

IN THE CENTRAL AGRICULTURAL TRIBUNAL
WESTERN DIVISION
AT LAUTOKA

Appeal No. 3 of 2022

Reference No. WD 10 of 2019

BETWEEN: **ABHINESH KUMAR** of Naikeli Settlement, Kabisi,
Sigatoka, Fiji, Farmer.

APPELLANT/APPLICANT

AND: **RAJESH KUMAR** of Naikeli Settlement, Kabisi, Sigatoka,
Fiji, Farmer.

1ST RESPONDENT

AND: **DIRECTOR OF LANDS**

2ND RESPONDENT

AND: **THE ATTORNEY GENERAL OF FIJI**

3RD RESPONDENT

Appearances: **Ms P Mataika (LAC) for the Appellant**
Mr E Dass for the 1st Respondent
Mr S Kant (AG's Office) for the 2nd & 3rd Respondents

JUDGMENT

1. The Appellant, who was the Applicant in WD 10 of 2019, filed a form 6 application to the Agricultural Tribunal on 30th August 2019. The application sought orders for the Declaration of Tenancy on state lease no. 839403, in accordance with section 4(1) and 5(1) of the Agricultural Landlord and Tenant Act, 1966.

2. The matter was decided by the Learned Tribunal on 4th March 2022, and in accordance with regulation 33 of Agricultural Landlord & Tenants (Tribunal Procedure) Regulations, the form 6 was promptly dismissed.
3. The Appellant, being dissatisfied with the Tribunal's decision, filed a Notice and Grounds of Appeal on 23rd March 2022. The grounds for appeal are as follows:
 - 1) The Learned Tribunal erred in law and in fact when it held that the Appellant disclosed no bona fide right to the tribunal's intervention and proceeded directly to a final determination dismissing the Appellant's application for declaration of tenancy under regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967;
 - 2) The Learned Tribunal erred in law and in fact when it held that the Appellant disclosed no bona fide right for the tribunal to intervene and be granted declaration of tenancy pursuant to section 4 of the Agricultural Landlord and Tenant Act 1966;
 - 3) The Learned Tribunal erred in law and in fact in failing to interpret and adopt the established statutory requirements in an application for declaration of tenancy pursuant to section 4 and section 5(1) of the Agricultural Landlord and Tenant Act 1966;
 - 4) The Learned Tribunal erred in law and in fact in failing to differentiate an application of declaration of tenancy pursuant to section 4 and section 5(1) of the Agricultural Landlord and Tenant Act as two different categories;
 - 5) The Learned Tribunal erred in fact in failing to consider that the Respondents have taken no reasonable steps to evict the Appellant as per section 4 of the Agricultural Landlord and Tenant Act;

- 6) The Learned Tribunal erred in law when it held that the Appellant is required to prove an existence of an expressed tenancy agreement when seeking declaration of tenancy under section 4 of the Agricultural Landlord and Tenant Act 1966;
 - 7) The Learned Tribunal erred in law and in fact by incorrectly exercising judicial discretion in considering facts by the first Respondent which was beyond the parameters of these proceedings.
4. The appeal hearing proceeded on 15th May 2024 and Appellants counsel indicated then that she was abandoning all the appeal grounds, except the ground of appeal that the Learned Tribunal erred in law and in fact when it held that the Appellant disclosed no bona fide right to the tribunal's intervention and proceeded directly to a final determination dismissing the Appellant's application for declaration of tenancy under regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967.
 5. The crux of Appellants argument was that the Appellant had met all the requirements needed for a section 4 application. Therefore, it would have been more appropriate for the Tribunal to hear the form 6 application rather than dealing with it under regulation 33 of Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967 and subsequently dismissing it.
 6. Regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations outlines the following:

"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. The principal focus of this appeal is whether the Learned Tribunal followed regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations correctly.
8. As stated in the Tribunal record (page 114, paragraph 5 of the judgement), the Tribunal was convinced during the hearing of the substantive matter that there was ample evidence provided by the parties involved, allowing it to move forward in accordance with regulation 33.
9. After carefully reviewing the records, it is difficult to find fault with the procedure followed by the Tribunal. There was certainly enough material to warrant the activation of regulation 33.
10. In this matter, a new agricultural lease (no. 839403) was issued to the 1st Respondent by the 2nd Respondent in 2012. In my view it was crucial for the Appellant to prove in his application that he had a valid tenancy contract (whether implied or written), that meets the requirements to be considered a "tenant" under the Act.
11. Firstly, in the reference (form 6) filled by the Appellant, there were some unanswered questions in 8, 9, and 10. It is evident that there was no tenancy agreement between the Appellant and the 1st Respondent based on the reference. Actually, the Appellant failed to establish any.
12. Secondly, it is worth noting that the Appellant and 1st Respondent share a biological bond as brothers. I agree with the Learned Tribunal's observation that their relationship is purely familial and does not extend beyond that. Family ties cannot be treated or elevated as a formal agreement for a contract of tenancy. In the case of Gounder v Zundal & others WD 32 of 1972, the Tribunal referenced the remarks made by

Denning LJ in *Facchini v Bryson (1952) 1 TLR 1386*, indicating their agreement and as follows:

"In the case where an occupier has been held to be a licensee, though in fact he had exclusive possession, there has been something in the circumstances such as a family arrangement, an act of friendship or generosity or such like, to negative any intention to create a tenancy."

13. Therefore, it was only reasonable for the 1st Respondent to refrain from evicting the Appellant given their pre-existing familial connection. The Appellant's claim that the arrangement was solely for managing the farm, rather than a family arrangement, seems highly unlikely.
14. Additionally, based on the evidence presented to the tribunal, it is clear that there was no agreement or arrangement that could be considered a tenancy contract between the Appellant and the 1st Respondent. Therefore, the Appellant does not have the right to cultivate and possess the subject holding.
15. I concur with the tribunal's decision that the appellant did not meet the criteria of being a bona fide tenant according to the law and that the tribunal had the relevant statutory powers (regulation 33) to deal with the matter summarily and dispose of the same.
16. It is evident that the tribunal in question had access to all the necessary information and had the power to address the issue in accordance with regulation 33 of the Agricultural Landlord and Tenant (Tribunal Procedure) Regulations 1967, resulting in the swift dismissal of the matter.
17. There were no errors in law or in fact.
18. The appeal lacks merits and is therefore dismissed.

19. Parties to bear own costs.



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Samuela D Qica
Central Agricultural Tribunal

Tuesday, 11th June 2024