

IN THE CENTRAL AGRICULTURAL TRIBUNAL
AT LAUTOKA

Agricultural Tribunal Reference No. C & ED 01 of 2018
Central Agricultural Tribunal Appeal No. CAT 01 of 2021

BETWEEN

EDWIN PRASAD of Vusuya Road, Nausori, Fish Farmer.

APPLICANT – APPELLANT

AND

RAJESH SINGH and **RANJANI MALA** both of 125, gray Avenue,
Papatoetoe, New Zealand.

FIRST RESPONDENT

AND

ITAUKEI LAND TRUST BOARD a body corporate constituted under the
iTaukei Land Trust Act, Lot 431 Victoria Parade, Suva, Fiji.

SECOND RESPONDENT

Counsel : No Appearance for the Appellant
Ms. Nayacalevu S. for the First Respondent
Ms. Rasiga M. for the Second Respondent

Date of Hearing : 14th June 2023

Date of Judgment : 20th July 2023

JUDGMENT

[1] The appellant file an application in the Agricultural Tribunal seeking a declaration of tenancy. The learned Tribunal dismissed the application with costs of \$500.00. The appellant being aggrieved by the decision of the Agricultural tribunal appealed to this Tribunal on the following grounds:

1. The learned Magistrate erred in law and in fact in dismissing the Appellant's declaration for tenancy when he had satisfied all the requirements under section 3, 4 and 5 of the Agricultural Landlord and Tenant Act thus fell into error.
2. The learned Magistrate erred in law and in fact in his interpretation of section 4(1) and 5(1) of ALTA thereby causing substantial miscarriage of justice.
3. The learned Magistrate erred in law and in fact in hearing the respondent without there being any opposition or response being served unto the applicant taking him by surprise with the new facts in the ruling resulting in severe prejudice to the appellant which infringed his rights enumerated under section 15 of the Fijian Constitution.

4. The learned Magistrate erred in law and in fact in failing to follow the dicta established by the Court of Appeal in the case of **Jai Prakash v Savita Chandra**, Civil Appeal ABU 0037/1985 in absence of a reply it is deemed admission thus have severally prejudice the appellant.
5. The learned Magistrate erred in law and in fact in failing to consider the application made by the appellant's counsel in reliance of section 9 of ALTA when it was unveiled at the time of hearing that ITAUKEI LAND TRUST BOARD deliberately issued a new lease to RAJESH SINGH and RANJANI MALA in order to defraud the applicant/appellant when the said lease was subject to section 13 extension which the Tribunal had the power to cancel the said lease based on illegality but disregarded the same thus fell into error.
6. The learned Magistrate failed to consider that because of the use of the land for agriculture and the payment of rental to iTLTB, the applicant protected the lease and avoided breach and/or cancellation of lease as the respondent was overseas and not capable to fulfil the lease condition thereby causing miscarriage of justice.
7. The learned Magistrate acted in a manner which depicted apparent and apprehended biasness which have severally prejudiced the appellant and has resulted in substantial miscarriage of justice.
8. The learned Magistrate erred in law and in fact in hearing the case with a close mind taking irrelevant matters into consideration leaving out the relevant ones thus has resulted in miscarriage of justice.

[2] At the hearing of the appeal the appellant was absent and unrepresented. However, the counsel for the appellant filed written submissions to consider at the hearing.

[3] Section 4 of the Agricultural Landlord and Tenant Act 1966 ("ALTA") provides:

(1) 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.

(2) Where payment in money or in kind to a landlord by a person occupying any of the land of such landlord is proved, such payment shall, in the absence of proof to the contrary, be presumed to be rent.

[4] Section 5 of ALTA provides:

(1) 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.

(2) Where an agricultural holding is held by a Fijian according to native custom, he or a person authorised in writing by the Native Land Trust Board may apply to a tribunal for a declaration that a tenancy under the provisions of this Act exist and from a date specified in such declaration, which shall not have retrospective effect, the provisions of this Act shall apply to such holding and such as rent as may be assessed and fixed by the tribunal in respect thereof shall be paid to the Native Land Trust Board.

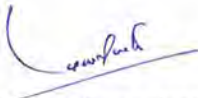
- [5] In this matter it is a fact that is not disputed by the parties that there was no formal agreement between the appellant and the 1st respondent and also they are brothers. Section 4 and 5 of ALTA do not require a formal agreement between the parties for the occupier of the land to seek a declaration of tenancy.
- [6] It is clear from the evidence given by the appellant before the learned Tribunal that he had come into occupation of the land at the request of the 1st named 1st respondent. He had requested the applicant to come and stay on the land since he got the citizenship in New Zealand.
- [7] From the appellant's own evidence it is clear that he came to live on the land and cultivate it pursuant a family arrangement between him and his brother.
- [8] In his application the appellant has stated that he paid rent. The appellant has tendered official receipts for payment of rent. However, he had not paid any rent to the 1st respondents but to the 2nd respondent, iTLTB and all the receipts are in the name of the 1st respondents.
- [9] The learned tribunal is therefore correct in dismissing the application of the appellant on the ground that he entered the property pursuant to family arrangement.
- [10] In paragraph 18 of the judgment the learned Tribunal states that the law is clear, that upon expiry of the valid lease, the subject land reverts back to the landlord absolutely which is correct. In the same paragraph the learned Tribunal also states that even though, iTaukei Lease No.2510 was subject to a section 13 extension, the 2nd respondent has issued a completely new iTaukei lease all together. However, the new lease issued to the same lessees before the 1st lease expired. Hence, the 2nd and 3rd respondents continued to be the lessees of the subject land. Therefore, the granting of new lease by the 1st respondent did not affect the continued occupation of the appellant.

[11] The learned counsel for the appellant submitted that the response filed by the respondents was not served on the appellant before the hearing. Every party to a proceeding is entitled to know the respective cases of the other parties. In this matter the appellant had been deprived of his right to a fair hearing.

[12] Although I decided above that the appellant came into occupation of the land pursuant to a family arrangement, this Tribunal cannot turn a blind eye to the defect in the proceedings. Therefore, This Tribunal is of the view that it is prudent to set aside the judgment appealed against and to refer it back to the Tribunal for a hearing afresh.

ORDERS

1. The appeal of the appellant is allowed, judgment of the Tribunal is set aside and the matter is remitted back to the Tribunal for hearing a fresh.
2. There will be no order for costs.


Lyone Seneviratne



CENTRAL AGRICULTURAL TRIBUNAL

20th July 2023