

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

Reference No. WD No. 007 & WD No.008 of 2021

BETWEEN: **Ashok Chand** of Waiwai, Ba, Farmer.

Applicant

AND: **Rohit Kumar** of Waiwai, Ba, Farmer.

1st Respondent

AND: **iTaukei Land Trust Board** a body corporate duly constituted under the iTaukei Land Trust Act, Cap 134 of Fiji, Lot 431 Victoria Parade, Suva.

2nd Respondent

Before: the Resident Magistrate – Mr. Jeremaia N. Lewaravu

Date of Hearing: 26th August, 2021

Date of Judgment: 1st October, 2021

Appearance

Messers Niudamu Lawyers for the Applicant

Samuel K Ram Lawyers for the 1st Respondent

ITLTB Legal Division for 2nd Respondent

Judgment

1. There are two interlocutory applications before the Tribunal. The Applicant filed an application for maintaining the status quo along with a supporting affidavit on the 15th of June, 2021. The 1st Respondent is opposing the application and has filed an Affidavit in Opposition to that effect. Subsequently, the 1st Respondent filed a motion along with a supporting affidavit on the 23rd of July, 2021 to strike out the substantive matter. The Applicant is opposing the strike out application and has also filed an affidavit in opposition dated 9th August, 2021.

2. It is important to note that the Applicant filed two substantive applications in this Tribunal for a declaration of tenancy and to fix boundaries in iTaukei Lease No. 25920. This being the Applicant's own itaukei lease. Despite being served, the 2nd Respondent has not taken an active role in these proceedings. The non-attendance and non-participation of the 2nd Respondent is disturbing given its statutory duty.

Legal Matrix

WD No. 007

3. The application by the Applicant for a declaration of tenancy is confusing. I have considered all the legal documents filed. Essentially, the Applicant is applying for a declaration of tenancy over his own iTaukei Lease No. 25920. In the case of **Bhadur v Autar & Others** WD No. 48 of 1978, this Tribunal held that:

'It is absurd to suggest that a person can be both a landlord and his own tenant'.

4. I agree with the 1st Respondent that the principles espoused in the above stated case is applicable herein.

WD No.008

5. The Applicant has also filed an application to fix the boundaries of his subject land. The Applicant is aggrieved that his house site is not included in his iTaukei Lease No. 25920. He is seeking the addition of his house site to his lease.
6. The 1st Respondent is opposing the application. He said that the Applicant's land is based on the distribution of property (that being iTaukei Lease No. 6452) under the Estate of Somai and the rest of the siblings under iTaukei Lease No. 14995. I note that both of these itaukei leases have expired.
7. On this point, the law is clear, that upon the expiry of any valid lease and there being no provision for extension, the subject land will revert back to the landlord absolutely. The landlord at that point has the discretion to deal with the subject land in any manner it may see fit. In essence, any reference to iTaukei Lease No. 14995 and iTaukei Lease No. 6452 herein is irrelevant and immaterial under the circumstances. The legal principles espoused in the case of **Gounder v Gounder** [2012] FJHC 866 is applicable.

8. The 1st Respondent concedes that the Applicant's house site is within his iTaukei Lease. There has been a settlement discussion between the parties that was unsuccessful. The 1st Respondent was advised to surrender his lease for the 2nd Respondent to do the needful. However, the 1st Respondent refused and asked for compensation. The question of compensation was relevant under the circumstances, however, it seems to me that the 1st Respondent was seeking compensation from the wrong party. The 2nd Respondent has not taken any active role in these proceedings, I am therefore unaware of its stand on the issues raised herein.
9. The bottom line is that, both parties agree that there is a dispute as to the boundaries of the two lease holdings. Both parties have subsequently invited this Tribunal for a determination of the same.
10. The full orders of the Court is as follows:
 - a. The application to strike out WD No.007 by the 1st Respondent is hereby granted.
 - b. The application to strike out WD No.008 by the 1st Respondent is hereby denied.
 - c. The application for maintaining the status quo by the Applicant is hereby granted.
 - d. The 2nd Respondent is hereby ordered to conduct a survey of the boundaries of the two lease holdings by the 31st of October, 2021.
 - e. The 2nd Respondent is further ordered to file the relevant survey report in this Tribunal by the 5th of November, 2021
 - f. Appeal within 28 days.
 - g. WD No. 008 is adjourned to the 12th of November, 2021 for further direction.



Ordered Accordingly,

Jeremaia N. Lewaravu [Mr.]

RESIDENT MAGISTRATE

1st October, 2021