

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 12 OF 2015

BETWEEN: AKUILA KUBOUTAWA

FIRST PLAINTIFF

AND: APILIASI TOMU KASA

SECOND PLAINTIFF

AND: KINIASI BETA

FIRST DEFENDANT

AND: SEFANAIA SAU, VILIAME ROKO AND EMOSI ROKO

SECOND DEFENDANTS

Appearance : Plaintiffs In person
Mr. K. Ratule for the Defendants

Date of Hearing : 10th July, 2017

Date of Judgment : 14th July, 2017

JUDGMENT

Introduction

1. The Plaintiffs are claiming for a iTaukei Land and seeking eviction of the Defendants, on the basis that they are illegal occupants of the land for over 40 years. Both Plaintiffs

gave evidence and for the Defendants, the counsel raised a legal objection to jurisdiction, without calling any evidence. He said that High Court does not have jurisdiction to deal with such an issue as stated in the paragraph 8 of the statement of defence.

2. Section 6 of the iTaukei Lands Act states as follow;

'Commissioners to enquire into titles and describe boundaries of lands claimed

6.-(1)The Commission shall institute inquiries into the title to all lands claimed by mataqali or other divisions or subdivisions of the people and shall describe in writing the boundaries and situation of such lands together with the names of the members of the respective communities claiming to be owners thereof.'

3. The said Commission is appointed by the Minister in terms of Section 4 of the iTaukei Lands Act. The Plaintiffs admit, that the land in dispute belongs to iTaukei Land.
4. According to the section 2 of iTaukei Lands Act word 'iTaukei Land' is interpreted in the following manner.

'iTaukei land means land which is neither State (formerly state) land nor the subject of State (formerly state) grant nor iTaukei grant but includes-

- (a) All vacant land including such land declared under section 19.*
- (b) All land set aside by proclamation under section 18 of the iTaukei Land Trust Act 1940; and*
- (c) All extinct mataqali land vested in the Board under section 19 of the iTaukei Land Trust Act 1940.'*

5. First Plaintiff states that he is an Agnate Descendent of Timoci Vakadrano. The land is registered in favour of Agnate Descendants of Timoci Vakadrano. The said land is known as Vunilolo and Nause depicted on Map Reference B/24, 4 as Lot 30 and titled RNL 140 containing 617 acres.
6. The Defendants in the Statement of Defence denied that the 1st Plaintiff is an Agnate Descendent of Timoci Vakadrano. According to him he is an Agnate Descendent of Timoci Vakadrano and he had described how he qualified as Agnate Descendant of Timoci Vakadrano.
7. In the Statement of Claim the Plaintiff claims vacant possession of said iTaukei Land and also a writ of possession. Apart from that General Damages for nuisance and trespass was also claimed.
8. So, the issue before this court is determination as who are the Agnate Descendants of Timoci Vakadrano.
9. At the hearing Defendants did not lead any evidence and objected to the jurisdiction of the court. This legal position is stated in the paragraph 8 of the Statement of Claim.
10. Fiji Court of Appeal in *Namatua v Native Lands and Fisheries Commission*[2005] FJCA 85; ABU0020.2004S (4 March 2005) had held that;

'We have concluded that the real dispute between the parties relates to the extent of the boundaries described in the determination by NLC in 1930. The dispute remains to be resolved and it can only be resolved by 1st Respondent in accordance with s 16 of NLA.

11. The Court of Appeal further said that High Court has no jurisdiction to determine the dispute in that case(see, paragraph32 of the Court of Appeal decision in *Namatua v*

Native Lands and Fisheries Commission[2005] FJCA 85; ABU0020.2004S (4 March 2005).

12. It was a case of dispute between two Mataqalis as to the boundary of respective lands, but it need not confine only to boundary disputes as Court of Appeal relied on Section 16 of iTaukei Lands Act, to exclude jurisdiction of High Court.

13. Section 16 of the iTaukei Lands Act state as follows

'16.-(1) In the event of any dispute arising the parties to which are Fijians in connection with land tikina province or tikina in which the proprietorship of the Fijian owners has been ascertained by the Commission or in a province or tikina which it may be inconvenient or inexpedient for the Commission to visit without delay or in any other case when he may deem it expedient, the Minister may delegate a member of the Commission or some other proper person to inquire into the same.(underlining is mine).

14. If the ratio of Fiji Court of Appeal decision in **Namatua v Native Lands and Fisheries Commission** [2005] FJCA 85; ABU0020.2004S (4 March 2005), is applied it is iTaukei Lands and Fisheries Commission that needs to determine Agnate Descendants of Timoci Vakadrano and High Court has no jurisdiction to deal with the dispute, in terms of section 16 quoted above.

15. It should also be noted that procedure as laid down in iTaukei Lands Act regarding such an inquiry before the Commission and the appeal process are specially provided , hence the intention of the legislation was to exclude jurisdiction of High Court from such disputes.(see Sections 6,7,7A,8,9,10,11,13,14,15,and 16 of iTaukei Lands Act).

16. In Fiji High Court decision *Ketenilaqi v Kolikata* [2016] FJHC 416; HBC40.2013 (16 May 2016) Justice Tuilevuka held that High Court has no jurisdiction to declare the claimant's mataqali was the holder of iTaukei Land. For this judgment his lordship also relied on the Court of Appeal decision of *Namatua v Native Lands and Fisheries Commission* [2005] FJCA 85; ABU0020.2004S (4 March 2005).


Conclusion

17. I accept the objection raised by the Defendants as to the jurisdiction of this matter, as stated in the paragraph 8 of the Statement of Defence. Though they are not prevented from raising this at any time it would have been prudent if such purely legal objection be dealt, before trial by way of an application for strike out in terms of Order 18 rule 18 of the High Court Rules of 1988 and or for a determination in terms of Order 33 rule 3 of High Court Rules of 1988. High Court Rules also serves for proper case management and the issue of jurisdiction is paramount and should have been dealt much earlier with much saving to both parties. The writ of summons is struck off, and considering the circumstances of the case each party is to bear their own costs.

Final Orders

18. a. The action is dismissed.
b. No costs.




Deepthi Amaratunga
Judge