

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO.ABU 70 OF 2020
[High Court Civil Case No. HBC 355 of 2018]

BETWEEN : 1. **ANIL KUMAR**
2. **SURESH PRASAD**
3. **SALESH KUMAR**

Appellants

AND : 1. **DIRECTOR OF LANDS AND SURVEYOR GENERAL**
2. **EKEVATI SAUMUDU**
3. **REGISTRAR OF TITLES**
4. **THE ATTORNEY GENERAL OF FIJI**

Respondents

Coram : Andrews, JA
Lakshman, JA
Qica, JA

Counsel : Mr S. Kumar for the Appellant
Mr R. Green for the 1st, 3rd and 4th Respondents
Mrs N. Raikaci for the 2nd Respondent

Date of Hearing : 8 September 2023

Date of Judgment: 29 September 2023

JUDGMENT

Andrews, JA

Introduction

- [1] Anil Kumar (1st appellant), Suresh Prasad (2nd appellant) and Satesh Kumar (3rd appellant) occupied land at Koroqaqa, Baulevu. They wished to have leases of the entirety of the land but the Director of Lands (DoL) subdivided the land into two Lots of Agricultural Land and granted a lease of lot 1 to the 1st appellant Anil Kumar and a lease of Lot 2 to the 2nd respondent Ekeveti Saumudu (Mr Saumudu).
- [2] The appellants filed proceedings in the High Court at Suva, seeking relief in respect of the DoL's refusal to grant them leases and the grant of a lease to Mr Saumudu. The appellants have appealed against the judgment of the Honourable Justice Deepthi Amaratunga, delivered on 31 July 2020, dismissing their claim.

Facts

- [3] There was little dispute as to the factual background. On 1 July 1972 a 10-year Approval Notice of Lease (ANL) was granted to Ram Kumar (the 1st appellant's father) of a parcel of land comprising 4.5653 ha, described as Lot 1656 Koroqaqa, "State Land without Title" (the land). A further ANL was granted on 6 April 1984 to Ram Kumar, renewing the ANL for 20 years as from 1 July 1982, expiring on 1 July 2002.
- [4] Ram Kumar died on 18 July 1994. In 1997, the ANL was transferred to Ram Kumar's wife Kala Wati. Kala Wati transferred the ANL to Anil Kumar by a transfer registered on 6 October 1997. The land was occupied by Anil Kumar and his cousins, the 2nd and 3rd appellants, Suresh Prasad and Satesh Kumar.
- [5] On 24 March 2000 the Anil Kumar applied for renewal of the ANL. He said that he hoped he would now be granted a registered lease. By a letter dated 3 July 2002, the

DoL refused the application. The DoL advised that the ANL would not be renewed, but:

...we will carry out a proposal to subdivide part of the land for residential and the balance area be made available to you for leasing. We will advise when approval to subdivide, so that a fresh lease is made.

[6] Suresh Prasad (on behalf of Anil Kumar) responded to the DoL's letter on 31 July 2002:

I acknowledge receipt of your letter dated 3rd July 2002 and wish to advise that I do not agree to your proposal of subdividing the mentioned block of land. This land has a creek flowing across the block and easy access to flood and we have been using this for farming as well. However, I agree to lease the whole block of land therefore appreciate if my application of extension lease is approved. With due respect I would also be keen to know the reasons in having this block of land being subdivided as this is not a usual case to other blocks in the area. Once again it would be very much appreciated to hear from you soon.

[7] In a letter dated 20 September 2004, the DoL notified Anil Kumar that he had breached the terms of the ANL, by reference to s 37(1)(a) of the Agricultural Landlord and Tenants Act 1966 (ALTA). The DoL said:

A recent inspection and investigation has revealed that you have deserted the above quoted land and left it uncultivated and unoccupied and using it for grazing purposes for the last 12 months. ... I intend to proceed with Re-Entry proceedings unless you immediately take steps to cultivate the holding in a manner consistent with the practice of good husbandry and pay all outstanding rental.

[8] The DoL also claimed "reasonable compensation", and advised that it was intended to "review the situation in 3 months",

[9] In a letter dated 23 October 2004, Anil Kumar denied any breaches. He said:

... whatever you have stated is false. I can show you that for the past years we have managed the land as per the [ALTA]. Furthermore there is no need to RE-ENTRY because of you go through my receipts it has been cleared...

[10] It is not disputed that the DoL took no steps to remove the appellants from the land, and did not inform the appellants of any steps taken as to subdivision of the land.

[11] Mr Marika Tunidau, in oral evidence called by the DoL in the High Court, said that the DoL's first application to subdivide was rejected by the Director of Town and Country Planning on the basis that a subdivision for residential purposes constituted fragmentation of good agricultural land. He further said that the DoL lodged a second proposal in 2008, which was put on hold because of a moratorium on subdivisions from agricultural to residential land.

[12] In a letter 20 September 2010 the appellants advised the DoL:

Based on our mutual understanding, we have agreed to equally divide the said place of land into three lots.

[13] They advised that they were the current residents, currently cultivating the land for cassava farming. They attached a sketch plan of the proposed lots, and asked the 1st respondent to assist them to have the land surveyed and separate lease agreements issued.

[14] 25 October 2010, Mr Saumudu applied for "approval to lease" the land. He said:

The lease expired in 2002 and has never been renewed because the lessees had not fully cultivated the subject land. Instead they have been renting/leasing the land to other people to cultivate for a long time...

[15] Mr Saumudu recorded that he was "a staff of Valuation section" of the DoL. In his oral evidence in the High Court, Mr Saumudu said he was aware of the land as he rented a house in Koroqaqa, and had made enquiries in the area about the land, and been told that the lease for the land had expired. He then accessed the DoL's records system (to which he had access as an employee of the DoL) and confirmed that the ANL had expired.

[16] The DoL's subdivision of the land into two lots for agricultural use (the subdivided land) was approved on 9 July 2012, being Lot 1 comprising 2.0221 ha, and Lot 2 comprising 2.1993 ha, in parcels of 1.5039 ha and 695 m². The land was described as "State Land Without Title".

- [17] On 13 March 2013 Mr Saumudu was granted an ANL for Lot 2 of the subdivided land. The ANL was for 30 years from 1 January 2013. On 23 March 2016 Mr Saumudu was granted an Agricultural Lease of Lot 2 for 27 years 5 months 30 days from 1 July 2015. The Agricultural lease appears to reflect the term of Mr Saumudu's 30-year ANL.
- [18] In a letter dated 21 July 2017, the DoL advised Anil Kumar of approval of a 99-year Agricultural Lease of Lot 1 on the subdivided land, as from 1 July 2002. Acceptance of the Agricultural Lease was indicated by Anil Kumar on 21 July 2017. Although in oral evidence in the High Court Anil Kumar stated that this was not his signature, this was not pursued as an issue on appeal. Anil Kumar's lease was registered and made available to him on 21 March 2018. The DoL recorded when advising Anil Kumar of the availability of the lease that arrears of rent were payable.

The appellants' claim

- [19] The appellants claimed (in summary):

- [a] The DoL and Mr Saumudu knew that the Anil Kumar's ANL had expired, that he had applied for renewal, and that the appellants had applied to subdivide the land, but failed to follow procedure and through dishonest, devious and fraudulent conduct, got their land subdivided and a portion of it leased to Mr Saumudu. They also claimed that they were never informed of any breaches of the lease, nor that refusal of renewal application was on basis of non-cultivation.
- [b] The DoL, as landlord, owed a fiduciary duty to the appellants, and breached that duty by failing to advise them that part of the land had been leased to Mr Saumudu, and by allowing Mr Saumudu to commit fraud and obtain an advantage by being granted a lease.

[20] The appellants sought orders from the High Court:

1. *That the land allocated to [Mr Saumudu] be reverted back to them and be equally divided into 3 separate lease hold as requested by them;*
2. *Aggravated and punitive damages against [the DoL and Mr Saumudu] for making the [appellants] to run from pillar to post to get information in regards to their wrongful doing;*
3. *Cost of this action on higher scale;*
4. *Any other order this honourable Court seems just.*

The HC Judgment

[21] The learned Judge held (in summary) that:

- [a] Although the appellants' pleadings were defective, in that they had not sought cancellation of Mr Saumudu's title, or alteration of Anil Kumar's title for a 99-year lease, that should not prevent him from considering the merits of the action, as it was axiomatic that the appellants were seeking to cancel Mr Saumudu's lease and that the land be returned to them.
- [b] The appellants had collectively and individually violated the provisions of Anil Kumar's ANL by cultivating separate areas of the land and allowing construction of houses on the land without the written consent of the DoL (amounting to illegal subdivision of the land).
- [c] There was no fraud or negligence by the DoL or Mr Saumudu in the DoL's refusal to subdivide the land between the appellants, to subdivide the land into two Lots of agricultural land (after the DoL's proposed subdivision for residential purposes was rejected), to grant a lease of Lot 2 to Mr Saumudu and to grant a lease of the balance of the land (Lot 1) to Anil Kumar.

[22] With respect to costs, the learned High Court Judge said that "considering the circumstances of the case", the parties were to bear their own costs.

The Appellants' Grounds of Appeal

[23] The appellants set out 21 grounds of appeal in their Notice of Appeal. Only the grounds numbered 1 to 17 were included in the Court record, and addressed in the submissions for the appellant. Grounds numbered 18 to 21 have been reviewed from the Court of Appeal file. As this Court noted to counsel at the hearing, the grounds of appeal were repetitive and overlapping, and are best dealt with in groups of similar grounds. These may be summarised as being that the learned High Court Judge:

- [a] erred in his findings regarding inspections of the land by the DoL, cultivation of the land by the appellants, the DoL's failure to evict the appellants (and as to whether that failure constituted acquiescence in the appellants' continued occupation), and (in light of the period of time they had occupied the land) the importance to the appellants of continuing to occupy the land;
- [b] failed to consider the evidence, and was wrong to dismiss the allegations of fraud, dishonesty, cheating, deceit and misuse/abuse of office by the DoL and Mr Saumudu;
- [c] failed to consider the evidence and find that the DoL had erred in the exercise of his discretion in relation to the refusal to renew Anil Kumar's lease, and the grant of lease to Mr Saumudu, alleging that the DoL's actions were arbitrary and unfair, procedurally unfair, and showed bias and prejudice against the appellants; and
- [d] erred in law and fact by failing to give adequate reasons for his judgment, and erred in law and fact and was unreasonable and biased in his conduct of the trial.

[24] The appellants have the onus of satisfying this Court that the learned High Court Judge was wrong and that the appeal should be allowed.

Preliminary issues raised by the DoL on appeal

Pleadings

[25] Counsel for the DoL, Mr Green, objected to the appellants citing in their submissions on appeal provisions of the Constitution of the Republic of Fiji. He submitted that the provisions had not been pleaded in the High Court, and had therefore not been considered by the learned High Court Judge. At the same time, he invited this Court to consider that the High Court had acted ultra vires in entertaining the appellants' proceeding, on the basis that pursuant to s 18 of the ALTA, the appellants' claim should have been brought in an agricultural tribunal.

[26] It can be accepted that the Constitution was not pleaded in the High Court, and that no leave was sought to refer to its provisions in this Court. However, the appellants' submissions were filed in this Court in April 2021. No application was made in respect of the appellants' submissions until the hearing of the appeal. I conclude that there can be no prejudice to any respondents in considering the appellants' submission.

[27] The DoL faces the same issue as was raised against the appellants, with respect to the DoL's submission that the High Court had no jurisdiction to hear the appellants' claim. Mr Green submitted that the appellants' claims could have been put before an agricultural tribunal which, he submitted, is "a specific body with statutory powers to adjudicate on issues relating to and arising out of the [ALTA]". This was not pleaded in the High Court, and therefore was not considered by the learned High Court Judge.

[28] Sections 16(1) and 18 of the ALTA provide (as relevant to this appeal) in relation to agricultural tribunals:

16 Agricultural Tribunals

(1) *The Judicial Services Commission may, by notification in the Gazette, and in accordance with the provisions of this Act, establish as many agricultural tribunals as he or she thinks fit.*

...

18 Powers of tribunal those of Magistrates Court

- (1) *A Tribunal shall have power –*
- (a) *to exercise all the powers of a magistrates' court in its summary jurisdiction of summoning and enforcing the attendance of witnesses, examining witnesses on oath, and enforcing the payment of costs and the production of documents;*
 - (b) *to admit evidence whether written or oral, and whether or such evidence would be admissible in civil or criminal proceedings;*
 - (c) *to award costs;*
 - (d) *to extend any period of time, whether in relation to a notice or otherwise, specified in this Act.*
- (2) *Where a tribunal considers that any landlord or tenant is in breach of this Act or of any law, the Tribunal may declare the tenancy or a purported tenancy granted by such landlord or to such tenant as aforesaid, null and void and may order such amount of compensation (not being compensation payable under the provisions of Part V) paid, as it shall think fit, by the landlord or by the tenant, as the case may be, and may order all or part of the agricultural land the subject of an unlawful tenancy to be assigned to any tenant or may make any determination or order that a Tribunal may make under the provisions of this Act.*
- (3) *Any application to a Tribunal for a declaration, for compensation or for the ordering of the making of an assignment or other order or determination under subsection (2) may be made notwithstanding the provisions of subsection (3) of section 59 but nothing contained herein shall be deemed to permit the ordering or making of an assignment in breach of the provisions of the Subdivision of Land Act or which would otherwise be lawful.*

[29] The appellants could have made a claim to an agricultural tribunal. However, nothing has been put before the Court that indicates that agricultural tribunals have been given a sole and exclusive jurisdiction of all disputes over agricultural land. There is no basis for a conclusion that the High Court lacked jurisdiction to deal with the appellants' proceeding.

[30] Mr Green further submitted that the appellants' allegations of fraud and collusion are serious, and should have been put to and considered by Fiji Independent Commission Against Corruption (FICAC). It was submitted that the appellants had "failed to provide an iota of evidence" that their concerns had been reported to FICAC.

[31] That submission is not accepted. A complaint to FICAC was referred to in the appellants' Statement of Claim, and evidence was given in the High Court that a report had been made to FICAC, but no response was received.

Issues on appeal

Did the learned High Court Judge err in considering of the evidence as to inspections, the DoL's refusal to renew Anil Kumar's ANL, and the failure by the DoL to evict the appellants from the land?

[32] Counsel for the appellants, Mr Kumar, submitted that the learned High Court Judge erred in finding that the DoL concluded that Anil Kumar had failed to cultivate the land and was therefore in breach of the ANL. He submitted that the Judge had wrongly relied on unreliable and uncorroborated hearsay evidence as to inspections of the land. He further submitted that the Judge failed to consider evidence that the land was being cultivated and failed to realise that there was no report confirming non-cultivation.

[33] This point on appeal does not require lengthy consideration. It is clear on the face of the DoL's notification letter that the refusal to grant a renewal of Anil Kumar's ANL on 2 July 2002 was not on the grounds that he had failed to cultivate the land. Renewal was refused and Anil Kumar was advised that the DoL intended to subdivide the land. Accordingly I reject the appellant's submission that the DoL's refusal to renew the ANL of renewal was on the grounds that Anil Kumar had breached the conditions of his ANL by failing to cultivate the land.

[34] It may be noted that the notification to Anil Kumar of breach on the basis of non-cultivation was made on 20 September 2004, more than two years after the DoL refused renewal of Anil Kumar's ANL. Whether the allegation was, or was not, correct is immaterial to the refusal to renew Anil Kumar's ANL. Renewal had already been refused.

[35] Mr Kumar contended for the appellants that the fact that they had resided and worked on the land for more than 40 years, had not been given any notice regarding their stay, and were not evicted from the land, amounted to the DoL's acquiescence in their continued occupation. He submitted that the appellants were "sitting tenants" on the land.

[36] As stated earlier, the appellants continued to reside in houses they had constructed on the land after the ANL to the 1st appellant expired in July 2002, and their evidence was that they continued to cultivate the land and use it for grazing. The fact that the DoL issued a notice of breach in September 2004 indicates that the DoL was aware of Anil Kumar's occupation of the land. Further, there was no evidence of any steps being taken to evict any of the appellants from the land. In his oral evidence to the High Court Mr Tunidau (witness for the DoL) said that when the lease expired the DoL "cannot take any land dealings".

[37] With respect to Anil Kumar's position, his ANL expired in 2002, he had been refused renewal and been advised of the DoL's subdivision proposal, but he had a promise of a lease of the remaining balance after subdivision. Although the subdivision process took from 2002 to 2012, Anil Kumar was offered a lease of the balance of the land after subdivision into two agricultural lots, which he accepted. He had an equitable interest to the extent of the promised lease of the balance of the land after subdivision (but no more), and was granted what he was promised. He cannot claim any reasonable expectation of a lease over the entire parcel of land (that is, both lots after subdivision).

[38] I accept Mr Green's submission for the DoL that Anil Kumar's interest in the land after his ANL expired was equivalent to some sort of equitable licence to occupy, and he had some reasonable expectation that, after a subdivision was completed, he would be granted a lease of the balance of the land.

[39] With respect to Suresh Prasad and Salesh Kumar, clauses 7 and 20 of the ANL provided:

7 *Only such buildings shall be erected on the demised land as are necessary for:-*

- (a) *A dwelling or dwellings for the lessee;*
- (b) *Accommodation for implements, vehicles, horses and other stock used in connection with the farm, plantation or any other building directly connected with the work of a farm or plantation.*

20 *The lessee shall not subdivide the land without the written consent of the lessor first had and obtained then only in accordance with a plan of subdivision approved by the lessor in writing.*

[40] Mr Kumar submitted for the appellants that the construction of three houses on the land (one for each of the appellants) did not violate cl 7 of the ANL. That submission is not accepted. The wording of cl 7 is clear: a dwelling (or dwellings) on the land may only be constructed for the lessee (in the present case, Anil Kumar). Mr Kumar submitted that this was a “family arrangement”, involving one extended family. That may be so, but it does not alter the fact that there was only one lessee, and that was Anil Kumar. Clause 7 did not allow construction of houses for Suresh Prasad and Saleshe Kumar who were not lessees. No steps were taken by any of the appellants to regularise their occupation of the land by obtaining the DoL’s written consent.

[41] I have concluded that at all times, whether while the ANL was in force or after it expired, Anil Kumar (as lessee under the ANL) was the only “sitting tenant”. Suresh Prasad and Saleshe Kumar were relatives of Anil Kumar, and clearly resided on the land with his consent, but were not “sitting tenants”, in any form.

[42] It was not disputed that all of the appellants and their families had lived on the land for many years. However, I accept Mr Green’s submission for the DoL that any interest Suresh Prasad and Saleshe Kumar might have had arising out of their continued occupation over the years was extinguished by their occupation of land and construction of homes without the written consent of the DoL. I am not persuaded that the learned High Court Judge erred in finding that the appellants were in breach of the terms of the ANL by virtue of the occupation of the land by Suresh Prasad and Saleshe Kumar, amounting to an illegal subdivision, without the written consent of the DoL being sought and obtained.

[43] Mr Kumar further submitted for the appellants that evidence given for the DoL of inspections of the property demonstrated that the DoL was aware of the appellants' occupation of the land, yet never took any action or gave notice to them. He submitted that pursuant to s 4(1) of the ALTA, there was a presumption that the tenancy continued to exist.

[44] Section 4(1) of the ALTA provides:

4 Presumption with regard to tenancies

4 (1) *Where a person is in occupation, and is cultivating, an agricultural holding and such occupation and cultivation has continued before or after 29 December 1967 for a period of not less than 3 years and the landlord has taken no steps to evict him, the onus shall be on the landlord to prove that such occupation was without his consent and, if the landlord fails to satisfy such onus of proof, tenancy shall be presumed to exist under the provisions of this Act. ...*

[45] Mr Kumar submitted for the appellants that the DoL's conduct in "doing frequent inspections" and awareness of the number of dwellings and occupancy of the land over more than 40 years, "inevitably" showed that the DoL consented or acquiesced to all appellants residing on the land and had no issues with them continuing to do so.

[46] As stated earlier, there was no dispute that the appellants had at no time obtained the written consent or regularisation of the DoL to the occupation of the land by Suresh Prasad and Saresh Kumar.

[47] Further, I accept Mr Green's submission for the DoL, that the conduct of inspections and provision of reports by the DoL is not an issue that can be adjudicated on by this Court. It is accepted that the DoL's actions must be aligned with the provisions of the State Lands Act 1945 and the budget provided by the Ministry of Finance. The DoL must prioritise activities to be pursued within the ambit of the budget, such that the exercise of the DoL's discretion cannot amount to acquiescence.

[48] I am not persuaded that the learned High Court Judge was wrong to find that the DoL's decision not to grant leases to Suresh Prasad and Salesh Kumar was a policy decision as to the allocation of State Lands, and not justiciable.

Did the learned High Court Judge err in finding that there was no fraud on the part of the DoL and Mr Saumudu in the grant of a lease to Mr Saumudu?

[49] The meaning of "fraud" is well discussed in the judgment of his Honour Justice Salmond in the New Zealand Court of Appeal in Waimiha Sawmilling Co. Ltd v Waione Timber Co. Ltd.¹ His Honour said:²

Where a purchaser actually knows for certain of the existence of an adverse right which will be destroyed by his purchase he is ... guilty of fraud. Where, on the contrary, he has no knowledge that such a right exists or is even claimed he is a purchaser in good faith. In between these two extremes there lie those intermediate cases in which, although there is no certain knowledge of the existence of an adverse right, there is knowledge of a claim and the possibility of that claim being well founded. ... knowledge ... that an adverse claim exists, that it may possibly be well founded, and that it will be destroyed by an alienation of the property, is not in itself sufficient to stamp the transaction as fraudulent within the meaning of the Land Transfer Act.

Waimiha Sawmilling was applied by this Court in its judgment in Prasad v Wati.³

[50] On the basis of my findings as to the appellants' occupation of the land (discussed at paragraph [37]-[42], above), I am not persuaded that the learned High Court Judge erred in finding that there was no fraud on the part of the DoL and Mr Saumudu.

Did the learned High Court Judge err in considering the DoL's exercise of his discretion to subdivide the land and grant a lease to Mr Saumudu?

[51] It was not disputed that the DoL has a discretion to grant leases of State Land. Nor was it disputed that Mr Saumudu was entitled to apply for a lease, pursuant to reg 4 of the State Lands (Leases and Licences) Regulations 1980. Mr Saumudu submitted an application to lease the entire (un-subdivided) parcel of land in October 2010. His

¹ *Waimiha Sawmilling Co. Ltd v Waione Timber Co. Ltd* [1923] NZLR 1137; [1923] NZ GLR 32.

² At 1174-5.

³ *Prasad v Wati* [2001] FJCA 40; ABU0027U.1999S (22 November 2001).

evidence was that he was not aware of the DoL's application to subdivide the land, or the moratorium in place with regard to the subdivision of agricultural lands.

- [52] Mr Kumar submitted for the appellants that the learned High Court Judge erred in fact and law by failing to hold that the DoL had failed to exercise his discretion fairly and not in an arbitrary manner, amounting to an abuse of his power. He referred to ss 27 (headed "Freedom from compulsory or arbitrary acquisition of land") and 29 (headed "Protection of ownership and interests on land") of the Constitution. He submitted that in breach of these provisions, the learned High Court Judge had failed to analyse the history of the appellants' acquisition of the land and their interests in the land.
- [53] I do not accept Mr Kumar's submission. The learned High Court Judge set out the history of Anil Kumar's and his predecessors' acquisition and occupation of the land. I am not persuaded that the Judge erred in findings he made in relation to that occupation, including the undisputed fact that the appellants failed (at any time) to obtain the DoL's consent to the occupation and cultivation of the land by Suresh Prasad and Salesh Kumar. I am not persuaded that there was anything arbitrary or unfair in the DoL's approach to the exercise of his discretion to subdivide the land.
- [54] Further, I accept Mr Green's submission for the DoL that once Anil Kumar's ANL had expired, the land reverted to the State, and it was open to the DoL to deal with as the DoL considered appropriate. In the present case, the DoL's decision was to subdivide the land.
- [55] Mr Kumar submitted for the appellants that Mr Saumudu admitted in cross-examination in the High Court that the subdivision of the land was done to accommodate his wish to obtain a lease. Mr Kumar's question and Mr Saumudu's answer were as follows:

Question: You won't know, I won't know, but it was only after you had made an application then [theDoL] started to subdivide, and the subdivision I am putting to you was made to accommodate your request. This is a very simple way of putting it around?

Answer: Yes

- [56] Counsel's question was ambiguous: Mr Saumudu was not asked directly first, whether he agreed with the proposition that the subdivision was not started until after he submitted his request for a lease, and secondly, whether he agreed with the proposition that the DoL subdivided the property in order to accommodate Mr Saumudu's request for a lease. Mr Saumudu's answer "yes" to a compound question suggests that he may not have understood the question. For that reason, I am not persuaded that Mr Saumudu's "admission" should be given the weight Mr Kumar urged upon this Court.
- [57] Mr Kumar also submitted that had Mr Saumudu not made an application for a lease of the land, there would never had been any subdivision.
- [58] The chronology of the relevant events does not support any reliance on Mr Saumudu's "admission", or the proposition that had he not applied for a lease, there would not have been a subdivision. The subdivision process commenced some years before Mr Saumudu applied for a lease. The evidence before the High Court was that the DoL's first application (for a residential subdivision) had been rejected and the second application (for an agricultural subdivision) was made in 2008 but put on hold because of the moratorium, some two years before Mr Saumudu applied for a lease. There was no basis on which the learned High Court Judge could have accepted a submission that there would have been no application for subdivision had Mr Saumudu not applied for a lease.
- [59] Accordingly, I am not persuaded that the learned High Court Judge erred in not finding that DoL's application for subdivision was made in order to accommodate Mr Saumudu.
- [60] Mr Kumar also submitted for the appellants that the availability of the land for lease was never advertised in local daily newspapers, and that this meant that the general public was never made aware of the availability. He submitted that the learned High Court Judge completely disregarded this evidence, and that it led to the fraud by the DoL and Mr Saumudu.

- [61] It is accepted that it is customary for there to be public advertisement of the availability of State Land for lease. However, I am not persuaded that the failure to advertise constitutes grounds to nullify lease to Mr Saumudu.
- [62] Mr Kumar also pointed to the fact that Mr Saumudu's signature on his application for a lease was not witnessed (as to which there was no dispute), yet the application was received and eventually granted, was further evidence of fraud on the part of the DoL and Mr Saumudu.
- [63] I accept Mr Kumar's submission that the learned High Court Judge's characterisation of the absence of a witness to Mr Saumudu's signature as a "trivial" matter was inappropriate: the application form completed by Mr Saumudu provided for the applicant's signature to be witnessed – although there was no prescribed requirement as to manner of witnessing – and I accept that a receiving officer would usually insist on a witnessed signature.
- [64] However, Mr Kumar could not direct this Court to any rule or regulation which makes it mandatory for an application to be witnessed (and thus invalid if not witnessed). It is accepted that the lack of a witness to a signature is irregular, but the fact that the application was accepted and the appropriate fee taken indicates that the receiving officer was satisfied that the application was valid. I am not persuaded that the learned High Court Judge was wrong to find that the lack of a witness's signature did not nullify the application.
- [65] I turn now to Mr Saumudu's evidence that he accessed the DoL system to check whether the Anil Kumar's ANL of the land had expired. The learned High Court Judge recorded that:

[Mr Saumudu] was truthful in his evidence and admitted that he checked that availability of the land when he received information about the said land for his application but made no further comment on the matter.

- [66] Counsel for Mr Saumudu, Mrs Raikaci, properly conceded that it was not consistent with his position as an employee of the DoL for Mr Saumudu to access the system for

his own private purposes, and that he should not have done so. I agree, and the relevant authorities should ensure that such conduct is not repeated.

[67] I take into account Mr Saumudu's evidence (accepted by the learned High Court Judge) that he had learned, from his own enquiries in the area, that Anil Kumar's ANL had expired before he accessed the system. His access was for the purpose of checking information he already had, not to obtain new information. Accordingly, I reject Mr Kumar's submission for the appellants that had Mr Saumudu not been in a position to access the DoL system, he would never have known that the ANL had expired and the land was available to lease.

[68] I am not persuaded that Mr Saumudu's impropriety was at such a level that would justify his lease of Lot 1 being cancelled. Further, I am not persuaded that the learned High Court Judge erred in finding no error by the DoL in the exercise of his discretion to grant a lease to Mr Saumudu.

Did the learned High Court Judge fail to give adequate reasons for his judgment and did he show bias?

[69] Mr Kumar submitted for the appellants that the learned High Court Judge did not give sufficient reasoning for ascertaining how and why it was justifiable for the DoL to allocate a portion of the land back to Anil Kumar when he had found that the appellants were in breach of the ANL, and failed to provide reasons as to why he accepted the DoL's and Mr Saumudu's "version of the story", when there was no "flow" in the evidence given for the respondents. He submitted that the appellants had been greatly prejudiced as a result.

[70] I accept, as has the Court of Appeal in earlier judgments,⁴ that Judges must give reasons for their judgments. I also accept Mr Green's submission for the 1st respondent, that in the present case the learned High Court Judge thoroughly considered the evidence, and wrote a considered decision covering all the issues emanating from the pleadings. The Judge's reasoning is apparent from the judgment. I am not persuaded that the learned High Court Judge failed to meet the standard required of him.

⁴ See, for example, *Pratap v GL John Ltd* [2003] FJCA 29, ABU0042.2000S (30 May 2003); and *Pratap v Christian Mission Fellowship* [2006] FJCA 41; ABU0093J.2005 (14 July 2006).

[71] Mr Kumar further submitted for the appellants that the learned High Court Judge showed bias and favoured the respondents. He submitted that in the course of the trial there were admissions to the questions asked of witnesses, and on various occasions the learned High Court Judge made comments such as “he won’t answer move on” and “was looking at his counsel signals”. He submitted that the genuine claims raised by the appellants had not been properly addressed, in breach of s 15(2) of the Constitution.

[72] It is accepted that all litigants before the Courts are entitled to an independent and impartial hearing. That right is enshrined in s 15(2) of the Constitution. I have carefully read the transcript of the trial before the learned High Court Judge. It is noted that he intervened from time to time during the examination, cross-examination and re-examination of witnesses by counsel for each of the parties. The interventions appear to have been for the purpose of clarifying evidence, and avoiding spending valuable Court time on repetitive questioning. I am not persuaded that those interventions went beyond an acceptable level, or that they showed bias against the appellants.

Was the relief sought by the appellants available to them?

[73] Finally, I note Mr Green’s submission for the DoL, that even if this Court were to accept the appellants’ submissions, the appellants could not be granted the relief they sought, that “the land allocated to [Mr Saumudu] be reverted back to them and be equally divided into three separate lease hold as requested by them”, as there was no pleading seeking cancellation of the lease to Mr Saumudu.

[74] This point was noted by the learned High Court Judge at an early stage of his judgment, and he recorded that this should not prevent consideration of the substance of the appellants’ claim. I am not persuaded that he erred in doing so.

Conclusion

[75] For the reasons set out above, I am not persuaded that the learned High Court Judge erred, and I would dismiss the appellants’ appeal.

[76] As recorded earlier, the learned High Court Judge decided that “in the circumstances” each party should meet its own costs. I note the parties’ submissions as to costs on this appeal, but I have concluded that this Court should take same view as the learned High Court Judge. I would order that each party is to bear its own costs.

Lakshman, JA

[77] I agree with the reasoning and conclusions of Andrews, JA.

Qica, JA

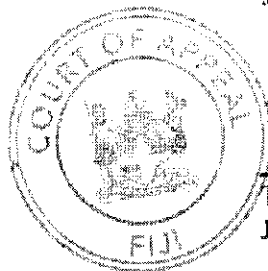
[78] I concur with the reasoning and views of Andrews, JA and that the appeal should be dismissed.

Orders of the Court

- (1) *The appellants’ appeal is dismissed.*
- (2) *Each party is to bear its own costs.*



The Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL



The Hon. Mr Justice Chaitanya Lakshman
JUSTICE OF APPEAL



The Hon. Mr Justice Samuela Qica
JUSTICE OF APPEAL

SOLICITORS:

Sunil Kumar Esq., Nausori, for the Appellant
Messrs Ravono & Raikaci Law, Nausori, for the 2nd Respondent
Office of the Attorney General, Suva, for 1st, 3rd and 4th Respondents