

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No.: HBC 287 of 2016**

**BETWEEN** : **ANARE SOVU** of Namalata Village, in the District of Tavuki in the Province of Kadavu, Farmer, suing in his personal capacity as a member of the Mataqali Valeiwai and in a representative capacity for and on behalf of the majority members of the Mataqali Valeiwai of Namalata Village, in the District of Tavuki in the Province of Kadavu.

**PLAINTIFF**

**AND** : **SIRELI WATISOKO, SEMISI KETENALAGI, SAMUELA SAUTAMATA, MATAIASI VERETAYAVO, JALESI MARA, AMINIASI CULA and ULAIASI RABESA SOVU** of Namalata Village, in the District of Tavuki in the Province of Kadavu as Trustees of the **MATAQALI VALEIWAI TRUST**.

**DEFENDANTS**

**Appearance** : **Ms. Jackson L. for Plaintiff**  
**Ms. Raisua L. for Defendants**  
**Date of Judgment** : **26<sup>th</sup> July, 2018**

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff had instituted this action in his personal capacity for and behalf of the majority members of the Mataqali Valeiwai against the Defendants as the trustees of Mataqali Valeiwai Trust (the Trust). The Plaintiff is seeking injunction restricting Defendants from dealing or representing the Trust and also removal of them as trustees and for an order to have a new meeting of the members of Mataqali Valeiwai to appoint new trustees for the Trust. For the Plaintiff he and two other witnesses gave evidence. On behalf of the Defendants only 3<sup>rd</sup> named Defendant gave evidence.

**FACTS**

2. The Plaintiff gave evidence and marked VKB register for Mataqali Valeiwai maintained by the Fijian Affairs Ministry and Plaintiff said that he is the head or the chief of Mataqali Valeiwai. He was not cross-examined by the counsel for the Defence.

Following facts were admitted in the pre-trial conference minutes

3. “The Defendants were at all material times the Trustees appointed under the Mataqali Valeiwai Deed of Trust dated 20 December 2013 (hereinafter; “2013 Trust Deed”).
4. Prior to the signing of the 2013 Trust Deed, the Mataqali Valeiwai Trust was governed by the Mataqali Valeiwai Trust Deed dated 17 December 2010 (hereinafter: “2010 Trust Deed”). The 2013 Trust Deed was revoked and replaced by the Mataqali Valeiwai 2010 Trust Deed.
5. The trustees appointed under the 2010 Trust Deed were Mataiasi Veretaco, Semisi Ketenilagi and Navitalai Koroi (hereinafter “2010 Trustees”). The term of appointment of the 2010 Trustees appointed under the 2010 Trust Deed was 3 years.
6. Under the 2010 Trust Deed, the 2010 Trustees were given control of the Mataqali Valeiwai’s BSP Bank Account Number 482812.
7. As per *Clause 2* of the 2010 Trust Deed, all income derived from NLTB (now known as TLTB) was to be deposited into the Mataqali Valeiwai’s BSP Bank Account Number 482812 and the utilisation of said funds were to be applied to accordance with the consensus of the members Mataqali Valeiwai, as settlors and beneficiaries, and in the best of all the members of the Mataqali.
8. On or about the end of November 2013, the Plaintiff and the members of the Mataqali Valeiwai met at Namalata Village, Tavuki, Kadavu to appoint new trustees for the Mataqali Valeiwai Trust. At said meeting, the majority members of the Mataqali Valeiwai appointed the Defendants to be the Trustees of the Mataqali Valeiwai Trust for a period of 3 years.
9. On or about December 2012, the Defendants as the newly appointed Trustees of the Mataqali Valeiwai Trust, submitted a new Trust Deed (2013 Trust Deed) to the members of Mataqali Valeiwai setting out the new terms of the Mataqali Valeiwai Trust which was to be signed between the representatives of the Mataqali Valeiwai, as the settlors, and the Defendants as the newly appointed Trustees.
10. The 2013 Trust Deed was intended to replace the 2010 Trust Deed.



11. On 20 December, 2013, the Defendants, save for Navitalai Bogitini, executed the 2012 Trust Deed and the same was accepted by Aminio Waiwai, and Marika Ritova and the Plaintiff on behalf of the members of the Mataqali Valeiwai.
12. *Clause 3* of the 2013 Trust Deed provided that the objects of the Mataqali Valeiwai Trust was to *inter alia*: advance the well-being and welfare of the members of the Mataqali Valeiwai, to advance the education of the children of the Mataqali Valeiwai and to protect the Mataqali Valeiwai lands.
13. *Clause 4 (a)* of the 2013 Trust Deed provided that the Defendants were vested with the power and were directed to manage and administer the resources of the Mataqali Valeiwai on behalf of and for the benefit of the members of the Mataqali Valeiwai.
14. Under *Clause 7* of the 2013 Trust Deed, the Defendants, in making all decision in respect of the Mataqali Valeiwai Trust, were required to have due regard “to the cultural protocols and practices” acknowledged and observed by the members of the Mataqali Valeiwai, which included consulting the Plaintiff as the Turaga ni Mataqali on all decisions and/or matters pertaining to the Mataqali Valeiwai Trust, especially the utilisation of Mataqali land and monies.
15. The Application for TLTB Consent to sub-lease TLTB Lease No. 4/5/11232 was lodged with TLTB on 16 December 2015.
16. The Head-Lease of Lot 9 Natuba Sub-Division, Tavuki, Kadavu contained in Agreement for Lese TLTB Lease No. 4/5/1232 was entered into by TLTB and the Controlling Trustees and one Jalesi Mara on 14 March 2016, months after Lot 9 Natuba Sub-Division, Tavuki, Kadavu had been sub-leased to Kamal Deo Sharma by the Controlling Trustees.
17. The Controlling Trustees had applied for TLTB Consent to Sub-Lease and entered into a Sub-Lease Agreement with Kamal Deo Sharma before the Mataqali Trust had been issued with a Head Lease comprising Lot 9 Natuba Sub-Division, Tabuki, Kadavu.

18. The Defendant's term of appointment as Trustees of the Mataqali Valeiwai Trust expired on 19 December 2016 and the Controlling Trustees called a meeting of all the beneficiaries of the Mataqali Valeiwai Trust at Namalata Village, Tavuki, Kadavu for the purpose of electing new Trustees of the Mataqali Valeiwai Trust."
19. The Plaintiff in his evidence stated that the trustees are not providing financial statements or seeking his and other members concurrence regarding the important decisions such as leasing the land of Mataqali Valeiwai for a business venture, when that land was earmarked to set up a building by the Trust to be let for government offices.
20. The Plaintiff also said that no financial statements were given for years 2014, and 2015, though some form of accounts were given in 2016. Even the accounts for 2016 were not audited and no evidence supporting expenditure were submitted in the meeting held in November, 2016."

#### **ANALYSIS**

21. The Plaintiff gave evidence and said that he is the head or chief of Mataqali Valeiwai and he said he had majority support to institute action against the trustees of the Trust.
22. The members of the Trust were represented by a law firm and they did not cross examine the Plaintiff's evidence.
23. It is proved on that Plaintiff is the Turaga ni Mataqali of the Mataqali Valeiwai of the Yavusa Batulevu of Namalata Village in the District of Tavuki in the Province of Kadavu on the evidence of the Plaintiff.
24. The Plaintiff has the necessary authority to represent the majority members of the Mataqali Valeiwai upon the production of P2 (VKB Register).
25. Those were not challenged in any way by cross-examining and also not producing any evidence to the contrary by the Defendants.



26. The Plaintiff has the necessary standing to institute this matter The Court of Appeal in *Narawa v Native Land Trust Board* [2002] FJCA 9; ABU0012.99S (decided on 31 May 2002) held,
- ‘First, all the members of the mataqalis have a common interest in ensuring that the agreements are being properly administered by the Trust Board, and that they receive whatever is due to them from the agreements. If, as the appellants allege, the agreements have not been properly administered and Timber Fiji is guilty of breaches for which damages are payable but have not been claimed, the members will also have a common grievance. Whether in fact that is so can only be determined at the trial. Similarly, if the causes of action are made out, the relief obtained is likely to be beneficial to the members or at least most of them*
27. The Plaintiff further said that the purpose of establishment of the Trust was to build a building on a land leased from iTLTB and the initiative to do that was taken in 2010 by establishment of Mataqali Valeiwai Trust under a trust deed. This fact was corroborated by the evidence of Mr. Navitalai Koroï Bogitini. His evidence was also not challenged by Defendants.
28. In 2013 a new trust deed was executed it was marked as ‘P4’. This is the Trust Deed that is in operation
29. In terms of the said trust deed the trustees needed to take due regard to cultural protocols and practices as acknowledged and observed in relation to decision making process of the members of the Trust.
30. The Plaintiff and other members of the Mataqali Valeiwai were not informed of the decision to lease the land earmarked to construct a building by the Trust to be rented for government offices.
31. Not only that they were not informed, the decision to lease the land was taken even prior to the land being leased to the Trust.
32. The Plaintiff said that he was unaware of the said lease to a commercial entity until the officials of the iTLTB came with the letter signed by the 3<sup>rd</sup> named Defendant, seeking consent of the iTLTB signed by the 3<sup>rd</sup> named Defendant.

33. 3<sup>rd</sup> named Defendant gave evidence and admitted that he sought consent to sub lease the land to a commercial entity even before head lease was granted to the Trust. There was no evidence that the 3<sup>rd</sup> named Defendant was entrusted with administering the trust by other members of the Trust. At the same time it was proved on the balance of probability that the members of the Mataqali Valeiwai were not informed of this sub lease when they were awaiting the lease to the Trust.
34. Though it was an act of one of the trustees, no other trustee objected to it so they are equally responsible for this serious violation.
35. This act itself was a serious breach of obligation of the trustees. It was proved on balance at probability that the purpose of the setting up of a trust was to construct a building and in order to do that a piece of land needs to be earmarked and subdivided with proper survey according to the local government requirements and it had taken considerable time to obtain a lease for the said land.
36. There was no evidence that decision to sub lease was deliberated among the members of the Trust and or members of Mataqali Valeiwai or even informed to the members. So, the conditions upon which the land was sub leased and more importantly the term or conditions of the sub lease including the amount of lease rentals were not determined in the transparent manner.
37. The trustees have failed to submit bi annual financial statements in terms of Trust Deed for more than 3 years and even annual financial reports were not submitted for years 2014 and 2015. Even the annual financial report submitted for year 2016 was not submitted to the court and evidence was that it was not audited and no verification of the expenses were available with receipts of the expenditure or statement of expenditure. This is an important part of any financial report and specially so when it relate to a trust. If the expenditure is not adequately supported with the receipts, it cannot be considered a financial report that was required under Trust Deed.
38. These are serious violations of the trust deed and more specifically violations of Clause 4(d) and Clause 7 of the Trust Deed (2013), which are a misconducts of the trustees in term of Section 73(2)(c) of Trust Act 1966.



39. The trustees have violated the clauses of the trust deed and had also failed to fulfil the primary objective of constructing a building for the purpose of renting it to the government offices. Instead, the earmarked land had been sub leased even before the head lease was obtained in favour of the Trust. So all the trustees of the Trust (Defendants) are removed forthwith.

#### **FINAL ORDERS**

- a) An injunction restraining the Defendants from acting in their capacity as Trustees of the Mataqali Valeiwai Trust and/or from dealing with or representing the Mataqali Valeiwai Trust.
- b) An injunction is issued restraining the Defendants from dealing with any Mataqali Valeiwai Trust properties or monies held in the Mataqali Valeiwai BSP Bank Account No. 482812 or any other bank account under the name of the Mataqali Valeiwai.
- c) All the Defendants are removed as the Trustees of the Mataqali Valeiwai Trust, with immediate effect.
- d) An order that new Trustees of the Mataqali Valeiwai Trust be appointed at a meeting of the Mataqali Valeiwai to be called and chaired by the Plaintiff as the Turaga ni Mataqali of the Mataqali Valeiwai.
- e) The cost of this action is summarily assessed at \$3,500.

**Dated at Suva this 26<sup>th</sup> day of July, 2018.**



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**Justice Deepthi Amaratunga**  
**High Court, Suva**