

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 357 OF 2005

BETWEEN : **AUSTRALASIAN CONFERENCE ASSOCIATION** having its
registered office at 357 Princess Road, Tamavua, Suva

PLAINTIFF

AND : **MERE SELA, et al**, all of Tamavua-i-Wai Settlement, Suva

DEFENDANTS

Counsel : **Mr. Clark W for the Plaintiff**
Mr. Singh A for the Defendants

Dates of Hearing : **26th August, 2015 and 27th October, 2015**

Date of Judgment : **7th October, 2016**

JUDGMENT

INTRODUCTION

1 On 26 August 2015 and 27 October 2015 the matter was heard after several adjournments due to the applications of the Defendants. Again on the day of the trial, the counsel of the Defendants sought to withdraw but this application was not allowed for obvious reasons considering the circumstances of the case. The application for withdrawal, was not even served to the parties when such an application was made at the commencement of the hearing. Previous occasions when the matter was listed for hearing adjournments were sought on the same ground but when time was granted to withdraw, the counsel for the Defendants did not withdraw but stated that he desired to continue. This is an action for possession of land (CT 7168) and two previous decisions of this court were delivered on 31st January, 2007 and 6th September, 2007. According to the said decisions each and

individual Defendant needed to be identified and consider whether that person qualified to be considered as 'direct descendant' of the original grantee.

2. The Plaintiff's counsel called 3 witnesses and the Defendants gave no evidence, but the counsel for the Defendants cross examined the witnesses called by the Plaintiff.
3. The Ruling delivered on 6 September 2007 by his Lordship Justice Coventry, explained further word direct descendants in following manner

"...in my judgment, the estoppels can only extend to the original grantees of the chiefly permission to occupy and their direct descendants... The original person was in perpetuity... For the estoppels to continue then there must be:

- a) *Continuity of Occupation*
- b) *By the direct descendants of the original grantees and*
- c) *The due performance of the custom obligations."*

4. This is an action filed under Order 113 of the High Court Rules of 1988 and judgment was delivered by Justice Coventry but instead of granting the order for vacant possession the judgment dated 31st January, 2007, stated as follows

*'I refuse to make order for Writ of Possession of the said land. **I acknowledge that Writ of Possession can issue in respect of those defendants who are not the original grantees or their direct descendants one individually identified'***
(emphasis added)

5. The word 'direct descendants' was further explained in the ruling of 6th September, 2007. So all the three criteria, stated earlier, has to be fulfilled to remain in possession of the land under estoppel. The writ of possession, could only be issued to defendants 'individually identified' in the hearing. So, the order for eviction cannot be applied to any person not 'individually identified' according to the judgment delivered on 31st January, 2007.
6. This identification of Defendants, was done by the Plaintiff through the 3 witnesses called by them. The Plaintiff also proved the position of the three criteria set in the ruling that defined the word direct descendant. So the proof contrary to that needs to be elicited,

by the Defendants if they satisfy the three criteria laid in the said ruling. This is a matter for the Defendants to prove. They have failed to prove estoppel to remain in possession as direct descendants. The Plaintiff is entitled for the judgment for eviction of all the Defendants individually identified as persons who are not direct descendants, but in their evidence they had admitted that nine of the Defendants fulfilled the criteria for estoppels, while 3 were dead and no action was taken for substitution of them. So no evidence was presented about the said dead parties and no order for possession could be issued according to the aforesaid determinations made by Justice Coventry. Neither the dead parties nor successors for the deceased were individually identified to determine whether they were 'direct descendants'.

7. The dead Defendants are Ms. Wainisi Tagi (D7), Mr. Lui Wedth (D11) and Ms. Salome Didroko (D22).
8. Apart from that 2 Defendants had already left the land voluntarily, since the institution of the action and they were Sulio Magiti (D25) and Ms. Vasemaca Qoli (D26).
9. This leaves with only 35 Defendants and in the Evidence of the 1st witness 9 Defendants were admitted as direct descendants of the grantees. Further, the said 9 Defendants were admittedly in occupation of the land for a long time. These were (D9) Cathy, (D15) Demesi Kokowau Tikotani, (D16) Merelita Kokowau Tikotani, (D17) Saravina Karawa (D20) Joji Oba, (D21) Inise L, (D35) Sovita Nasemira, (D36) Mereani Nasemira, (D 38) Mosese Bele Laisenia, (D40) Wame Bua. According to the last witness called for the Plaintiff all of them are also performing customary obligations.
10. The Plaintiff in its evidence stated that 3 of the Defendants are dead so their names needed to be struck out as Defendants since there were no applications to substitute them. I have granted them time to substitute but the Plaintiff did not do so and continued the hearing. In the circumstances no order could be made against said parties or their relatives who remain in possession based on the deceased Defendants.

11. The Plaintiff's Witness Nemani Turagabeci, said that Plaintiff's Land (Tamavua-i-Wai) and people living on that land is known to him .He said that he lived with them for 23 years and knew about the community and also collected rent from them. These facts were not disputed in the cross-examination. He was a person who had knowledge about the Defendants to identify them individually. There was no evidence to contradict the evidence presented by the Plaintiff. On the balance of probability the Plaintiff has proved that there are 26 individually identified Defendants who do not qualify to remain in possession according to the determinations of the Justice Coventry in this case. They are MERE SELA, SEMI VEIMATEYAKI, TAINA VEIMATEYAKI, SALOTE RAMATAU, MERE DICKSON, SERU CAMA, MOSESE TUIMASALA, VILOMENA LEWATABU, KONI M, JONE TAWAKE, SALOTE B TAWAKE, RUSIATE AMASIA, ANA VECENA, ASaeli VALEMEI, MAKERETA VALEMEI, VILIVE RAINIMA, NANCY RAINIMA, RUSIATE MATAI, SEREIMA MATAI, JOE RAKAI, LITEA RAKAI, SECI KIRIKITI, ULAMILA KIRIKITI, EMELE ADI, MOSESE BELE LAISENIA, MAKETRETA N, WAME BUA.

CONCLUSION

12. No evidence was elicited about 3 Defendants to identify their interests as direct descendants as they were dead. Apart from that 2 defendants had already left voluntarily so there is no need to issue eviction of said two Defendants. Only 9 of the 35 named Defendant, who were individually identified, together with their children, grandchildren, etc., qualify under the criteria for estoppel and can remain on the land to continue as set out by his Lordship Justice Coventry in his Lordship's Judgment dated 31st January, 2007 and Ruling on this matter dated 6 September 2007. The other Defendants (except the dead parties and parties who had left) should give up the possession. Considering the facts of this case I do not award a cost for the hearing before me.

FINAL ORDERS

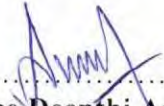
- a. The 26 named Defendants who are in occupation of the Plaintiff's land (CT 7168) to give up occupation immediately. (They are MERE SELA, SEMI VEIMATEYAKI, TAINA

VEIMATEYAKI, SALOTE RAMATAU, MERE DICKSON, SERU CAMA, MOSESE TUIMASALA, VILOMENA LEWATABU, KONI M, JONE TAWAKE, SALOTE B TAWAKE, RUSIATE AMASIA, ANA VECENA, ASaeli VALEMEI, MAKERETA VALEMEI, VILIVE RAINIMA, NANCY RAINIMA, RUSIATE MATAI, SEREIMA MATAI, JOE RAKAI, LITEA RAKAI, SECI KIRIKITI, ULAMILA KIRIKITI, EMELE ADI, MOSESE BELE LAISENIA, MAKETRETA N, WAME BUA.

- b. The 9 Defendants namely Cathy, Demesi Kokowau Tikotani, Merelita Kokowau Tikotani, Saravina Karawa, Joji Oba, Inise L, Sovita Nasemira, Mereani Nasemira, Mosese Bale Laisenia (together with their children, grandchildren, etc. of the original grantees) who has the right to possession subject to continuation of the rituals performed by them in accordance with the customs.
- c. No costs ordered for the hearing before me.

Dated at Suva this 7th day of October, 2016




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Justice Deepthi Amaratunga
High Court, Suva