

**IN THE CENTRAL AGRICULTURAL TRIBUNAL AT SUVA**

**CAT APPEAL No. 10 of 2019**

**REFERENCE No. ND 13 of 2012**

**BETWEEN**

**DURGA PRASAD** of Waiqele, Labasa.

**APPELLANT**

**AND**

**AJESHWAR PRASAD** of kawakawa, Waiqele, Labasa.

**FIRST RESPONDENT**

**AND**

**iTAUKEI LAND TRUST BOARD** a statutory body registered under the provisions of Native Land Trust Act with its Head Office in Suva.

**SECOND RESPONDENT**

**Counsel** : Mr. Sen A. for the Appellant  
Mr. Radio E. for the 1<sup>st</sup> Respondent  
Mr. Ratulele K. for the 2<sup>nd</sup> Respondent

**Date of Hearing** : 26<sup>th</sup> March 2020

**Date of Judgment** : 23<sup>rd</sup> April 2020

## **JUDGMENT**

- [1] The 1<sup>st</sup> respondent (the original applicant) made this application (Form 6) to the Agricultural Tribunal (the Tribunal) for a declaration of tenancy in respect the Native Lease No. 25692; Land known as TUDRELI being Lot No. 1 on PLAN M 1719 in the Tikina of Wailevu, province of Macuata containing an area of 14 acres, 2 roods and 0 perches.
- [2] The learned Tribunal granted the application for tenancy and ordered the 2<sup>nd</sup> respondent to issue a new instrument of tenancy to the 1<sup>st</sup> respondent.
- [3] Being aggrieved by the decision of the learned Tribunal the appellant (the original 1<sup>st</sup> respondent) preferred this appeal the Central Agricultural Tribunal on the following grounds:
1. That the learned Resident magistrate of the ALTA Tribunal erred in law and in fact in failing to consider all the relevant matters and took into consideration irrelevant matters into consideration.
  2. That the learned Resident Magistrate of the Tribunal erred in law and in fact in granting a tenancy to the 1<sup>st</sup> respondent when there is no landlord and tenant relationship between the appellant and the 1<sup>st</sup> respondent.
  3. That the learned Resident Magistrate of the Tribunal erred in law and in fact in ordering the 2<sup>nd</sup> respondent to issue an instrument of tenancy for the 1<sup>st</sup> respondent.
  4. That the learned Resident Magistrate of the Tribunal erred in making an order for the declaration of tenancy when 1<sup>st</sup> respondent was a purchaser of the lease hold and had not paid the full consideration amount.
  5. That the decision of the learned Resident Magistrate of the Tribunal is erroneous and perverse and must be set aside with costs against the respondents.

[4] When an application of this nature is made the Tribunal must carefully ascertain under what provision of the law the application must be considered.

[5] Section 4(1) of the Agricultural Landlord and Tenant Act 1966 (the Act) provides:

Where a person is in occupation of, 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:

Provided that any such steps taken between the 20 June 1966 and 29 December 1967, shall be no bar to the operation of this subsection.

Section 5(1) of the Act provides:

A person who maintains that he is a tenant and whose landlord refuses to accept him as such may apply to a tribunal for a declaration that he is a tenant and, if the tribunal makes such a declaration, the tenancy shall be deemed to have commenced when the tenant first occupied the land:

Provided that rent shall only be recoverable where the tribunal is satisfied that it is just and reasonable so to order.

[6] Section 4(1) of the Act creates a presumption of tenancy in favour of a cultivator who has been in occupation of and has been cultivating for a period not less than three years where the landlord has not taken any step to evict him or her from the agricultural holding. In such a situation the burden shifts to the landlord to prove that the occupation was without his consent.

[7] Under section 5 of the Act a person who maintains that he is the tenant of a particular agricultural holding can make an application for a declaration of tenancy if the landlord refuses to accept him as the tenant.

[8] The provisions of the above two sections of the Act deals with two different situations. Therefore, before making an application for a declaration of tenancy the applicant must carefully ascertain under which provision the application should be made.



- [9] In this matter the respondent made the application on the basis that he was a tenant. Therefore, the Tribunal should have considered the application under section 5 of the Act.
- [10] In his application the 1<sup>st</sup> respondent says that the contract of tenancy was entered into in 2008 and it is evidenced by the sale and purchase agreement entered into between the appellant and the 1<sup>st</sup> respondent. It is a fact admitted by the parties the 1<sup>st</sup> respondent entered into the sale and purchased agreement to purchase the agricultural holding which is the subject matter of these proceedings. Hence the application should have been considered under section 5 of the Act which places the burden of establishing the existence of a tenancy on the 1<sup>st</sup> respondent.
- [11] As correctly observed by the learned Tribunal there was no copy of the signed agreement before the Tribunal. However, the Tribunal has taken into consideration certain contents of the agreement in arriving at the findings which, in my view, is an error on the part of the Tribunal.
- [12] Under section 5 of the Act the burden of proving the existence of a tenancy is on the party who seeks a declaration of tenancy. Tenancy can be established by tendering a properly executed tenancy agreement or by evidence of payment of rent. From the evidence it appears that the 1<sup>st</sup> respondent has not been able establish the existence of tenancy between him and the appellant which is a requirement under section 5(1) of the Act.
- [14] In the case of **Ali, In Re** [1986] FJLawRp 22; [1986] 32 FLR 30 the Court of Appeal held:
- It is true that a person who is occupying and cultivating land under an unlawful agreement may never nevertheless qualify for a declaration of tenancy if he satisfies the requirements of section 4 but he would then be applying under section 5 and not under the agreement, whose contents would be mere evidence to establish those requirements.
- [15] In the said case the parties entered into an agreement which was contrary to section 12 of the Native Lands Trusts Act. In the matter before this tribunal the agreement was a sale and purchase agreement and not a lease agreement.
- [16] The application is in Form 6 and the 1<sup>st</sup> respondent has stated that he came before the Tribunal as a tenant and to establish tenancy he relied on the sale and purchase agreement which was not before the Tribunal.

- [17] The next question is whether the 1<sup>st</sup> respondent after failing to establish the existence of a tenancy under section 5(1) of the Act can rely on the provisions of section 4(1) of the Act.
- [18] For the Tribunal to make a declaration of tenancy under section 4(1) of the Act it has to be satisfied that the applicant has been in occupation cultivating the land for a period of three years and that the landlord did not take action to evict the applicant.
- [19] The 1<sup>st</sup> respondent entered upon the property with the understanding of purchasing it. Therefore, the appellant had no reason to evict him. If the Tribunal acts under section 4(1) of the Act in these circumstances it would be a grave abuse of the provisions of the Act.
- [20] For the aforesaid reasons I make the following orders.

### **ORDERS**

1. The appeal of the appellant is allowed.
2. The decision of the learned Tribunal is set aside.
3. The application of the 1<sup>st</sup> respondent is refused.
4. The 1<sup>st</sup> respondent is ordered to pay \$2000.00 as costs of this appeal to the appellant.



23<sup>rd</sup> April 2020

  
Lyone Seneviratne

**Central Agricultural Tribunal**