

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 345 of 2018

BETWEEN : **SAKIUSA BOLADAI WAQA** of Dakuinuku Village, Sawakasa, Tailevu Fiji, Retired suing in propria persona, as Head of Mataqali Ulugai and in a representative capacity for and on behalf of other members of Mataqali Ulugai of Sawakasa, Tailevu, who qualify pursuant to the provisions of the Itaukei Land Trust Act (as amended) as customary owners of the Itaukei Land.

PLAINTIFF

AND : **BASIC INDUSTRIES LIMITED** and/or its subsidiary Standard Concrete Industries, its servants and/or agents, having its registered office at 4th Floor, Ra Marama House, Suva,

1st DEFENDANT

AND : **ITAUKEI LAND TRUST BOARD** is a statutory body incorporated under the Itaukei Land Trust Act, having its registered office at 431 Victoria Parade, Suva.

2nd DEFENDANT

Counsel : Plaintiff: Ms A. Valenitabua
: Defendant: Ms S. Deven

Date of Hearing : 2.4.2019

Date of Judgment : 30.4.2019

JUDGMENT

INTRODUCTION

1. The Plaintiff who is the Head of *Mataqali Ulugai* had filed this action by way of originating summons claiming rights to the land as customary owners. First Defendant allegedly obtained a gravel and sand extract licence in Wailiko River and was constructing a road for that purpose. The Plaintiff is claiming that 1st Defendants does not provide for access rights across Native Reserve Lands of *Mataqali Ulugai*, but the

Defendant was constructing a road on such land. Plaintiff is seeking declarations in terms of the Originating Summons and also seeking restraining order against First Defendant.

FACTS

2. First Defendant is a company that intends to extract gravel and sand from Wailiko River. There are several sites identified for that purpose and Defendant had earlier engaged in the gravel extraction, too. (see paragraph 5 of affidavit in opposition filed by second Defendant).
3. First Defendant had applied for a licence for sand and gravel extraction and had obtained a licence annexed to the affidavit in reply as MVI. There is no denial of this fact by Plaintiff. Second Defendant had also corroborated this fact by further evidence in its affidavit in opposition.
4. The Defendant had started construction of an access road for the purpose of extraction of gravel without a plan or sketch. The Plaintiff is seeking permanent injunction restraining construction and or using road over Native Reserve Land. There is no plan or sketch for this access road which grants access to first Defendant, but it states that it had completed construction of an access road without a specific sketch or plan of that road.
5. The Plaintiff is also claiming environmental damage due to the said construction of access road to Wailiko River over Native Reserve. The Plaintiff states that without dereservation of the said land, no right of way could be granted in law.

6. *Originating Summons filed by Plaintiff seeks;*

1. *Whether the Defendant by itself, its servants and/or agents and/or subsidiaries, holds a valid gravel licence to extract and/or quarry gravel from Wailiko River in Sawakasa.*
2. *Whether the Defendant by itself, its servants and/or agents and/or subsidiaries, is required to seek, and did sought and obtained the written consent of the registered members of Mataqali Ulugai and/or the iTaukei Lands and Fisheries Commission ("TLFC") and/or the Roads Authority of Fiji and/or the Department of Environment, severally and/or collectively, to:-*

(a) De-reserve itaukei lands referred to by the TLFC as NLC 500 an area of 694.0358 hectares belonging to Mataqali Ulugai ("the said land"),

- (b) *Lease the said land or the piece of the said land upon which the Defendant now constructs its access road to Wailiko River;*
 - (c) *Construct an access road across the said land; and*
 - (d) *Be issues a Gravel Licence by the Taukei Land Trust Board ("TLTB") commencing from 01/01/18 to 31/12/18 to extract gravels from Wailiko River situated within the said land.*
3. *Whether the Defendant should be injuncted or ordered by itself, its principal, their respective servants and/or agents to refrain and be restrained from carrying out any field work, earthworks, earthmoving and/or construction of an access road across the said land on the grounds that:-*
- (a) *The Defendant has failed and/or willfully refused to obtain the written consent of the Plaintiff as Head of Mataqali Ulugai and majority of members of Mataqali Ulugai to de-reserve that piece of the said land upon which the Defendant now constructs its access road to Wailiko River on reserve itaukei land;*
 - (b) *The Defendant has failed and/or willfully refused to obtain the written consent of the Plaintiff as Head of Mataqali Ulugai and majority of members of Mataqali Ulugai to lease that piece of the said land upon which the Defendant now constructs its access road to Wailiko River on reserve itaukei land;*
 - (c) *The Defendant has failed and/or willfully refused to apply for de-reservation and issuance of itaukei lease by TLTB over the said land;*
 - (d) *The Defendant has failed and/or willfully refused to obtain the written consent of the Plaintiff as Head of Mtaqali Ulugai and majority of members of Mataqali Ulugai to construct its access road to Wailiko River on reserve itaukei land;*
 - (e) *The Defendant has failed and/or willfully refused to negotiate with and pay consideration to the Plaintiff as Head of Mataqali Ulugai and majority members of Mataqali Ulugai for the construction of its access road on Mataqali Ulugai reserve itaukei land to access Wailiko River; and*
 - (f) *The Defendant has failed and/or willfully refused to do Environment Impact Assessment ("EIA"), Traffic Impact Assessment ("TIA") and obtain all*

necessary approvals to construct its access road from the Plaintiff as Head of Mataqali Ulugai and majority members of Mataqali Ulugai, Lands Department, Ministry of Environment, TLTB, Roads Authority of Fiji and TLFC, in order to access Wailiko River."

ANALYSIS

7. There is no dispute First Defendant had obtained gravel and sand mining licence for 12 months starting from 1.7.2018 which is annually renewable in terms of the conditions contained in the said licence. (see Annexed MVI to affidavit in opposition of first Defendant).
8. There is no issue raised as to the validity of the said licence so first Defendant had obtained a valid licence for mining of sand and gravel from Wailiku River in terms of the said licence. It also stipulates the place or site for mining.
9. The said licence is silent on road access to the site of gravel extraction. As I stated earlier in my judgment regarding interim injunction of 14.1.2014 clause 6 of licence is not to a right to road access. A road access needs to be specially given through a plan or sketch as there is no public road access to site. Without a sketch or plan first defendant could construct a road disregarding environment impact.
10. In paragraph 19(d) of the affidavit in opposition filed by the second Defendant stated that consent of the Fijian land owners were obtained for de reservation of iTaukei Reserve and a document was annexed (RV13) to prove that. There is no denial of this fact by Plaintiff as he had opted not to file an affidavit in reply to this affidavit though an opportunity was granted for that.(see minutes on 5.2.2018)
11. So I accept that the members of Mataqali Ulugai had consented to dereserve iTaukei Reserve belonging to Mataqali Ulugai in favour of first Defendant. There is no date stated in the said document.
12. Second Defendant in the affidavit in opposition had admitted the Plaintiff's claim that part of the access road that was constructed was inside iTaukei Reserve and area of that is 0.3836 ha. It had submitted a sketch, but this is after first Defendant had constructed the road.
13. So , it is clear that though consent for dereserve was obtained there was no dereservation of the area as required in terms of Sections 15 and 16 of iTaukei Land Trust Act, 1940.

constructed part of a road through iTaukei Reserve. The area is small and about 0.3836 ha but this needs to be regularized and till then use of that part of the road is illegal.

21. The Department of Environment had granted permission for first Defendant to engage in Gravel Extraction in Wailiko Creek on 12.12.2017 subjected to the conditions stipulated therein. There is no permission granted to first Defendant to use the road access from point of extraction to closest public road. This can be done only through a plan and sketch.

CONCLUSION


22. First Defendant had obtained licence to extract gravel and concurrence of Environmental Ministry for the said project was also obtained. An EIA was also obtained. There is no sketch or Plan regarding road that is to be used for the project for transportation of extracted gravel. First Defendant had constructed a new road across iTaukei Reserve without dereservation which is illegal. Till dereservation and legal licence to use the road access is obtained first Defendant is restrained from carrying out any type of work in iTaukei Reserve land and use of the said access road. The cost of this action is summarily assessed at \$3,500. There was an earlier hearing regarding interim injunction and that was also considered in the summary assessment of costs.

FINAL ORDERS

- a. First Defendant had obtained a sand and gravel extraction licence for 12 months from 1.7.2018 which is annually renewable, subjected to the conditions therein.
- b. First Defendant had obtained consent for dereservation of iTaukei Reserve, but so far it had not been dereserved and right of passage /access granted.
- c. First Defendant is refrained from conducting any type of work that would damage fauna and flora of iTaukei Reserve belonging to Mataqali Ulugai including and not limiting use of the road already constructed until that is regularized and specific road access is granted through a sketch or plan.
- d. Cost of this action is summarily assessed at \$3,500 to be paid by first Defendant to Plaintiff.

Dated at Suva this 30th day of April, 2019.




Justice Deepthi Amaratunga
High Court, Suva