IN THE CENTRAL AGRICULTURAL TRIBUNAL AT SUVA

Reference No. ND 12 of 2011

CAT Appeal No. 08 of 2019

BETWEEN

RITESH CHAND of Waiqele, Labasa, Fiji.

APPELLANT [ORIGINAL APPLICANT]

AND

i-TAUKEI LANDS TRUST BOARD a statutory body registered under the provisions of Native Land Trust Act with its Head Office in Suva, in the Republic of Fiji.

FIIRST RESPONDENT [ORIGINAL FIRST RESPONDENT]

AND

SATENDRA of Draladamu, Labasa, Cultivator.

SECOND RESPONDENT [ORIGINAL SECOND RESPONDENT]

Counsel	:	Ms. Sumer A. for the Appellant Mr. Ratule K. for the 1st Respondent 2nd Respondent absent and unrepresented
Date of Hearing	:	14th August 2020
Date of Judgment	:	28th August 2020

JUDGMENT

[1] The appellant made this application (Form 7) to the Agricultural Tribunal (the Tribunal) on 27th June 2011 to have the boundaries fixed in the subject land described in Instrument of Tenancy No. 11223 containing an area of 12.1406 hectares as Draladamu subdivision No. 3 belonging to the 2nd respondent and Instrument of Tenancy **No. 6394** containing an area of 9.7529 hectares known as Draladamu subdivision No. 2 belonging to the appellant.

[2] The appellant, along with his application, has filed a statement of dispute giving the history since 1979. In 1979 one Mehi Lal was the lessee of Lot 3 (NLTB Tenancy No. 4/9/9394) and one Badulal was the lessee of Lot 2. In 1979 Mehi Lal filed the application No. ND 40 of 79 before the Agricultural Tribunal complaining Badulal had encroached upon Lot 2 and the area encroached upon was over 18 acres.

[3] On 14th March 1980 the common boundary between Lots 2 and 3 was altered. At the expiry of the original lease it was transferred to one Manaini Dugulele Vuwai and on 8th December 2008 it was transferred to the appellant.

[4] After the hearing the learned Tribunal made the following orders:

a. The boundary of the applicant is fixed as per the land description in iTaukei instrument of tenancy No. 6394.

b. The applicant is further ordered to cease his encroachment forthwith.

c. The applicant is also ordered to pay legal costs to both respondents in the sum of $1000.00 each to be paid within 21 days.

d. Appeal within 28 days.

[5] Being aggrieved by the orders of the Tribunal the appellant preferred this appeal to this Tribunal on the following grounds:

1. That the Learned Magistrate/ Tribunal erred in law and in fact in failing to deal with the Reference upon its merits.

2. That the Learned Magistrate/ Tribunal erred in law and in fact in misunderstanding the application therefore dismissing the same.

3. That the Learned Magistrate/ Tribunal failed to deal with the Reference before him on the basis of the uncontradicted evidence from the Appellant and his witnesses before him, and the failure of the 1st Respondent to give any evidence (which was vital for its case) and the failure of the 2nd Respondent to give evidence at the hearing.

4. The Learned Magistrate/ Tribunal has erred in law and in fact to settle the issue of boundaries when the plan attached to the Applicant's Instrument of Tenancy clearly showed the extended boundary as determined by the Tribunal Reference No. 40 of 1979 and which the 1st Respondent's records showed as the boundaries to the Tenancy No. 6394, that being the only evidence available to the Tribunal.

5. The Learned Magistrate/ Tribunal has failed in law and in fact to determine the boundaries of the Tenancy No. 6394 as required by the application before him.

6. The Learned Magistrate/ Tribunal has erred in law and in fact in holding that since the instrument of tenancy 4/9/9394 (original) expired, all rights were extinguished and did not carry on to the new lease of 4/9/9394 when the TLTB plan showed an extra land markings, the new tenant Manaina continued cultivating the extra land just like her predecessors in title did before her and the 1st Respondent did nothing to stop the occupation and cultivation.

7. The Learned Magistrate/ Tribunal has erred in law and in fact in placing very little probative value on the evidence that Manaina had occupied and cultivated from the old boundary when there was undisputed evidence which were in no way rebutted by contrary evidence.

8. The Learned Magistrate/ Tribunal has erred in law and in fact in holding that the Appellant was an educated man who simply closed to ignore the new boundary by adhering to the old boundary when each lessee of 4/9/9394 had adhered to the old boundary.

9. The Learned Magistrate/ Tribunal had erred in law and in fact in holding that the boundary of a lease is sufficiently described in the lease document and the landlord is required to point out the boundary and the tenant is required to maintain the boundary as provided in Section 54 of ALTA and treating the law as actual evidence when the contrary was true in that the lease document itself had an amended line boundary on the plan attached issued by the 1st Respondent, the instrument of tenancy area was "subject to survey", there was no evidence whatsoever that the 1st Respondent had shown the boundaries and actual occupation by all lessees of 4/9/6394 was to the extended boundary.

10. The Learned Magistrate/ Tribunal has erred in law and in fact in holding that a declaration of tenancy could not be entertained as the required form was not filed when the primary application was for fixing of boundaries and the declaration of tenancy was an alternative remedy sought. The effect of the Tribunal's ruling was to unnecessarily duplicate proceedings.

11. The Learned Magistrate/ Tribunal has erred in law and in fact in holding the Appellant was encroaching on 12 acres when no such evidence was tendered in Court.

12. The Learned Magistrate/ Tribunal has erred in law and in fact in fixing the boundary of the Appellant's land as per the land description in Instrument of Tenancy No. 6394 when the subject land was unsurveyed and the plan in the Instrument of Tenancy had amended boundaries.

13. The Learned Magistrate/ Tribunal has erred in law and in fact in awarding costs to the 1st and 2nd Respondents and awarding excessive costs to the 1st and 2nd Respondents.

14. The Learned Magistrate/ Tribunal had erred in law and fact the Appellant reserves the right to add to or amend the above grounds of appeal after the receipt of the copy record.

[6] The 2nd respondent did not participate at the hearing. However, his solicitors filed written submissions prior to the hearing.

[7] At the hearing of the appeal the learned counsel for the appellant withdrew the 4th, 5th, and 12th grounds of appeal.

[8] It is common ground that under the Instrument of Tenancy No. 6394 (C1) the area which was given to the appellant is 9.7529 hectares which is shown as lot 2 in the Sketch Plan (C5). The 2nd respondent is in occupation of the adjoining land shown in the Sketch Plan as Lot 3. The dispute between the appellant and the 3rd respondent is the common boundary between these two allotments of land. It is also not in dispute that the appellant has encroached upon the 2nd respondent's land and seeking a declaration of tenancy over the encroached portion of land.

[9] In 1979 one Mehi Lal filed an application in the Tribunal complaining that part of his land (Lot 3) had been encroached upon by one Babu Lal who was the tenant of Lot 2 and the matter was settled between the parties on the following terms:

> It is mutually agreed that the boundary between the applicant's holding and the 2nd respondent's holding shall henceforth be as follows:
>
> > From the existing wooden survey peg on the hilltop as indicated by the Tribunal to the existing survey peg on the applicant's northern boundary beside the small coconut tree.
>
> It is further mutually agreed that the second respondent has the right to continue cultivating and to harvest the sugar cane at present on that part of the land previously in dispute which now falls on the applicant's side of the new agreed boundary.

The second respondent agrees to vacate that part of the land previously in dispute which now falls on the applicant's side of the new agreed boundary immediately the cane is harvested, and thereupon any ratoon thereon shall become the property of the applicant without payment.

[10] The question was whether the parties to the present application were bound by the above terms of settlement entered into between the previous landlord and tenant.

[11] The learned Tribunal held that upon the expiry of the subject lease, the land reverts back to the landlord absolutely and any right or benefit arising from the earlier agreement cannot be imported to a subsequent lease. It is also important to bear in mind the decision made or the settlement entered into in the earlier matter only binds the parties to that matter and not the land. The appellant and the 1st respondent are bound by the terms and conditions contained in the instrument of tenancy. The learned counsel for the appellant submitted that the Sketch Plan shows the boundary agreed upon by the previous owners of Lots 2 and 3. However, the plan prepared by the surveyor shows only one boundary between Lots 2 and 3. There is a thin line showing another bounder but the learned counsel for the first respondent submitted that that boundary was not demarcated by the first respondent. On the other hand the extent of the land purchased by the appellant is 9.7529 hectares and the extent of the portion of land claimed by the appellant is not included in the Transfer or Instrument of Tenancy.

[12] For these reasons the learned Tribunal is correct in holding that the parties to these proceedings are not bound by or cannot rely on the terms and conditions of the previous settlement between the previous owners of Lots 2 and 3.

[13] The appellant in his application to the tribunal has made and alternative claim seeking a declaration of tenancy. In making a claim the appellant did not file the proper Form which is Form 6 instead he filed what he calls a "Statement of Dispute" with the Form 7 application.

[14] The learned Tribunal held Form 6 application for declaration of tenancy cannot go hand in gloves with an application under Form 7 to fix boundaries as the test for both are different.

[15] The position of the appellant is that since there is no provision in the Act to make an alternative application he filed "Statement of Dispute" seeking the alternative remedy which is a declaration of tenancy acting under the provisions of Regulation 3 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967 which provides:

> Where no provision is specified by the Act or by these Regulations for the procedure to be followed or the conduct of proceedings by the parties, their barristers or solicitors or agents before the tribunal, the provisions of the Magistrate's Court Rules 1945 shall be followed with such necessary alterations as may be necessary to meet the circumstances for the case, provided at the provisions of Orders 5 and 11 of the said Rules shall always apply to proceedings before a tribunal.

[16] The procedure that should be followed in institution proceedings before the Tribunal is very clearly stated in the Act. Before instituting proceedings the applicant must decide on the relief he is seeking from the Tribunal. The format of the application is provided in the Act and every applicant must complete that form and hand it over to the Tribunal Registry. If the law does not provide for an alternative claim in one application a party cannot rely on Regulation 3 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967 and add provisions to the procedure.

[17] Section 4(1) of 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.

[18] To claim tenancy to a particular agricultural holding the applicant must clearly identify the boundaries of the land. Without first identifying the boundaries of a particular agricultural holding one cannot claim tenancy. For the Tribunal to declare tenancy it must first identify the boundaries of the subject agricultural holding. In this application the appellant claimed tenancy as a relief alternative to his claim for definition of boundaries, which is not practically possible.

[19] For these reasons the claim of the appellant for declaration of tenancy must necessarily fail.

ORDERS

(1) The appeal of the appellant is dismissed.

(2) The appellant is ordered to pay the respondents $1000.00 each as costs of this appeal.

HIGH COURT OF FIJI SUVA

Lyone Seneviratne

Central Agricultural Tribunal.

28th August 2020