

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

Civil Action No. HBC 140 of 2014

BETWEEN : **ALIPATE CECE, NACANIELI CAVISI No. 1, IFEREIMI NATO** representing themselves and all those who are living at Navilakwalakwa Settlement, the direct descendants of the late Laisa Tuvou, then Marama Leweitaqatolu.

PLAINTIFF

AND : **ILAMI NABIAU** for and on behalf of himself and on behalf of the members of Yavusa Leweitaqatolu, Sanasana Village, Nadroga.

DEFENDANT

Appearances : Plaintiffs in person
: Mr. Niko Nawaikula for the Defendant

R U L I N G

1. There is a piece of *i-taukei* land which is at the heart of this matter before me now. The land is described as NLC Lot 74 on Plan No. L/2, 4 (part of) (“**Lot 74**”).
2. The Plaintiffs live in a settlement called Naivilakwalakwa which is on the said Lot 74. They have been living there for many years now. They claim to have a right to reside on a portion of this land.
3. The Register of Native Lands confirms that the *i-taukei* owners of Lot 74 is now vested in the yavusa Leweimataqalulu. This was the evidence of Mr. Ratubalavu, the Commissioner of Native Reserves who gave evidence for the defendants. He had referred to the Fiji Government Gazette Volume 2 published on Friday 23 February 2001 which records a Notice of the extinction of the Mataqali Leweinanubu which was previously the registered *i-taukei* owners of Lot 74, Lot 109 and Lot 106 in Plan L/2,4 in Malomalo, Nadroga.
4. The Gazette also indicated that the said three Lots were being reserved for the yavusa Leweimataqalulu.
5. Mr. Ratubalavu also referred to records in the Register of Native Title namely V2 F273 and V2 2001, 14 which confirm that the plaintiffs are not members of the extinct Mataqali.

6. Lot 74 however formerly belonged to a Tokatoka Volivoli. Tokatoka Volivoli was a sub-unit of Mataqali Leweinubu. Mataqali Leweinubu was a sub-unit of the wider Yavusa Leweitaqalulu in the village of Sanasana, District of Malomalo in the Province of Nadroga.
7. Tokatoka Volivoli became extinct upon the death of one Laisa Tuvou. She was the last registered member of the said Tokatoka.
8. Upon the death of Laisa Tuvou, a gazettal was made on 23 February 2001 by which Lot 74 was formally reverted to the wider Yavusa Leweituqatuqa of which the said extinct Tokatoka Volivoli was a sub-unit.
9. The late Laisa Tuvou was the matriarch of the Plaintiffs. The Plaintiffs claim to have derived an interest in Lot 74 from the said Laisa Tuvou. According to the evidence of the Plaintiff, the late Laisa Tuvou had left a Will shortly before her death by which she purportedly assigned Lot 74 to the Plaintiffs and their descendants. The said Will was tendered in evidence and I reproduce it in full below.

This is the Last Will of me LAISA TUVOU of SANASANA, MALOMALO, NADROGA
Full name Address
 in the Republic of Fiji Domestic Duties.
Occupation

I REVOKE all wills and testamentary dispositions at whatsoever time heretofore by me made.

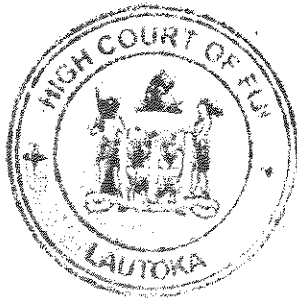
I GIVE DEVISE AND BEQUEATH all my estate both real and personal of whatsoever kind and wheresoever situate of which I shall be possessed or to which I shall be entitled at my death unto my four sons namely: Nacanieli Cavisi, Alipate Cece, Vereimi Nato and Mesake Nayacabuli absolutely AND APPPOINT them the executors of this my will.

IN WITNESS WHEREOF I have to this my will set my
 hand this 7th day of March 1995.

10. I-taukei lands have always been beneficially owned by kinship-based communal proprietary units called *i-tokatoka* or by the larger proprietary unit called *mataqali* (which comprises two or more *i-tokatokas*). These proprietary units would belong to a wider unit called the *yavusa*.
11. Membership of these units is determined by patrilineal descent. This is in accordance with custom and reinforced by section 3 of the *i-Taukei Lands Act*.

Tenure of native lands by Fijians

3. Native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to their native customs and subject to any regulations made by the Fijian Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst native Fijians is relevant all courts of law shall decide such disputes according to such regulations or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.
12. This was also the evidence of Mr. Ratubalavu. I also accept Mr. Ratubalavu's interpretation of the law that i-taukei ownership of land cannot pass under the general succession laws relating to our testacy or intestacy rules.
13. There is a plethora of cases which have more or less established the position in Fiji that such disputes over membership of an i-taukei landowning unit, or, disputes between parties who are members of a landowning unit as to which of them is the rightful title holder of head of their landowning unit – is a matter properly to be determined by the i-Taukei Lands Commission and not the Courts, this case before me is not such a dispute.
14. The issue before me really is whether or not the plaintiffs have any interest over the land in question by virtue of their long occupation of the said land since birth which they say derived ultimately from the late matriarch of the family, who I gather, held a chiefly title over the yavusa.
15. The short answer to that is – they do not. It is hard to see whether any equitable interest can arise in favour of the plaintiffs in the circumstances of this case. In any event, the effect of the Will of the late Laisa Tuvou offends Section 7 of the iTaukei Lands Trust Act in that it purports to alienate the said iTaukei Land to the plaintiffs who have no beneficial entitlement whatsoever in it.
16. The plaintiffs' claim is dismissed. I will order costs in favour of the defendant which I summarily assess at \$3,000 (three thousand dollars only).



Anare Tuilevuka
JUDGE
Lautoka

03 August 2018