

IN THE CENTRAL AGRICULTURAL TRIBUNAL

AT SUVA

CAT Appeal No. 03 of 2020

Agricultural Tribunal Reference No. WD 09 of 2019

BETWEEN

KAMLESH KUMAR of Navo, Nadi.

APPELLANT

AND

ARUNESH KUMAR of Navo, Nadi.

FIRST RESPONDENTS

AND

AVINESH KUMAR of Navo, Nadi.

SECOND RESPONDENT

AND

THE DIRECTOR OF LANDS of Tavewa Avenue, Lautoka.

THIRD RESPONDENT

AND

THE ATTORNEY GENERAL OF FIJI

FOURTH RESPONDENT

Counsel : Mr. Singh R. for the Appellant
Ms. Raman J. for the 1st Respondent
Ms. Chand S. for the 2nd & 3rd Respondents

Date of Hearing : 08th October 2020

Date of Judgment : 30th October 2020

JUDGMENT

[1] The appellant made an application to the Agricultural Tribunal seeking a declaration of tenancy (Form 6) to the following allotment of land:

Lot 1 NDSW 1088 Subdivision (PT of) Tiliva and Navo, Nadi formally of Lot 2 SO 6461 and in the District of Nadi and Province of Ba.

[2] The learned Tribunal determined the matter under Regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations and dismissed the application of the appellant with costs of \$200.00.

[3] Being aggrieved by the said dismissal the appellant appealed to this Tribunal on the following grounds:

1. The Tribunal erred in law and in fact in proceeding to a determination under Regulation 33 of the (Exemption) Regulations without hearing the applicant and thereby causing substantial miscarriage of justice.

2. The Tribunal erred in law and in fact in ignoring the fact that the Estate of Khedu had a legitimate expectation of the renewal of the subject lease and this being the norm in cases of expiry of estate leases generally.
3. The Tribunal erred in law and in fact in invoking Regulation 33 of the absence of a hearing to determine the practice procedure of the respondent in cases of expired lease.
4. The Tribunal erred in law and in fact in ignoring the unchallenged fact that the appellant and the Estate of Khedu was in continuous and uninterrupted possession and cultivation over a fifty year period.
5. The Tribunal erred in law and in fact in holding that the tenancy cannot be created over an expired lease.
6. The appellant reserves the right to amend, revise and/or alter the grounds of appeal upon receipt of the record.

[4] The applicant 02nd October 2019 filed a notice of motion together with the supporting affidavit seeking the following reliefs:

1. The status quo to remain, that is the appellant's peaceful and quiet enjoyment of Crown Lease No. 4101559 Lot 2 NDSW 1088 Subdivision (PT. OF) TILIVA and Navo, Nadi, Formally of Lot 2 SO 6461 In the District of Nadi and Province of Ba to remain until the final determination of this here reference.
2. The respondents are not to interfere/deal with this land in any manner until further order of this Tribunal.
3. Cost to the applicant on a full indemnity basis.
4. The time for service of this motion be abridged to one day.

[5] The hearing of this application was fixed for 21st February 2020 and on the same day the learned Tribunal made the orders referred to above.

[6] Regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations provides:

Where in the opinion of a tribunal, the reference discloses no *bona fide* right to the tribunal's intervention, the tribunal may, for reasons to be promulgated,

after hearing the applicant, proceed directly to a final determination, provided that such decision shall be served by the tribunal on all the parties.

[7] In paragraph 6 of the judgment the learned Tribunal says;

I have considered the issues before the Court, there is sufficient material evidence filed by the parties for this Court to make a determination under Regulation 33.

[8] The question here is whether there is proper compliance of regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations.

[9] In his affidavit the appellant has stated as follows:

THAT whilst my application was pending the Lands Department without dealing with my application proceeded to parcel the Estate of Khedu and issue instrument of tenancy to other several respondents herein.

THAT on 16th May 1990, the Lands Department advised me that the Renewal application was refused because of unavailability of Lands.

[10] From the affidavit of the appellant it is clear that his grievance is that the lease was not extended by the 2nd respondent. The only issue before the learned Tribunal for determination was whether the appellant had a legal right have the lease extended.

[11] The learned Tribunal in this regard relied on the principle enunciated in the case of **Grounder v Gounder** [2012] FJHC 866; HBC232.2010 (14 February 2012) the court held:

Hence, neither the plaintiff by virtue of his being a beneficiary in the Muluamma estate, nor the estate itself, has a right of first refusal on the land - whether under any statute or any other law. Nor does any such right accrue to them under any law simply by virtue of the fact that they are still in occupation of the said lease. It follows then that there is no statutory duty or other obligation on the part of the Director of Lands to consult the plaintiff first before leasing out the land afresh (see Mr. Justice Jiten Singh's decision in **The State v Ministry of Lands & Mineral Resources & A-G ex-parte Rafiqan Bi and Jantul Bi v Abdul Hakim** - Judicial Review No. HBJ 01 of 2007.

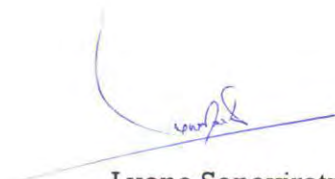
In the above case, Singh J. held that no argument based on legitimate expectation for a further extension can be validly be made by the occupiers of an ALTA lease where the twenty year extension had run its course and in the absence of any evidence that there was a policy in place to grant a further extension as such.

[12] In my view the material available to the Tribunal was sufficient to decide the question whether the appellant was entitled as of a right to a further extension of the lease. This is mainly a question of law that is whether the law confers such a right upon a tenant. Once the lease expires the land which is a crown lease will automatically revert back to the state. The appellant, at the hearing of this appeal did not refer to any previous authority or statutory provision which entitles him to have the lease extended as of a right.

ORDERS

1. The appeal of the appellant is dismissed.
2. The parties will bear their own costs of this appeal.




Lyone Seneviratne

Central Agricultural Tribunal

30th October 2020