of today. It was the way the evidence was kept that had preserved the minutes which were recorded contemporaneously. This has more probative value.
- [86] Even for today a contemporaneous generated copy such as copy of type written document can be accepted without signature as primary evidence as the copied were generated at the same time. From the evidence before court no such evidence was led to consider whether copies were made simultaneously but it can be assumed as there were no photocopying at that time and popular mode of making type written document was copy made at the same time till electronic copies became popular very much later.

Absence of document to evidence exchange of land between susau and Garagsau

- [87] If District officer involved in the fraud he would have recorded a transfer instead of exchange as this involved two entries and may also be documents or one . If it was one document that was also more cumbersome and a person who wants to commit a fraud would engage less in documentation. Absence of evidence of both documents can be
- a. Due to lapse of time these documents can be misplaced due to time ..
 - b. The document recorded an exchange also can be destroyed or due to actions interested parties as this is more easy than to delete contemporaneous recording in a registry.
 - c. It may be that exchange of lands were dealt differently at that time in Rotoma due to circumstances, and may not have been common as there were no evidence recorded before the court.

Counter Claim of Defendant

[88] Defendant through evidence had failed to prove the damage in the evidence. There were evidence crop damage , but there was no proof on the balance of probability that such actions were done by Defendants.

Conclusion

[89] Plaintiff admit the registration of the land the relevant registries and the evidence of the said documents were also produced in their bundle of documents at tab 7 and 8.

[90] No credible evidence supports forgery . The expert report (D4) compared signatures to a non-signature entry so does not assist the court to decide relevant issues relating to the allegation of fraud , the basis on which Defendant seeks to cancel the exchange of lands between Garagsau and Susau registered on 1.2.1960 and approved by the Council on 3.12.1959

[91] Temporary permission granted post-Cyclone Bebe (1972) was exceeded by unauthorized construction and occupation . Notice to Quit (P1) is admitted fact and this remains unheeded, and on balance of probability can be accepted and justified eviction . Plaintiffs prove Tariagava as hanua pau via P6/P7 (1960 register: "gift from father"), corroborated by P3 (1962 lease as "her own freehold") and P8 (1985: hanua pau for descendants). DW's D1 (Puku) is a 1940s tax levy, not title determinant—registers govern (Act s 9). Council approval (P2) Minutes of 3.12.1959 was in (PW2); unsigned and it was the norm. Minutes were confirmed next meeting (8 .3. 1960, defendant's bundle Tab 7). These documents support the entries in the land register as Tariagava an area of 389X413 square feet belonged to Susau as hanua pau. There was no proof of fraud in this land exchange which obtained approval from the Council including District Officer on 3.12.1959 and recorded on 1.2.1960.

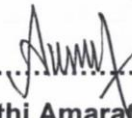
[92] Counter claim of Defendant is dismissed. Cost of this action is summarily assessed at \$5,000 to be paid by Defendant to Plaintiffs.

FINAL ORDERS:

1. Declaration that Tariagava an area of 413X 389 ,(as recorded on the Register) including the house as shown in Plan P5 prepared on 22.5.1985 belonged to Susau as hanua pau as recorded, and now to her descendants including Plaintiffs ,who have life interest in undivided share in such land.
2. Defendant including his relatives, agents, servants etc., are ordered to vacate from the house and area stated above from Tariagava as shown in Plan P5 forthwith.

3. Counterclaim is dismissed.
4. Cost of this action is summarily assessed at \$5,000 to be paid within 21 days to Plaintiffs by the Defendant.




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Deepthi Amarātunga
Judge

At Suva this 23rd day of September 2025.

Solicitors

Vama Law

Sherani & Company