

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

Reference No. WD 14 of 2012

BETWEEN: **Rakeshwar Singh** of Yalalevu, Ba.

APPLICANT

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

1st RESPONDENT

AND: **Attorney General of Fiji** of Tavewa Avenue, Lautoka

2nd RESPONDENT

Counsels

Mr. Nacolawa, S of Nacolawa & Company for the Applicant

Ms. Faktaufon for both Respondents

Ruling on Strike Out

1. The Respondent pursuant to a Motion filed on the 9th of November, 2015 sought the following order:
 - a. That the Application for tenancy dated 6th February, 2015 be struck out on the grounds that the same 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 Vikas Rao. 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**'). The Applicant is opposing the application and has filed an Affidavit in Opposition to that effect.

The Submissions

3. The Respondent submits that the original Crown Lease No. 7245 had expired on its legal termination date on the 31st of December, 1994 and was then extended for another twenty year term that expired on its legal termination date on 31st December, 2014.

4. The Respondent stated that since the expiry of the subject lease, the subject land has since reverted back to the State. The Respondent is relying on the case of **Asha Lata v Director of Lands** WD No. 08 of 2005 in support of its application.
5. The Respondent further submits that there are two applications pending, the original application dated 3rd September, 2012 and the amended application filed on the 6th of February, 2015. Counsel submits that the amended application is a new application altogether as it was filed after the expiry of the subject lease. Counsel further stated that the Applicant knew who the registered leasee was and failed/neglected to include the same as a party from the beginning. The omission is fatal. He cannot pursue either application now.
6. The Applicant submits that the expiry of a tenancy does not preclude the Tribunal from granting any valid orders. However, in this case, the original application was filed when the subject lease was still extant. The Applicant relied on the cases of **Shiu Charan v Doctor Shri Chand** WD No. 8 of 2012 and **Martha Charan v iTLTB** WD No. 9 of 2008 and **Hidayat v Chee & Native Land Trust Board** WD No. 99 of 1975,
7. The Applicant further submits that there is valid claim for tenancy under section 4 and section 5 of ALTA. All issues raised by the Respondent are evidentiary issues that should be ventilated at a full hearing. Counsel submits that the application be dismissed and the matter to be listed for a substantive hearing.
8. In reply, the Respondent states that the case of **Shiu Charan** (supra) is to be distinguished on the facts of the case herein. In this case, the amendment application was filed 12 months after the amendment order was made.
9. The central issue for the Tribunal is whether the Court should apply the principles highlighted in the case of **Hidayat v Chee** (supra) despite the expiry of the subject lease.

Legal Matrix

10. I have considered the submissions of both parties in this matter.
11. Section 19 of ALTA is instructive. It provides a duty to this Tribunal to protect its own procedures and processes from abuse. In the same vein, the jurisdiction to strike out proceedings is one that is sparingly exercised. The comments of Marsack J.A. in the case of **Attorney General v Shiu Prasad Halka** (1972) 18 FLR 210 is apt, it was thus stated that:

'I think it is definitely established that the jurisdiction to strike out proceedings under Order 18 Rule 18(1) should be sparingly exercised, and only in exceptional cases. It should not be so exercised where legal questions of importance and difficulty are raised.'

12. In the case of **Hanif v Shariff** [2015] FJHC 372, the Court cited with approval the commentary in the **Halsbury's Laws of England**, Volume 37 at page 322, the phrase "**abuse of process**" is described as follows:

"An abuse of process of the court arises where its process is used, not in good faith and for proper purposes, but as a means of vexation or oppression or for ulterior purposes, or, more simply, where the process is misused. In such a case, even if the pleading or endorsement does not offend any of the other specified grounds for striking out, the facts may show it constitutes an abuse of the process of the court, and on this ground the court may be justified in striking out the whole pleading or endorsement or any offending part of it. Even where a party strictly complies with the literal terms of the rules of court, yet if he acts with an ulterior motive to the prejudice of the opposite party, he may be guilty of an abuse of process, and where subsequent events render what was originally a maintainable action one which becomes inevitably doomed to failure, the action may be dismissed as an abuse of the process of the court'.

13. The law is clear, an abuse of the court process will arise where the process is misused or used not in good faith and for an ulterior purpose. In such instances, the onus of proving the abuse lies with the party alleging it.

The Original Application

14. The Applicant filed the original action herein on the 3rd of September, 2012 without joining the registered leasee as a party. I am curious as to the reasons behind this omission as it goes to the very core of the matter at hand. The Applicant has failed to provide any reasons to this Court during the tenure of the case which in my view is critical.
15. It is undisputed that the Applicant knew all along who the registered leasee was, vide the letter dated 20th August, 2008 by the original leasee that is marked as annexure '**VR 2**' in the Respondent's Affidavit in Support dated 9th November, 2015 which the Applicant admitted and referred to in paragraph 4 of his Affidavit in Reply dated 8th February 2016. This is inclusive of the letter dated 15th December, 2008 by a Mr. Reddy marked as annexure '**RS 8**' in the Affidavit in Reply of the Applicant dated 8th February, 2016. The letter dated 14th August, 2012 marked as annexure '**RS 6**' in the Affidavit in Reply of the Applicant puts the issue beyond any doubt that the same was aware of the ownership status of the subject lease.
16. In the case of **Singh v Speakman** [2007] FJSC 7, the Court held that '**ALTA is a special Act dealing with rights in agricultural land**'. In the case of **Baxter v Gafuran** CAT Appeal No. 17 of 1968, the Learned Tribunal held that:

'the purpose of the Act as expressed in the heading is to provide for the relation between the landlords and tenants of agricultural holdings and for matters connected therewith....it is clear from the following provisions that ...probably the main object is to give a certain security of tenure to agricultural tenants no doubt both their own welfare and for the betterment of agricultural as such'.

17. In addition, section 15 of ALTA provides a safe guard for a registered tenant. Furthermore, under section 4 of ALTA the onus of rebutting any presumption of tenancy lies with the registered leasee. Moreover, there is a preliminary test under section 5(1) of ALTA. It is for these reasons that the joining and/or involvement of any registered leasee are regarded as crucial in any application for tenancy under a valid lease. The omission of the same will render the whole process as an abuse of the Court process.
18. On the 30th of January, 2014, this Tribunal initiated an Order under Regulation 13 and Regulation 24 of the Tribunal Procedure Regulation to join the registered leasee as a party to the case. This was preceded by a letter dated 20th of March, 2014, by the then Counsel for the Applicant, Reddy Nadan Lawyers. The said letter to the Respondent was copied to the Secretary of the Tribunal. The said letter is persuasive, I will reproduce the relevant extract for ease of reference. The letter in paragraph 2 state:

'Our Clients concern as follows:

The subject Crown Lease No. 7245 twenty year term of extension from 1st January, 1995 will expire on 31st December, 2014. Our clients occupation at present depends on the out come of the Agricultural Tribunals decision which is yet to be determined. The Trustee of Mr. Balwant Singh [Amar Jeet] is living overseas and has not shown any interest in occupation and cultivation of the said land. Photos taken by our client today to the subject land is enclosed for your ease of reference and it shows overgrown weeds on the subject land.

Our clients application to court was heard yesterday wherein you and the Tribunal suggested to join the Trustee of Balwant Singh [Amar Jeet] to be a party to this action. According to the term of the lease which will expire on the 31st December, 2014, it will be a fruitless exercise to join the Trustee at this moment as the Director of Lands has the lawful right to exercise his powers and enter the land straight away and revoke whatever period of lease is left on the lease conditions applicable to present tenant Balwant Singh [Amar Jeet] as his Trustee.

In view of the foregoing information, we suggest that you agree with our clients concern and provide us with an assurance of a new lease to be issued

in our clients name after expiry of the present term of lease to Balwant Singh and or his Trustee Amar Jeet.

By a copy of this letter, we are also advising the Secretary of the Agricultural Tribunal to bring this letter to the information of the Honorable Tribunal in the event we have to seek time to file necessary documents to join the Trustee later on in this action once you refuse to our request.

Our Client undertakes to meet and pay all rental arrears to the Lands Department and agrees to pay all expenses for new lease'. [underlined for emphasis].

19. I am of the view that this letter by the previous Counsel for the Applicant is prima facie evidence that the intention was to misuse the process of the Tribunal, in that, the substantive application was not made in good faith and/or for a proper purpose but for an ulterior purpose that was aimed at gaining possession of the subject leasehold via any means necessary. There is a dispute pending before the Court. The matter is '**sub judice**'. The letter dated 20th of March 2014 by the previous Counsel for the Applicant borders on contempt of Court.
20. The availability of the Agricultural Tribunal as a forum for obtaining possession is limited. I am guided in this proposition by the case authority of **Lotan v Douglas J.G. Garrick & Helen L. Garrick** Civil Appeal No. 45 of 1984. Similarly, in the case of **Bhadur v Autar & Another** WD No. 48 of 1978, the Tribunal held that:

'Section 5(1) of ALTA affords protection only to bona fide tenants whose landlords subsequently refuse them as such. It is not a short cut to acquiring an interest in land by adverse possession'.

21. I am not convinced that the Applicant is a bona fide tenant. The letter by the original leasee dated 20th August, 2008 is persuasive. In this particular matter, I hold the view that the filing of the original application without the registered leasee as a party was an attempt at a short cut and/or misuse of the Tribunal process which has rendered the application as an abuse of the Court process.

The Amended Application

22. I also hold the view that, the Applicant has only made his position untenable when he failed to file an Amended Application promptly as per the orders dated 30th January, 2014. He eventually filed the Amended Application on the 6th of February, 2015 a little over 12 months after the order was made and two months after the expiry of the subject lease.

23. The legal maxim that "**Equity aids the vigilant, not those who slumber on their rights**" is applicable under the circumstances. This status of affairs in my view is fatal to the Amended Application filed herein. The law is clear, upon expiry of a subject lease, the land will revert back to the landlord absolutely. In this case, the extended portion of the lease has expired. There is no further right of renewal under section 13 of ALTA. The subject land is unoccupied and there is no proof of cultivation. I therefore find that the Applicant herein cannot seek protection and/or relief under ALTA.
24. In the case herein, there is prima facie evidence that the Applicant has abused the process of the Court. In light of the foregoing, I decline to apply the principles espoused in the case of **Hidayat** (supra).

Final Analysis

25. The case of **Shiu Charan** (supra) submitted by the Applicant is to be distinguished on the facts herein. In that matter, the Tribunal decline to adjudicate the substantive matter as the Applicant had conceded the case even though the Tribunal had ruled that it could still grant valid orders despite the expiry. Similarly, the case of **Martha Charan** (supra) is also distinguished based on the facts of the case. In light of the foregoing, I find that the Applicant cannot proceed with either application in this Tribunal. Both Applications are an abuse of Tribunal process, for that reason, the substantive application is hereby struck out.
26. 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.
 - d. 21 days to appeal.

Ordered Accordingly,



Jeremaia N. Lewaravu [Mr.]
RESIDENT MAGISTRATE

23rd May, 2017

