

**IN THE CENTRAL AGRICULTURAL TRIBUNAL**

**CAT Appeal No. 04 of 2020**

**Tribunal Reference No. ND 01/2016**

**IN THE MATTER** of an appeal against the decision of the  
Agricultural Tribunal dated 15<sup>th</sup> day of June 2020.

**BETWEEN**

**MANJULA DEVI** and **BIMAL DEO** of Nasealevu, Vunivutu,  
Nadogo, Macuata.

**APPELLANTS (Original 1<sup>st</sup> Respondents)**

**AND**

**SHIU CHARAN** of Nasealevu, Vunivutu, Nadogo, Macuata.

**FIRST RESPONDENT (Original Applicant)**

**AND**

**iTAUKEI LAND TRUST BOARD** of 431 Victorial Parade, Suva.

**SECOND RESPONDENT (Original 2<sup>nd</sup> Respondent)**

**Counsel** : Mr. Sen A. for the Appellant  
Ms. Sumer A. for the 1<sup>st</sup> Respondent  
Ms. Vokanavanua Q. for the 2<sup>nd</sup> Respondent

**Date of Hearing** : 03<sup>rd</sup> December 2020

**Date of Judgment** : 21<sup>st</sup> December 2020

## JUDGMENT

- [1] The 1<sup>st</sup> respondent (the applicant) filed this application (Form 7) pursuant to section 22(1)(i) of the Agricultural Landlord and Tenant Act 1966 (the Act) to have the southern boundary of the agricultural holding described in iTaukei Lease No. 6936 known as Waibata subdivision, Lot 2, part of, in the Tikina of Nadogo in the province of Macuata, determined.
- [2] The 1<sup>st</sup> respondent's complain is that the appellants have encroached upon about 1.8878 hectares for his tenancy and planted sugar cane.
- [3] At the hearing before the learned Tribunal commenced by calling the 1<sup>st</sup> respondent to testify and before his evidence was concluded the Tribunal, by consent of the parties decided to inspect the disputed area of the land and after inspection the Tribunal delivered its judgment on 15<sup>th</sup> June 2020.
- [4] The orders made by the learned Tribunal are as follows:
- a. The common boundary between the parties is the Namoli Creek verified and confirmed vide the GPS survey report dated 31<sup>st</sup> March 2017 and Tribunal Inspection dated 25<sup>th</sup> February 2020.
  - b. The 1<sup>st</sup> respondent is hereby ordered to cease his encroachment of iTaukei Lease No. 6936 forthwith.
  - c. The 1<sup>st</sup> respondent is further ordered to pay legal costs to the applicant in the sum of \$1000.00 within 21 days.

- [5] Being aggrieved by the findings of the Agricultural Tribunal the appellant appealed to this Tribunal (Central Agricultural Tribunal) on the following grounds:
1. That the learned Magistrate of the ALTA Tribunal erred in law and in fact in only hearing the testimony of the 1<sup>st</sup> respondent and refused to give audience to the appellant.
  2. That the decision of the learned Magistrate of the ALTA Tribunal is uncertain, perverse and abuse of the process of the tribunal for failing to consider relevant facts and taking into irrelevant matters before arriving to his decision.
- [6] The main allegation of the appellant is that the learned Tribunal has violated the *audi alteram partem* rule by refusing give audience to her. When this matter was taken up for hearing the 1<sup>st</sup> respondent testified before the Tribunal and before his evidence was concluded the Tribunal with the consent of the parties decided to go for a site inspection. After conducting the inspection the Tribunal prepared the inspection report and delivered its judgment.
- [7] The record does not show that the appellant indicated if her desire to testify and the Tribunal turned down her application. It is therefore, not correct to say that the Tribunal refused to hear the appellant.
- [8] The 2<sup>nd</sup> ground of appeal is that the learned Tribunal has not considered the relevant facts in its judgment but considered the irrelevant matters. The submission of the learned counsel for the appellant is that the learned Tribunal is not qualified to define boundaries and it is a matter for a qualified surveyor. When the Tribunal suggested to go for an inspection the appellant should have brought this matter to the notice of the Tribunal or when she knew that this dispute could not have been decided by an inspection she should have objected to the inspection.
- [9] Before considering the correctness of the findings of fact arrived at by the learned Tribunal it is important to ascertain whether the appellant has the right to appeal the decision of the Tribunal.
- [10] As I stated at the commencement of this judgment the 1<sup>st</sup> respondent made this application pursuant to section 22 of the Act.

[11] Section 22(1)(i) of the Act provides:

In respect of its agricultural district, a tribunal may, upon the application of a landlord or a tenant of an agricultural holding-

(i) in the case of any dispute, specify the area and boundaries of any agricultural holding:

Provided that no appeal shall lie in relation to such decision which shall be final and conclusive for the purposes of this Act;

[12] Learned counsel for the 1<sup>st</sup> respondent submitted that there is no right of appeal from a decision made by the Tribunal under section 22(1)(i) of the Act but the appellant's counsel did not address this issue..

[13] The proviso to section 22(1)(i) of the Act says any decision made under section 22(1)(i) is final and conclusive and there is no right of appeal.

[14] On that ground alone the appeal of the appellant is liable to be dismissed.

#### **ORDERS**

1. The appeal of the appellant is dismissed.
2. The appellant is ordered to pay \$1000.00 (\$500.00 to each respondent) as costs to the respondents.



21<sup>st</sup> December 2020

Lyone Seneviratne

**Central Agricultural Tribunal**