

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

Judicial Review Action No. 4 of 2024

IN THE MATTER of a decision delivered on 8th March 2024 in respect of Application for Vesting Order over a part of Certificate of Title No. 42618 by the Registrar of Titles.

STATE

v

THE REGISTRAR OF TITLES

**EX PARTE: WILLIAM OLIVER THAGGARD
KAVETANI** of Biliwai, Naganivatu Road, Lot 14,
Wailoku Settlement, Tamavua, Suva.

APPLICANT

Representation:

Applicant: Mr. G.A. L. O’Driscoll (O’Driscoll & Co).

State: Mr. A. Bauleka (Office of the Attorney General).

Interested Party: Mr. R.A. Singh (Parshotam Lawyers)

Date of Hearing: 15th September 2025

Ruling

A. Introduction

[1] The applicant has sought leave to apply for judicial review in respect of the decision of the Registrar of Titles (ROT) on an application for vesting order by the applicant over a part of Certificate of Title No. 42618.

[2] The grounds the applicant is seeking the relief against the ROT are as follows:

“(i) *The Registrar of Titles in delivering the decision failed to take into account the representations made by the Applicant and in particular ignored the fact that the Applicant had followed all the correct processes and obtained all necessary documents to establish that a Vesting Order should be granted in his favour.*

(ii) *The Registrar of Titles in delivering the decision failed to give proper consideration to the following facts:-*

- (a) *That the Applicant had been in occupation of the land sought to be subject of Vesting Order for a period of over 20 years.*
- (b) *That the Applicant met all criteria for a Vesting Order to be granted under Section 78 of the Land Transfer Act.*
- (c) *That a proper legal opinion should have been obtained by the Registrar of Titles and reasoned decision delivered pursuant to the relevant laws.*
- (iii) *The Applicant would be prejudiced in that he would effectively lose out and suffer financially if the application for Vesting Order were not granted in his favour.*
- (iv) *The Applicant's position if vindicated means that he would have been put to considerable expense in bringing this action and an award of costs should compensate him accordingly."*

An affidavit in support of the applicant was filed with the application.

- [3] A Notice of Opposition and an Affidavit in Opposition were filed by the State.
- [4] Summons were filed seeking leave to join Falkon Farms Export Pte Limited as an Interested Party. It was unopposed. They joined in the proceedings.

B. Submissions

- [5] The submission by Mr. O'Driscoll for the Applicant is briefly summarized as follows:

- *A vesting order application was made by the Applicant. Relied on Section 78 of the Land Transfer Act 1971.*
- *Not applying for entire title. Previously litigated.*
- *In occupation since 1974.*
- *ROT did not give reasons. They did not follow correct process. Got ROT's reply.*
- *Owner was applying for certain things in Title.*
- *ROT has failed to consider the vesting order application.*
- *Not done their job and complied with statutory position.*
- *Section 78 to 80 sets out what ROT should do.*
- *Section 164 allows appeals. "may". Does not exclude what we did. Wrote to ROT.*
- *Applying for portion of it. Reason – dealing on title. No reason.*
- *Seeking certiorari. Let ROT do proper job.*
- *Rely on McDonnell & Giblin (1904) New Zealand - Old case.*

- [6] The submission by Mr. Bauleka for the State were by way of written submissions. He briefly presented the following orally:

- *Oppose on 2 grounds – (a) Out of time, and (b) No arguable case.*
- *(a) Out of time – Order 53 rule 3, to be made within 3 months when decision made.*
- *Decision made on 8th March 2024. Filed on 13th September 2024.*

- 6 months later.
- No satisfactory explanation given giving reasons for delay. Time barred.
- (b) no arguable case to be made. Reasons for refusal – ROT subject has many dealings. (Registered on it)
- Section 78 – vesting order – key element continuous possession. See Annex “2”- CT 42618 – Head Title.

[7] Mr. Singh’s oral submission for the interested party were:

- Filed affidavit in response on 1st May 2025.
- Section 78 of Land Transfer Act.
- Continuous possession.
- Not less than 20 years.
- ROT – they look at title shows various transactions. Partial transfers.
- Large sub-division takes place – physical civil work. Including part claimed by applicant.
- Electricity, water connection. Subdivision.
- Number of titles sold owners built and living in it. 2 cases.
- After 2008 order we filed 3rd action. 3 High court proceedings to evict applicant. He has continued to remain there.
- Work around property.
- Order 35 rule 6 – to inspect place. apply to inspect at Wailoku.
- Large development has taken place. court orders applied for on 3 occasions. Clients could not remove applicant.
- Application to ROT was not made honestly and correctly. In fact done that way to establish possession to meet requirement of Section 78. To show 20 years. ROT came to decision – he was not in continuous possession. No arguable case.

[8] Mr. O’Driscoll’s reply was that:

- The interested party is only an intervener. Section 164 uses “may” not mandatory – suggestive it’s not “shall”.
- Judgment since 2007 by Justice Singh. No case against Applicant. Letter of ROT mentions got dealings. Large portions adjacent not developed. Development not reached where Applicant is residing.
- ROT has failed to follow recorded decisions. Delay we invited ROT to clarify position. Gave plenty of time. Came to do this. Compelled.

C. Determination

[9] The criteria necessary for grant of leave to apply for judicial review are authoritatively set out in **Matalulu v Director of Public Prosecutions [2003] FJSC 2; [2003] 4 LRC 712 (17 April 2003)** and more recently in **Proline Boating Company Ltd v Director of Lands [2014] FJCA 159; ABU0020.2013 (25 September 2014)**, it was classified as:

“(a) Mandatory Statutory Requirements.

(b) Other requisites developed largely judicially given the fact that, as opposed to a direct appeal, judicial review is a remedy that is subject to the exercise of judicial discretion.”

- [10] The Mandatory statutory requirements are set out in Rule 3 (2) and Rule 3 (5) of Order 53 of the High Court Rules 1988. The Applicant has complied with Rule 3 (2) by commencing with an originating motion, supported by an affidavit stating the facts being relied upon.
- [11] Rule 3 (5) sets out that: *“the court shall not grant leave unless it considers that the applicant has sufficient interest in the matter to which the application relates.”* In **Proline** (supra), the Fiji Court of Appeal stated that *“...Order 53 Rule 3 (5) of the Fijian High Court Rules has been inspired by Order 53 Rule 3 (7) of the RSC of 1978 and Section 31 (3) of the Supreme Court Act of 1981 in the United Kingdom. In fact they are in identical terms.”*
- [12] Furthermore, in **Proline** (Supra) it is stated that *“The English decisions reveal a vast range of situations in which an applicant has been held to have a sufficient interest in applying for leave to seek judicial review. Of these it is what I would like to call the direct consequences test that would be applicable in the instant case, for example, if the decision sought to be reviewed interferes directly with the applicant’s personal rights then the applicant would have “sufficient interest”. ”*
- [13] In this matter the Applicant has sought leave to apply for judicial review of the decision of the ROT to return the vesting order application for CT42618 (registered under Falkon Farms Export Limited), with partially cancelled Title.
- [14] The Applicant was directly affected by the Registrar of Title’s decision. The Applicant has a standing to challenge the Registrar of Title’s decision.
- [15] I further note that while the Applicant seeking leave to issue judicial review proceedings needs to demonstrate that he has sufficient interest in the matter to which the application relates. This is a standing requirement. It is a necessary condition for grant of leave. It is not a sufficient condition. I have a discretion whether or not to grant leave. The grant of leave is not automatic consequences of the applicant’s satisfaction of the sufficient interest requirement: **Matalulu** (supra).
- [16] I now shall look at other requisites which ought to be looked at into at the stage of leave to apply for judicial review. The Supreme Court in **Matalulu** (supra) succinctly set out the variety of factors a Judge is entitled to have regard to for the purposes of Order 53. I also note from **Proline** (supra) the factors that were outlined by the Fiji Court of Appeal.
- [17] Having noted the pronouncements of the superior courts, I note some of the requisites are as follows:

(a) whether the proposed application is frivolous or vexatious or an abuse of the court process, and was there an inordinate delay in seeking judicial review against the decisions that is complained of by an applicant?

(b) whether the application discloses arguable grounds for review based upon facts supported by affidavit;

(c) Whether the application serves any useful purpose;

(d) whether there is an obvious alternative remedy, such as administrative review or appeal on the merits, which has not been exhausted by the applicant and

(e) whether a restrictive approach to the grant of leave is warranted because the decision is one which is amenable to only limited judicial review.

- [18] One issue is inordinate delay. This issue was raised by the State. The decision of the ROT was dated 8th March 2024. The application for judicial review was on 13th September 2024. The time period being in excess of 6 months.
- [19] Order 53 rule 4 of the High Court Rules 1988 requires that judicial review applications be promptly made. In **Harikisun Ltd v Singh [1996] FJCA 15; ABU0019.1995 (4 October 1996)**, the Fiji Court of Appeal stated that “*where the Court considers there has been undue delay it may refuse to grant leave; or where the application is made after "the relevant period", that is, in the case of applications for certiorari, three months after the date of the proceeding, it may refuse to grant leave. It may do so, not shall do so. What, then, was the factual position so far as delay was concerned in this case and was the application made or the relevant period?*”
- [20] I further note from **Harkisun Ltd** (supra) that the FCA added that “*here in Fiji the Court has a general discretion in terms of which the applicant has an obligation to show there has not been undue delay in the matter. No question of extending times that are otherwise finite arises. What is meant by undue delay will, in our view, vary according to the circumstances of each case.*”
- [21] The Applicant did not specifically address the issue of delay. His position is that they wrote to the ROT “*pointing out the issues with the decision and inviting the Registrar of Titles to review the decision.*” The submission by the State is that the Applicant has not provided any satisfactory explanation for the delay, nor has any exceptional circumstances been deposed or evidenced that would warrant the Court’s indulgence. They submit that it is outside the 3 months statutory time limit and should not be entertained.
- [22] Does the applicant have an arguable case? I am only required to be satisfied that the material available discloses what might, on further consideration, turn out to be an arguable case for relief: **Fiji Airline Pilots’ Association v Permanent Secretary for Labour and Industrial Relations (Civ App, ABU 0059/1997S, 27 February 1998, unreported)**. I have before me various affidavits, which I have considered.
- [23] The applicant through his affidavit states that sometime in 1940 his grandfather began to reside on a portion of what has since become CT 42618, with the permission of then owners, Bhindi Brothers. He claims that he was born and raised in the property, His date of birth being 2nd October 1974. He now lives there with his wife and 9 children. On the property is his 3-bedroom wood and iron house.
- [24] In April 2023, the Applicant submitted an application for a vesting order. The paperwork was returned to the applicant sometime later with notation “*R/corr –*

p/transfers, duly operating transactions on this CT.” In December 2023, Mr O’Driscoll wrote the Attorney General on the matter. On 21st February 2024, the Applicant wrote to the ROT. The ROT responded on 8th March 2024.

- [25] The ROT explained in the letter the reasons why the vesting order was returned. The main reason the vesting order was not approved by the ROT was due to various registered dealings that were encumbered on the title over time.
- [26] CT 42618 (4.2202 ha), the property that is the subject of this matter is an amalgamation of CT 22129 (1.9567 ha) and CT 22130 (2.3504 ha). CT 22130 in 1983 was owned by K Bhindi Brothers Limited. In 1986 it was transferred to Dominic Bo Jong Wong and Margarita Maureen Wong. Then in 2005 it was transferred to Filimone Qerewaqa Lesuma and Joana Rosemary Friberg. In 2015 it was transferred to Falkon Farms Export Limited. The amalgamation took place in 2016.
- [27] In the application for a vesting order the applicant had declared that he is not aware of *“any lease, mortgage or encumbrances affecting the said land or that any person other than” him has any estate or interest, save and except Falkon Farms Export Limited, being registered proprietors of CT 42618.”*
- [28] Mortgages are noted in CT 22130 of Fiji Development Bank (2005), Westpac (2011), Bank of South Pacific (2013). In addition, there is an easement certificate (2016) affecting lots on DP 10827. These are all dealings and encumbrances. CT 22130 was wholly cancelled following its amalgamation with CT 22129. Upon which CT 42618 was issued.
- [29] CT 42618 was issued in October 2016 to Falkon Farms Export Limited. CT 42618 has numerous dealings and encumbrances. It has easement certificates, partial transfers, partial discharge of mortgage and request for new Certificate of Title’s. These dealings are endorsed on CT 42618. These were what the ROT referred to in her response to the applicant.
- [30] The ROT in returning the application informed the applicant that CT 42618 had dealings that were encumbered and for that reason vesting order could not be granted. The ROT noted from the titles that there were a number of dealings on the property prior to the amalgamation including registration of a number of easements, transfer and mortgages that were registered and discharged since 1983. The ROT recognised the last registered owner as holding the legal interest over the land. There were numerous dealings registered on the Title for the past 20 years.
- [31] Filimone Qerewaqa Lesuma, a director of Falkon Farms Export PTE Limited who acquired CT 42618 in 2005 has since 2006 been trying to evict the applicant and his family. This period in itself is about 20 years.
- [32] The applicant for his part states that he was born on the property. Which means that he has lived on it for 51 years. In opposition, Mr Lesuma states that the applicant came onto the property on or about 2007. The applicant’s contention to be on the property for 51 years (for himself) and over 80 years (his family) is not supported by any application he or his family previously made for adverse possession.
- [33] The Applicant despite noting the Certificate of Titles declared that there were no mortgages or encumbrances registered on them. When in fact there are mortgages and encumbrances. These do not seem to be an oversight on the part of the applicant. The ROT correctly picked up the dealings and informed the applicant of the same. The

practice of the ROT is that in order to lodge a vesting order application on any title, there should not be any dealings registered on the titles within 20 years.

[34] Form 13 in Schedule of the Land Transfer Act 1971 contains the form to be utilised for the application of a vesting order. In that form an applicant is required to declare various things. These include, amongst others: particulars of possession, registration of encumbrances on the title, and interests of other persons. A certified copy of CT 42618 of 31st March 2023 by the applicant in his affidavit in support, is marked “A” it shows a number of easement certificates, partial transfers, partial discharge of mortgage and request for new CT’s. The applicant declaration for the application for a vesting order is dated 3rd April 2023. I find that the applicant knew when he lodged the application for a vesting order of the interest of other persons and registration of encumbrances on the title. He did not acknowledge them in his vesting order application. The Registrar of Titles picked those out. The application was returned.

[35] Section 80 of the Land Transfer Act 1971 sets out the powers and duties of the Registrar of Titles in relation to an application under Section 78 (application for vesting order). The Registrar has the power not to accept an application if it is not in order: **Section 89 (1) (a) LTA 1971**. This is what the Registrar did when she noted that there were dealings on the title within 20 years. The applicant did not acknowledge or disclose those numerous dealings in the application for vesting order. I also note that “*possession in order to be ‘adverse’ must be such as will be sufficient to entitle the person in occupation during the twenty years to maintain his right against any person but the rightful owner*”: **McDonell v Giblin and Another (1904) 23 NZLR 660**.

[35] For the reasons given leave to apply for judicial review is refused. The applicant is to pay each party \$2000.00 as costs with 21 days. The costs have been summarily assessed.

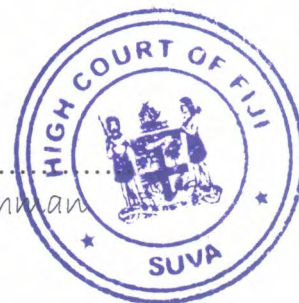
D. Court Orders

(a) The application for leave to apply for judicial review is refused.

(b) The applicant is to pay each party \$2000.00 as costs with 21 days. The costs have been summarily assessed.

Hon Justice Chaitanya S C A Lakshman

Puisne Judge



24th October 2025