IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

000090

Action No. 173 of 1979

BETWEEN: ADIAMMA d/o Kannu — Plaintiff

AND: MAIKELI TOUTOU — 1st Defendant

AND: DIRECTOR OF LANDS — 2nd Defendant

Messrs. G. P. Shankar & Company — Counsel for the Plaintiff

Messrs. M. T. Khan & Company — Counsel for the 1st Defendant

Mr. Prasad — Counsel for the 2nd Defendant

R U L I N G

The plaintiff who is a tenant of Crown land claims that the 1st defendant is encroaching on and trespassing on about 4 acres of his land. The 1st defendant on the other hand claims that the land in dispute is part of his Crown lease, and that it is the plaintiff who is trespassing on it. Both leases are held from the 2nd defendant, and at this stage it appears fairly certain that evidence from the 2nd defendant will be necessary before the Court will be in a position to decide on the issues before it.

No claim is made against the 2nd defendant and the statement of claim merely refers to him as a nominal defendant. But it seems to me that the 2nd defendant might well be very interested in the outcome of the case and might well wish to ensure that any decision of the Court is in conformity with his own interpretation of the position between the parties. I don't at this stage, know whether the Crown leases to the two parties leave the line of demarcation vague and undefined, or whether they are self explanatory, whether the fault lies in the 2nd defendant's drafting of the leases or the parties' interpretation of the leases.

Since no claim is made against the second defendant, (so that there is no question of prejudice to the second defendant) the second defendant now seeks to be struck out of the action. He claims also to have been erroneously named as a party, since actions involving him should be brought in the name of the Attorney-General. An amendment to the pleadings would take of the second objection, but with regard to the first objection, although it seems to be a matter of convenience that the Director of Lands - either himself or through the Attorney-General - should be named as a party, giving him an automatic right of hearing in the matter, if he does not wish to be so joined I have no option but to have his name struck out as a party to the action.

I presume that by his application the Director of Lands is indicating that he is quite prepared to be bound by any decision in the dispute, and that otherwise he has no interest in the outcome.

Since the 2nd defendant was named merely as a matter of convenience, and to give him an opportunity of being heard if he so wished, and that he was in no jeopardy in being named as a party I do not think that the application calls for an award of costs.

LAUTOKA (sgd.) G. O. L. Dyke
25th June, 1980 JUDGE