

The Submissions

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE AGRICULTURAL TRIBUNAL
WESTERN DIVISION AT LAUTOKA

Reference No. WD 16 of 2014

BETWEEN: **Mohammed Tahir** of Rarawai, Ba.

APPLICANT

AND: **Director of Lands** of Tavewa Avenue, Lautoka.

RESPONDENT**Counsel**

Mr. Mohammed of Fazilat Shah Legal for the Applicant

Ms. Faktaufon for the Respondent

Ruling on Strike Out

1. The Respondent pursuant to a Motion filed on the 21st of July, 2016 sought the following orders:
 - a. That the Application made via Form 6 dated 16th July, 2014 be struck out on the grounds that the Application is an abuse of the Court process.
 - b. An Order that the cost of this Application be paid by the Applicant
2. The Application was supported by an Affidavit of Sanjesh Kumar. The Respondent is relying on section 18 and section 22 (1), (J) and (K) of the Agricultural Landlord and Tenant Act (herein referred to as '**ALTA**').
3. The Applicant is opposing the Application and has filed an Affidavit in Opposition to that effect dated 17th August, 2016. The Respondent has also filed an Affidavit in Reply dated 16th May, 2017. The Hearing of Motion was held on the 17th of May, 2017.

The Submissions

4. The Respondent submits that the original Crown Lease No. 6711 was for a 10 year term that expired on its legal termination date on 1st April, 1983. The subject lease was extended for a further 20 (Twenty) year term under section 13 of ALTA that expired on its legal termination date on the 1st of April, 2003. In a letter dated 18th May, 2011, the Respondent had informed the Applicant that the subject lease had expired and that the Lands Department was in the process of subdividing the subject land. Counsel submits that upon expiry of the subject lease, the land reverts back to the Landlord absolutely as such all rights and benefits under the lease are extinguished upon expiry. Counsel submits that the current application is an abuse of process and should therefore be struck out. Counsel relied on the case authority of **State v Ministry of Lands & Mineral Resources and Attorney General Exparte: Rafiqan Bi and Jantul Bi v Abdul Hakim** Judicial Review No. HBJ 01 of 2007 and the case of **Asha Lata v Director of Lands** WD No. 08 of 2005 in support of its application.
5. Counsel also stated that the Applicant had initially filed a related matter in this Tribunal that being, Reference No. WD 10 of 2006. The said reference was struck out for want of prosecution by the former Tribunal on the 22nd of January, 2009. Counsel further submits that the proper procedure under Regulation 40 and Regulation 41 of the Tribunal Procedure Regulations was for the Applicant to lodge an application to reinstate the Reference No. WD 10 of 2006. The Applicant fail do this but has instead filed a new application herein. Counsel state that the current application is an abuse of the Court process and should therefore be struck out.
6. The Applicant submits that after the expiry of the subject lease, the Respondent treated the Applicant as a fresh leasee. He was advised to pay \$1,834.40 (One Thousand, Eight Hundred Thirty Four Dollars and Forty Cents) for renewal which he did. He has been cultivating and occupying the subject land all this time. The land rent is up to date, the record from the Fiji Sugar Corporation indicate consistent harvesting of sugar cane for the past 4 years. Counsel further submits that the Respondent has failed to evict the Applicant at any time after the expiry of the lease and the onus was on the Respondent to evict. The Applicant submits that the expiry of the subject lease is not a bar to the current application. Counsel also submit that the Reference No. WD 10 of 2006 was never adjudicated upon as such the new application should not be restricted. The Applicant seeks that the application to strike out be dismissed with costs.

Legal Matrix

7. I have considered the submissions of both parties in this matter.
8. The law is clear, upon expiry of a subject lease, the subject land will revert back to the landlord absolutely, and thereafter the landlord is free to deal with the subject land.
9. In this case, upon expiry of the subject lease on 1st April, 2003, the Respondent had communicated to the Applicant vide a letter dated 30th August, 2006 that the subject would not be renewed (see: paragraph 7 of Statement of Defence). Furthermore, 2 years later another decision was made regarding the subject land. The decision was communicated vide the letter dated 18th May, 2011 marked as annexure '**SK 6**' wherein the former registered leasee was informed that '***the Department is now subdividing the land for advertisement***'. However, from the date of that letter to the filing of this Application dated 14th July, 2014, there has been no other development regarding the subdivision. The subject land in question is still agricultural which means that the jurisdiction to deal with this matter remains. The case of **Asha Lata v Director of Lands** WD No. 08 of 2005 is distinguished on the facts. Similarly, the case of **Nath v Kumar and Director of Lands** WD No. 44 of 1997 cited by the Applicant offer little assistance herein.
10. In the case of **Pratap v Lal** [2008] FJCA, the Court of Appeal held that:

'...steps to evict an occupier must be taken within any three year period of occupation and cultivation. Once the three year period is up, the occupant has a statutory tenancy and subsequent steps to attempt to evict the occupier can be of no relevant effect'
11. In essence, the question is whether at the time of filing this Application, the Applicant's rights to seek protection under ALTA had settled or not? The answer is in the affirmative. This application was filed 3 years after the letter dated 18th May, 2011. There is has been no further action taken by the Respondent regarding the subdivision and that the Applicant has remained in occupation and cultivation. I find that the Applicant is entitled to seek protection under ALTA. The first ground of abuse raised by the Respondent therefore fails.
12. However, in regards to the second ground of abuse raised. This Tribunal finds that the Applicant herein has failed to follow proper procedures by filing a new application herein instead of an application to reinstate the Reference No. WD 10 of 2006 under Regulation 40 and Regulation 41 of the ALTA Tribunal Procedure Regulations. I therefore find that the current application for tenancy is an abuse of the Court process.

IN THE STATUTORY TRIBUNAL FIJISLANDS
13. The full orders of the Court are as follows:

- a. The application by the Respondent is upheld.
- b. The substantive application is hereby struck out.
- c. Each party to bear own costs.

Reference No. WD 16 of 2014

BETWEEN: Mohammed Tahir of Parawai, Ba

APPLICANT

Ordered Accordingly,

AND: Director of Lands of Tavewa Avenue, Lautoka.

Counsel

Jeremaia N. Lewaravu [Mr.]
RESIDENT MAGISTRATE

6th July, 2017



Ruling on Strike Out

1. The Respondent pursuant to a Motion filed on the 21st of July, 2016 sought the following orders:
 - a. That the Application made via Form 6 dated 16th July, 2014 be struck out on the grounds that the Application is an abuse of the Court process.
 - b. An Order that the cost of this Application be paid by the Applicant.
2. The Application was supported by an Affidavit of Sanjesh Kumar. The Respondent is relying on section 18 and section 22 (1), (j) and (k) of the Agricultural Landlord and Tenant Act (herein referred to as 'ALTA').
3. The Applicant is opposing the Application and has filed an Affidavit in Opposition to that effect dated 17th August, 2016. The Respondent has also filed an Affidavit in Reply dated 16th May, 2017. The hearing of Motion was held on the 17th of May, 2017.