

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL (APPELLATE) JURISDICTION**

**CIVIL APPEAL NO. HBA 03 OF 2019**

**IN THE MATTER** of an Appeal from the decision of the Ba Magistrate's Court, in Civil Action No. 80 of 2016.

**BETWEEN** : **ADI MELAIA VAKAWALE WERE** of Namosau, Ba, Fiji,  
Domestic Duties.

**APPELLANT/(ORIGINAL PLAINTIFF)**

**AND** : **VAMARASI VAURASI AND MILIAKERE TUWAI** and/or  
**THE OCCUPIERS OF INSTRUMENT OF TENANCY NO. 13205** land known as Sauyaro (Part of) Subdivision Lot 1 in the Tikina of Bulu in the Province of Ba.

**RESPONDENT/(ORIGINAL DEFENDANT)**

**Appearances** : Mr N. Padarath for the appellant  
Mr R. Vananalagi for the respondent

**Date of Hearing** : 08 May 2019

**Date of Judgment** : 26 June 2019

## **J U D G M E N T**

### **Introduction**

[01] This is a timely appeal from the Magistrates Court sitting at Ba. By his decision of 11 December 2018 (but dated 11 November 2019), the learned Magistrate (*the Magistrate*) upheld a preliminary objection raised by the respondent that the

Magistrates Court has no jurisdiction to deal with substantive claim as proprietary title is being disputed. The magistrate in fact pronounced his ruling on 11 December 2018, although it is incorrectly dated 11 November 2018.

### **The background**

- [02] Adi Melaia Vakawale Were, the plaintiff (*'the appellant'* in these proceedings) is the registered proprietor of the land in dispute. She brought an action in the Magistrates Court against Vamarasi Vaurasi and Miliakere Tuwai and/or the occupiers of Instrument of Tenancy No. 13205 (*'the land'* in dispute), (*'the respondent'* in these proceedings) seeking for among other things vacant possession of the land and damages. The appellant's claim was grounded that the respondent is a trespasser to the land and he is occupying and unlawfully staying in the land.
- [03] The respondent raised a preliminary objection that the Magistrates Court has no jurisdiction to deal with the substantive claim when the title of the plaintiff (*appellant*) is disputed by the defendant (*respondent*).
- [04] The Magistrate upheld that objection and held that the Magistrate Court has no jurisdiction to deal with the matter as proprietary title is disputed. The appellant appeals that decision to this Court.

### **The decision in the Court below**

- [05] Having inclined to go with the decision in *Sukhia v Pratap* and *Blaise v Wati*, the Magistrate decided that as the title being disputed here is proprietary and this court is devoid of jurisdiction to entertain the matter (see para 23 of his rulings).
- [06] The Magistrate found at para 20 and 21 (para 20 and 21 must be read as para 24 and 25) that:

"20. On the basis of foregoing discussions, I find that the correct position of the law was adopted in the case of *Sukhia v Pratap* (*supra*) and in *Blaise v Wati* (*supra*).

21. *I find that this court has no jurisdiction to deal with the substantive matter as proprietary title is being disputed."*

### **Ground of appeal**

[07] The appellant appeals the impugned decision of the Magistrate on the following grounds:

1. *That the Learned Magistrate erred in law at paragraph 23 of his judgment in accepting that **Sukhia v Pratap** (1967) 13 FLR 19 was the correct authority which established the interpretation of Section 16 of the Magistrates Court Act when:-*
  - 1.1 *The decision of **Sukhia V Pratap** (Supra) was a decision based on a repealed legislation and this was noted at paragraph 22 of the Judgment.*
  - 1.2 *The Authority of **Murari Lal & Indar Bas v Santu** Civil Appeal no 9 of 1977 was a decision decided on the amended legislation as such was the correct decision to follow.*
2. *The learned Magistrate erred in law by relying on the authorities of **Mehmood Khan v Pauliasi Ratu** Civil Action 1 of 2015 and **Blaise v Wati** Civil Appeal HBA 6 of 2015. Both these decisions were per incuriam decisions and not binding on the Learned Magistrate. The decision failed to consider the principles in **Murari Lal & Indar Bas v Santu** (Supra).*
3. *The Learned Magistrate erred in law in the construction of Section 16(2) by not considering the submission in relation to the rules of statutory interpretation that is, the Learned Magistrate did not consider that Section 16(2) makes no reference to title to land but rather only makes reference to title to any right, duty or office.*
4. *The Learned Magistrate erred in law in ordering costs against the appellant.*
5. *Such further Grounds of Appeal as may be added upon receipt of the record of the court.*

### The issue

- [08] The primary issue at the hearing of the appeal was whether the Magistrate was correct in deciding that the Magistrates Court has no jurisdiction to hear and determine a claim for possession of the land on the ground that defendant is a trespasser, especially when the defendant disputes the plaintiff's title to the land.

### The law

- [09] The Magistrates Court Act ('MCA'), section 16 (1) (b) (ii) provides:

"...

*(ii) in all suits involving trespass to land or for the recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof);*

..." (Emphasis supplied)

- [10] The MCA, section 16 (2) (a) states that:

*"(2) A Magistrates Court shall not exercise the following jurisdiction-*

*(a) in suits wherein the title to any right, duty or office is in question; or*

*..."*

### Discussion and decision

- [11] The appellant appeals the Magistrates decision on three main grounds. The grounds of appeal collectively challenge that the Magistrate erred in law in accepting that *Sukhia v Pratap* (1967) 13 FLR 19 was the correct authority which established the interpretation of Section 16 of the Magistrates Court Act. I would, therefore, consider the grounds of appeal collectively.
- [12] The appellant issued proceedings against the respondent in the Magistrates Court and sought an order for vacant possession of the land on the basis that the respondent is a trespasser to the land and he is occupying and staying in the land

unlawfully. The trespass to the land is a question of fact which is to be decided solely by the Magistrate based on the evidence available to him or her.

- [13] At the hearing in the court below, the respondent raised a preliminary objection that the Magistrates Court has no jurisdiction to hear and determine the matter as there is a challenge to the title to the land on the ground of fraud.
- [14] It is to be noted that the respondent raised the jurisdictional objection after filing his statement of defence.
- [15] The Magistrate held with the respondent and said the Magistrates Court has no jurisdiction to deal with the appellant's substantive claim as the title to the land is disputed. He relied on section 16 (2) (a) of the MCA and *Sukhia v Ram Pratap*.
- [16] Before me, Mr Padarath of counsel for the appellant contended that the Magistrate erred in law when he relied on the *Pratap's* case, which was a case decided under the repealed Magistrates Court Ordinance. He further contended that the correct case authority for the Magistrate to follow is *Murari Lal & anor v Santu* (Civil Appeal No. 9 of 1977) as it was latest decision under the Magistrates Court Act.
- [17] Mr Vananalagi of counsel for the respondent on the hand submits that: the lower court does not have jurisdiction to deal with this matter. Although the case of *Murari Lal* was delivered after *Sukhia Pratap*, the onus is on the appellant to provide the Bill that lead to the changes in the Magistrates Court Act as discussed by the learned Judge in *Murari Lal*. This will enable the court to understand clearly the intention of parliament. Interpretation of the laws cannot be determined from examining the two cases now that majority of the latest cases have relied on *Sukhia Pratap* including the decision of *Blaise v Wati* a decision of this court.
- [18] *Sukhia* case was decided under the repealed Magistrates Court Ordinance of 1944 in 1967. The repealed Magistrates Court Ordinance, under subsection 4 of section 16 specifically provided that:

*"if in any suit or matter before a Magistrates' Court the title to any land is disputed or the question of the ownership thereto arises, the Court may adjudicate thereon if all parties*

*interested consent, but if they do not all consent, the presiding magistrate shall apply to the Supreme Court to transfer such cause or matter to itself.” (Emphasis provided)*

- [19] The above subsection has been omitted in the current Magistrates’ Court Act and has no application.
- [20] In the *Sukhia’s* case, the appellant brought an action against the respondent in the Magistrates’ Court for declaration that she was owner of a strip of land by adverse possession. It was a case brought under the repealed Magistrates’ Court Ordinance, which had a provision under section 17 (4) that: ‘*if, in any suit or matter before a magistrate’s court, the title to any land is disputed or the question of the ownership thereto arises, the Court may adjudicate thereon if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the Supreme Court to transfer such cause or matter to itself.*’, the then Supreme Court (Knox-Mawer J) (which had jurisdiction equivalent to the current High Court) held that in view of the provisions of section 17 of the Magistrates’ Court Ordinance the Magistrate’s Court had no jurisdiction to resolve the dispute and the judgment would be set aside.
- [21] The Magistrate, having found the *Sukhia’s* decision was a correct decision for to follow, followed the dictum of *Sukhia’s* case. It is to be noted that the *Sukhia’s* was decided under the repealed Magistrates Court Ordinance, the claim in that case was about a declaration of title or ownership of the land by adverse possession, whereas the issue that was before the Magistrate was recovery of land on account of trespass. The *Sukhia’s* case was irrelevant to the dispute that the Magistrate had to handle, and it was decided under the repealed Magistrates Court Ordinance. The Magistrate was not obliged to follow a decision made under a repealed law. In the circumstances, the Magistrate had erred in following a case that was irrelevant to the matter that was before him.
- [22] I now turn to the case authority of *Murari Lal*, which was decided under the Magistrates Court Act. In that case Stuart J held that:
- ““I think that the best way of testing that argument is to look at the development of this section 16. As originally contained in the ordinance of 1944, this section continued a subsection (4) which read*

*"If in any suit or matter before a Magistrates' Court the title to any land is disputed or the question of the ownership thereto arises, the court may adjudicate thereon if all parties interested consent, but if they do not all consent, the presiding magistrate shall apply to the Supreme Court to transfer such cause or matter to itself."*

*With that subsection in the statute, I do not think it can be seriously argued that the proviso (1) deals with a right to own land. It clearly deals with the title to any right, duty or office other than a right to hold land. Now in 1973, when subsections (b) and (bb) appeared in the statute subsection 4 was repealed. Again it seems to me obvious that the introduction of those sub-sections served to extend the powers of magistrates and it would seem to me to have been a corollary of their introduction that ss.4 was no longer required, and it was repealed. The result is, I think, that in actions involving trespass to land or recovery to land, and irrespective of whether there is a dispute as to title, where there has never been a relationship of landlord and tenant the magistrate has jurisdiction..."*

- [23] The *Murari Lal* case concluded that in action involving trespass to land or recovery to land, and irrespective of whether there is a dispute as to title, where there has never been a relationship of landlord and tenant the magistrate has jurisdiction.
- [24] The Magistrate declined to follow the *Murari Lal* case. He said the correct position of the law was adopted in the case of *Sukhia* and in *Blaise v Wati*.
- [25] Undoubtedly, the MCA, section 16 (1) (b) (ii) confer jurisdiction to hear and adjudicate on all suits involving trespass to land or for the recovery of lands (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof). The question arises whether this jurisdiction is limited by subsection (2) (a), which states a Magistrates Court, shall not exercise the jurisdiction **in suits wherein the title to any right, duty or office is in question.**
- [26] The subsection (2) (a) clearly says a Magistrates Court must not exercise the jurisdiction in suits wherein the title to any right, duty or office is in question. It

does not say the title to the land, but only the title to any right, duty or office is in question.

[27] In *Murari Lal*, the court held that in actions involving trespass to land or recovery of land, and **irrespective of whether there is a dispute as to title**, where there has never been a relationship of landlord and tenant the magistrate has jurisdiction.

[28] If the intention of the legislature was to limit the jurisdiction of the Magistrates Court to hear and adjudicate on actions involving trespass to land or for the recovery of land where there is a dispute as to the title to the land, it would have expressly stated so. There is nothing in the MCA to suggest that the Magistrates Court must not exercise the jurisdiction where there is a dispute as to the title to the land. The prohibition in subsection (2) (a) (of section 16) is not in relation to the title to the land. It is, in my opinion, only in relation to the title to any right, duty or office in question. Any other construction would lead to absurdity. Therefore, I would accept the decision in *Murari Lal* is the correct decision reflecting the true intention of the legislature.

### **Conclusion**

[29] For the reasons I have set out above, I conclude that the Magistrates Court has, by virtue of section 16 (1) (d) of the Magistrates Court Act, the jurisdiction to hear and adjudicate on all suits involving trespass to land or for the recovery of land (including any building or part thereof) irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit in respect of the land or any part of the land (including any building or part thereof). This jurisdiction, in my opinion, is not ousted when the title to the land is disputed. The prohibition of jurisdiction in subsection (2) (a) of section 16 of the Magistrates Court Act relates to the title to any right, duty or office is in question, not to the title to the land. Any other interpretation would lead to absurdity.



[30] I would, therefore, allow the appeal and set aside the Magistrate's ruling of 11 November 2018. I would return the case back to the Magistrates Court, Ba for hearing and adjudicating on the merits. There will be no order as to costs.

**The result**

1. Appeal allowed.
2. Magistrate's order dated 11 November 2018 is set aside.
3. Matter sent back to the Magistrates Court, Ba for hearing and adjudication on the merits.
4. There will be no order as to costs.

*H.M. Mohamed Ajmeer*  
*26/6/19*

.....  
**M.H. Mohamed Ajmeer**  
**JUDGE**



**At Lautoka**  
**26 June 2019**

Solicitors:

For the appellant: Samuel K Ram, Barrister & Solicitor

For the respondent: R Vananalagi & Associates, Barristers & Solicitors