

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

Judicial Review No. **HBJ 38 of 2023**

**IN THE MATTER** of an application by  
Manoa Drugucava Gade for Judicial Review of  
the decision made by the iTaukei Lands  
Appeal Tribunal delivered on 4 September  
2023.

**AND**

**IN THE MATTER** of the **ITAUKEI LANDS  
APPEALS TRIBUNAL**.

**BETWEEN** : **MANOA DRUGUCAVA GADE** of Cautata Village, Bau, Tailevu.  
**APPLICANT**

**AND** : **ITAUKEI LANDS APPEALS TRIBUNAL**.  
**FIRST RESPONDENT**

**AND** : **ATTORNEY-GENERAL OF FIJI**.  
**SECOND RESPONDENT**

**BEFORE** : **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:** **Mr. Filipe V.** for the Applicant  
**Mr Nawaikula P.** for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**DATE OF JUDGMENT:** 25<sup>th</sup> March, 2026

**JUDGMENT**

*(Amended Leave to apply for Judicial Review)*

**A. Introduction**

1. The Applicant, Manoa Drugucava Gade filed an Amended Inter Parte Summons and sought for the Leave of this Honorable Court pursuant to Order 53 Rule 3(2) of the High Court Rules to apply for Judicial Review in respect of the decision made by the Itaukei Lands Appeals Tribunal for the following relief:
  - (a) An order of CERTIORARI to review the decision of the Itaukei Lands Appeals Tribunal delivered on 4 September 2023 specifically Order B of the decision.
  - (b) Any further declarations or other relief as this Honorable Court may see fit.

The **grounds upon** which the Applicant is seeking relief against the Respondents are:

- 1) The Respondents failed to consider the relevant factors that the position of Roko Tui Cautata originates from Mataqali Gusuna and has never been given to the other Mataqali's.
  - 2) The Respondent failed to consider that he is currently the Turaga ni Mataqali Gusuna when delivering Judgment.
  - 3) The Respondents decision is arbitrary and improperly made as it:
    - (i) Failed to consider relevant factors that Mataqali Gusuna is here the position of Roko Tui Cautata should be chosen from,
    - (ii) Failed to consider that the Applicant is currently the Turaga ni Mataqali Gusuna and rightful heir to the title Roko Tui Cautata.
2. The Applicant relies on the affidavit in support filed on 8<sup>th</sup> February 2024 in support of this application.

**Decision challenged by the Applicant**

3. The decision that this being purported to be challenged by the Applicant relates to matters arising out of a decision by the First Respondent on 4<sup>th</sup> September 2023 regarding the dispute of the rightful holder of the traditional title of Yavusa Koronikalou Ka Roko Tui Cautata.
4. The Decision emanated from an Appeal of an earlier decision made by the Itaukei Lands and Fisheries Commission on 14<sup>th</sup> April 2023 in relation to the same issues that were deliberated by the First Respondent pursuant to **Section 7 (1) of the Itaukei Lands Act 1905**.

### **Sufficient interest**

5. The most instance, as in this case, the issue of **sufficient interest** is not deemed contentious as at the leave stage the only question is whether a **sufficient interest** or **locus standi** as a preliminary issue has been established (R. Commissioner of Inland Revenue, exp National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617).

### **Arguable case**

6. The applicant must demonstrate that there is an **arguable case** that a ground for seeking the Judicial Review exists. [A Judicial Review is not an appeal]

The English Court of Appeal has indicated that Leave should be granted where a point exists which merits investigation on a full inter-partes basis, with all the relevant evidence and arguments on the law (R V Secretary of State for Home Department, exp Rukshanda Begum (1999) COD 107).

Conversely, if the applicant cannot demonstrate an **arguable case** that a ground for review exists, Leave will be refused. Lewis Judicial Remedies in Public Law, London, Sweet and Maxwell, 1992 at p 230.

### **Jurisdiction**

7. The issue of **Jurisdiction** was raised by the Respondent(s) Amidst when this Court dwelled on the hearing of the Applicant's-
  - (a) Leave to apply for Judicial Review application.  
The issue was "whether this Court had the jurisdiction to deal with the Appeals from the Decision of the Itaukei Lands Appeals Tribunal?"
  - (b) The Court had to direct parties to furnish further submissions on the Issue of Jurisdiction and had the Application adjourned to a later date.

### **Determination**

8. The Supreme Court Judgment dated 29 April 2022 in the case of **Tawadokai v State** [2022] FJSC 13; CBV 0008.2019 Keith J. said:

*"The title Tui is a venerated title in Fiji. It is the title given to the Chief of the local yavusa, which approximates to what might be called a clan. Because the title is one which gives its holder much respect and esteem, there are **occasionally disputes about who should be appointed the Tui**. Different districts have different practices when it comes to appointing their Tui, and there is no uniform*

*criterion in Fiji for choosing one. Should it be lineage? Should it be suitability for the office? Or should it be a combination of the two?*

*The body in Fiji which arbitrates in disputes of this kind is the Itaukei Lands and Fisheries Commission. The commission adjudicates on disputes regarding land ownership and fishing rights, but also on customary chiefly titles. The Commission is the custodian of the various registers for the Itaukei which are maintained and updated from time to time. They contain records which facilitate the resolution of disputes. The most significant of these registers is the Vola Ni Kawa Bula (VKB). Appeals from the decisions of the Commission lie to the Itaukei Lands Appeals Tribunal. Except in clearly defined circumstances, adjudications by their tribunal are final and cannot be challenged in the Courts."*

9. Further, whilst it is acknowledged that Judicial Review Leave Application is filed and pursued in relation to the delivered Decision in terms of **Order 53 Rule 3 of the High Court Rules 1988**, it must also be noted that **Section 7(5) of the Itaukei Lands Act** provides for an **ouster clause** or provision and states '**that decisions of the First Respondent is final and conclusive and cannot be challenged in a Court of Law**'.
10. I reiterate the case of **Waqanitoga v Itaukei Lands Appeals Tribunal** [2024] FJCA 102; ABU 0031.2022 (30 May 2024) wherein the Court states the following at paragraph 61 of the Judgment.

[61] In **Jemesa Ramasi v Native Lands Commission, Native Lands Appeals Tribunal, Attorney General at Itaukei Land Trust Board** Civil Appeal No. ABU 0056 of 2012, the Honorable Justice W D Calanchini, then President of the Court of Appeal, in agreeing to the Court's Judgment (per Basnayake, JA) made the following comments on the application of Section 7(5), at paragraph [3] - [6]:

'[3] The problem arises because Section 7(5) of the Act provides that decisions of the Tribunal are to be final and conclusive and cannot be challenged in a Court of Law. This clause is a class that is known as an ouster clause and in the past referred to as '**private clauses**'.

[4] The Learned High Court Judge acknowledged that the effect of Section 7(5) is that a decision of the Tribunal is final and cannot be challenged in a Court. However, as the Learned Judge observed, an examination of the decision-making process is not prohibited by Section 7(5) of the Act.

[5] The Learned Judge concluded that it remains open to the Court to examine the decision-making process by way of an application for Judicial Review of the accepted grounds upon which an application for Judicial Review may be made, the issues of jurisdiction and natural justice are more relevant to the decision-making process than to the merits of the decision and therefore can be reviewed by a Court."

11. The Court went further to state:

[6] What this means is that it is open to an aggrieved person to apply for Judicial Review of a decision of the Tribunal alleging either lack of jurisdiction or a denial of Natural Justice. A denial of Natural Justice may mean either the existence of bias on the part of the Tribunal or procedural impropriety. These issues are not directly concerned with the merits of the decision."

12. Taking into consideration the case of **Waqanitoga** (supra) and after perusal of the Current Judicial Review application before this Court, it is clear that the Applicant has not raised any issues related to any form of procedural impropriety that may have occurred during the course of the proceedings before the First Respondent nor has there been any evidence provided for or alluded to in relation to a denial of Natural Justice as they were heard on their Appeal of the decision by the Itaukei Lands and Fisheries Commission on 14<sup>th</sup> April 2023 in relation to the same issues that were deliberated upon by the First Respondent, pursuant to Section 7(1) of the Itaukei Lands Act 1905.

13. In light of above, I have no alternative but proceed to dismiss the Applicant's application seeking for leave to apply for Judicial Review.

**Costs.**

14. The Application proceeded to full hearing with counsels filing simultaneous written submissions and affidavit. It is only just and fair that the applicant pay a summarily assessed costs of \$1,000 each to the First and Second Respondents within 14 days' time frame.

**Orders.**

15. The Applicant's Amended Inter-Parte Summons seeking for Leave for Judicial Review is dismissed in its entirety.

16. The Applicant to pay the First and Second Respondent a sum of \$1,000 each as summarily assessed costs within 14 days' time frame.

Dated at **Suva** this **25<sup>th</sup>** day of **March**, 2026



  
VISHWA D'ATT SHARMA  
PUISNE JUDGE

**CC:** Redwood Law, Suva  
Office of the Attorney General, Suva  
Itaukei Lands Appeals Tribunal, Suva