

IN THE HIGH COURT OF FIJI  
AT SUVA

Civil Action No: HBC 144 of 2010

BETWEEN : i-TAUKEI LAND TRUST BOARD  
Plaintiff

AND : JIMAIMA LEDUA & ORS  
1<sup>st</sup> Defendants

AND : MINISTRY OF LOCAL GOVERNMENT, HOUSING,  
SQUATTERS, SETTLEMENT AND ENVIRONMENT  
2<sup>nd</sup> Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Ms. Q. Vakanavanua for the Plaintiff  
Mr R. Vanalagi for the First Defendants  
Mr. A. Prakash for the Second Defendant

Date of Hearing : 9 March 2017

Date of Interlocutory  
Judgment : 30 March 2017

INTERLOCUTORY JUDGMENT

1. This is the First Defendants' Application (application) for the Plaintiff's action against the 1<sup>st</sup> Defendants to be struck out and dismissed on the following grounds:
  - (1) It discloses no reasonable cause of action.
  - (2) It is scandalous, frivolous or vexatious.
  - (3) It is an abuse of process.
  - (4) It may prejudice etc the fair trial.
  - (5) The Plaintiff has no locus stand to continue or maintain the action.
2. The Application is made pursuant to Order 18 rule 18(1) (a), (b), (c) and (d) of the Rules of the High Court (RHC) and the Court's inherent jurisdiction.
3. It is supported by the Affidavit of one of the 1<sup>st</sup> Defendants, Josaia Cokotiono (Josaia) who deposes as follows:
  - (a) He is authorised to make the affidavit on behalf of those defendants who are not deceased.
  - (b) The Plaintiff (TLTB) had leased the land concerned to the Housing Authority (HA).
  - (c) He attached a copy of the TLTB's letter to him dated 25 November 2016 confirming this.
  - (d) TLTB's action is an abuse of process and there is no reasonable cause of action any more against the 1<sup>st</sup> Defendants by 1 January 2017.
4. The Plaintiff's Affidavit in objection was deposed by its regional manager, Soloveni Masi who said the following:
  - (a) While admitting the land concerned had been given under a Development Lease to the HA, the TLTB has the mandate to control and administer all iTaukei land for the benefit of the iTaukei owners and therefore has the locus standi to bring any proceedings regarding all iTaukei land.
  - (b) The 1<sup>st</sup> Defendants' occupation of the land concerned without paying anything has deprived the land owners of any benefit.
  - (c) The 1<sup>st</sup> Defendants' application is frivolous, delays proceedings and is an abuse of process.

5. Josaia's affidavit in reply essentially repeats what he said in his original affidavit.
6. According to the Minutes of the Pre- Trial Conference the Agreed Facts include the following:
  - (i) The Plaintiff's sole responsibility is the administering of all Native Land in Fiji subject to the Native Land Trust Act (Cap 134) (The Act).
  - (ii) The 1<sup>st</sup> Defendants are occupying the land concerned and hold no lease over the land.
7. At the hearing, Counsel for the 1<sup>st</sup> Defendants said he was only proceeding under O 18 r 18 (1) (a) and (d). His grounds were that the HA should be doing the evicting and not the TLTB. This action was an abuse of process.
8. Counsel for the TLTB said that the land occupied by the 1<sup>st</sup> Defendants is part of the land leased to the HA. The TLTB has more than sufficient interest in the land as the head lessor and will never give up ownership of the land. The 1<sup>st</sup> Defendants were guilty of abuse of process by filing an application at the last minute.
9. Counsel for the 1<sup>st</sup> Defendants replied there was no abuse by his clients.
10. At the conclusion of the arguments I said I would take time for consideration. Having done so, I now deliver my decision.
11. The pivotal issue here is the fact the TLTB has leased the land concerned to the HA for a term of 10 years with effect from 1 January 2017.
12. The Court notes that Section 4 (1) of the Act states that "The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the Fijian owners.
13. It is also to be noted that section 23 (1) of the Act provides, inter alia, that all actions respecting native land "may be commenced, prosecuted and carried on in the name and title of the Board".

14. Having said the above, the Court moves to consider the legal issues involved here. The first is whether the fact that the Plaintiff has leased the land to the HA has ipso facto deprived the Plaintiff of its locus standi to continue or maintain the action, so that it has become one which discloses no reasonable cause of action and is an abuse of the process of the court.
15. The leading case on locus standi is the decision of the Supreme Court of Fiji in: Chandar Lok v Bal Ram, the Registrar of Titles and the Attorney General of Fiji: Civil Appeal No. CBV 001 of 2013. Madam Justice Ekanayake said at para 22 that the test for locus standi is whether the (Applicant) has sufficient interest in the matter to which the proceedings relate to.
16. The Supreme Court Practice 1995 (The White Book) states with regard to the analogous English O. 18 r. 19, that a reasonable cause of action means a cause of action with some chance of success when only the pleadings are considered (Drummond – Jackson v British Medical Association [1970] 1 W.L.R 688).
17. The White Book also says that abuse of process occurs when the process of the Court is not being used bona fide and properly.
18. It is trite law that a lease is nothing more than the granting of possession of land for a fixed period by the owner / lessor to a lessee. It in no way implies that the lessor has given up legal ownership of the land to the lessee for the period of the lease or at all. Even less can that be the case here where the Act establishes a Board of Trustees, then presided by the Governor – General and now, I am advised, chaired by the Prime Minister, in which, as I have stated earlier, is vested control of all native land. The apposite term to describe this trust is the Christian concept of stewardship.
19. I am of opinion that the 1<sup>st</sup> Defendants have singularly failed to satisfy the Court that they have any basis to bring this application. The ownership of the land which gives the

owner the right to evict any one unlawfully on its land has not been surrendered by the Plaintiff to the HA.

20. Consequently, the 1<sup>st</sup> Defendants' contentions that the Plaintiff has no reasonable cause of action and that the instant action is an abuse of process collapses to the ground once I find as I do and hold as I do that the Plaintiff has locus stand to bring this action against the 1<sup>st</sup> Defendants, as it has a sufficient interest in the land.
21. In the result the 1<sup>st</sup> Defendants' Summons filed on 16 January 2017 is dismissed with costs which I summarily assess at \$500 to be paid by the 1<sup>st</sup> Defendants to the Plaintiff.

Delivered at Suva this 30<sup>th</sup> day of March, 2017.



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David Alfred  
**JUDGE**  
High Court of Fiji.