

THE HIGH COURT OF FIJI AT LABASA
APPELLATE JURISDICTION

Appeal No. HBA 02 of 2019

BETWEEN : MOHAMMED HARUN & MOHAMMED ILTAJ ALI

APPELLANTS

AND : TEVITA RASIGA

FIRST RESPONDENT

AND : JIMI VOLA

SECOND RESPONDENT

AND : ITAUKEI LAND TRUST BOARD

THIRD RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. A. Sen for the Appellant
: Mr. J. Koroitini for the First and Second Respondents
: Mr. K. Ratule for the Third Respondent

Date of Hearing : 21 August 2019

Date of Judgment : 23 December 2020

JUDGMENT

APPEAL Agricultural land – Trespass – Civil jurisdiction of magistrate to hear suit on trespass – Jurisdiction of agricultural tribunal – Section 16 (1) (d) Magistrates’ Courts Act – Magistrates’ Courts Rules

The following cases are referred to in this judgment:

- a. *R v Agricultural Tribunal Ex Parte Jalil* [1985] FJLawRp 5, [1985] FLR 1 (1 November 1985)
 - b. *Reddy v Samy* [1982] FJLawRp 11, [1982] 28 FLR 69 (2 April 1982)
 - c. *Wilkinson v Barking Corp* [1948] 1 All ER 564
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1. This appeal concerns the civil jurisdiction of a magistrate relating to an allegation of trespass into agricultural land, and arises from the order of the Magistrate Court of Labasa dated 17 January 2019. The court declined – citing absence of jurisdiction – to hear the appellants’ action instituted by writ of summons filed on 27 June 2016. At the inception of the action, the appellants had obtained orders to restrain the first and second respondents from entering the disputed land and the third respondent from granting the first and second respondents a license to use the land. The magistrate also restrained the first and second respondents from threatening or intimidating the appellants, and from harvesting pine logs from the land. After pleadings were closed and prior to the hearing of the substantive matter, the issue of jurisdiction was raised, and the parties were asked to make submissions on the question of the court’s jurisdiction. It is the ruling on jurisdiction that is under appeal.
2. The case of the appellants is that they and their parents have been in occupation of the subject land for a very long time, and that they have cultivated agricultural produce and keep livestock on the land; their father, they said, was in occupation for more than 30 years before his death. They claim to hold 62.2743 hectares. This claimed extent is disputed by the third respondent, which is the trustee of the land in terms of the Itaukei Land Trust Act 1940, and in whose control all itaukei land is vested. The first and second respondents, they alleged, trespassed into their property and removed the trees planted in the land. The appellants pleaded that trespass into the land and intimidation had commenced on 1 June 2016. On the

morning of 27 June 2016, the first and the second respondents forcefully entered the land and started to cut trees. The main reliefs against these respondents was to restrain them from entering the land, from threatening or intimidating conduct and from harvesting pine logs from the land. The third respondent, they complained, allowed the other respondents to intrude into the land, and also had failed to issue a new instrument of tenancy despite the appellants having complied with all requirements of an offer to renew the lease. They sought to restrain the third respondent from issuing a license to any person to enter their land.

3. The third respondent's offer to lease was by letter dated 19 February 2015. By this letter, the appellants were called upon to make a payment of \$7,794.95 to execute the contract. The appellants state they have paid the requisite sum. The land in dispute is described by the appellants as Vuninoko sub division, lot 4, ITLTB 4/9/23597 in Lekutu, Bua containing an area of 62.2743 hectares. By letter dated 21 June 2016, the appellants put the third respondent on notice alleging that it was trying to reduce their acreage and exclude the pine plantation from their tenancy. A week later the appellants filed action against the respondents .
4. Responding to the appellants' statement of claim, the first and second respondents denied having trespassed into the land leased to the appellants. These two respondents contended that the extent of the land leased to the appellants was much less than that claimed by them; this being similar to the position taken by the third respondent.
5. The third respondent pleaded that the appellants' father was initially the leaseholder of the disputed land, that the lease expired on 31 December 1999 and that the appellants unlawfully occupied the land subsequent to the expiry of the lease. The third respondent, the Itaukei Land Trust Board, formerly known as the Native Land Trust Board, alleged that the appellants are not in occupation of 62.2743 hectares as claimed, but were given only 38.67617 hectares. The third respondent also denied that the appellants planted pine in the disputed land. These positions have not been taken before this court by the third respondent, which has expressed support for the appellants' appeal.

6. The magistrate concluded that agricultural leases should be dealt with by an agricultural tribunal. He reasoned that the dispute related to the extent of the lease as the appellants claimed they were entitled to occupy 62.27 43 hecatres, whilst the respondents contended that the area occupied by the appellants was much less. He relied on section 22 (1) (i) of the Agricultural Landlord & Tenant Act (ALTA), which states that in the event of any dispute, the tribunal is to specify the area and boundaries of any agricultural holding.
7. On the question of compensation for trespass, the magistrate referred to section 18 (2) of the ALTA and concluded that the tribunal is competent to award compensation to deal with a breach of any provision of law. Section 18 (2) of the Act states that where a tribunal considers that any landlord or tenant is in breach of the ALTA or of any law, the tribunal may declare the tenancy null and void, and may order such amount of compensation to be paid by the landlord or by the tenant. The tribunal may also order all or part of an agricultural land that is the subject of an unlawful tenancy to be assigned to any tenant or make any other order in terms of the ALTA.
8. The magistrate relied upon the decisions in *R v Agricultural Tribunal Ex Parte Jalil*¹ and *Reddy v Samy*² in holding that it was the agricultural tribunal that had the jurisdiction to hear the dispute. In these cases, the court decided that issues related to agricultural leases must first be taken up in the agricultural tribunal. In *Reddy v Samy*, the Fiji Court of Appeal made it clear that it would not trespass upon the domain of the tribunal or in any way attempt to determine any of the matters which are solely within the powers of, and exclusive to, the tribunal. The magistrate also quoted a passage from the decision in *Wilkinson v Barking Corp.*³, stating, "...where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to this remedy or this tribunal and not to others".
9. The appellants' grounds of appeal are reproduced verbatim:

¹ [1985] FJLawRp 5, [1985] FLR 1 (1 November 1985)

² *Reddy v Samy* [1982] FJLawRp 11, [1982] 28 FLR 69 (2 April 1982)

³ [1948] 1 All ER 564

- a. *“That the Learned Magistrate erred in law and in fact in holding that the Agricultural Landlords and Tenants Tribunal had exclusive jurisdiction to deal with the plaintiffs claim when the case involved trespass by third parties who were the 1st and 2nd defendant/respondents.*
- b. *The Learned Magistrate erred in holding that Agricultural Landlords and Tenants Tribunal had an exclusive jurisdiction to deal with the plaintiff’s claim when there was no landlord and tenant relationship between the plaintiff and 1st and 2nd defendant/respondents.*
- c. *That the Learned Magistrate erred in law and fact in holding that the Agricultural Landlords and Tenants Tribunal had exclusive jurisdiction to deal with the plaintiffs claim when the nature of relief sought by the plaintiff/appellant was within the jurisdiction of the magistrate’s court.*
- d. *That the appellants reserve the right to amend its grounds of appeal upon receipt of the copy record of the proceedings”.*

10. The contention of the appellants is that the resident magistrate exercises civil jurisdiction in terms of section 16 (1) of the Magistrates’ Courts Act and, therefore, has the jurisdiction to hear the appellants’ action.
11. The third respondent submitted that the relationship of landlord and tenant subsisted only between the appellants and the third respondent, and with no such relationship between the appellants and the first and second respondents, the tribunal had no jurisdiction to rule upon a dispute between those parties. As the complaint related to trespass, the third respondent submitted, the magistrate could exercise jurisdiction in the matter. On this basis, the third respondent expressed support for the appeal.
12. The ALTA provides for relations between landlords and tenants of agricultural holdings and for matters connected therewith. There is no disagreement that the land occupied by the appellants is an agricultural land. The agricultural tribunal has all the powers of a magistrate in its summary jurisdiction of summoning and enforcing the attendance of witnesses, examining witnesses on oath, and enforcing the payment of cost and the production of documents. It has the power to admit evidence whether written or oral, irrespective of whether such evidence would be

admissible in civil or criminal proceedings. Section 22 of the ALTA sets out the powers and duties of a tribunal. A tribunal may exercise its stipulated functions on the application of a landlord or tenant of an agricultural holding, which is defined to mean a parcel of agricultural land to which the provisions of the statute apply⁴.

13. The appeal is grounded on the issue of trespass, with the dispute at first instance mainly relating to the alleged infringement of the appellants' property rights by the first and second respondents on land claimed to be lawfully occupied by the appellants. Clearly, the appellants and the first and second respondents do not have a contractual relationship, which is necessary for the agricultural tribunal to assume jurisdiction. The main issue to be determined, on the basis of the appellants' action, is whether or not the first and the second respondents committed any wrongs in the land lawfully occupied by the appellants. In adjudicating this, the third respondent's assertion that the appellants are not lawfully in occupation of the land may be a material consideration. The burden of establishing legitimate rights to the property rest upon the appellants, as well as to prove the alleged wrongs committed by the first and second respondents. These are matters that the magistrate is entitled to consider in deciding the question of trespass. Section 16 (1) (d) of the Magistrates Court Act vests a resident magistrate with jurisdiction in all suits involving trespass to lands irrespective of its value, where no relationship of landlord and tenant has at any time existed between any of the parties to the suit. If satisfied, a magistrate is empowered by Order 22 Rule 5 of the Magistrate Court Rules, to restrain a breach of contract or the commission of a tort.
14. The appellants also claimed general and special damages. The statement of claim does not specify that these damages are sought from the first and second respondents, but taking it as such for the purpose of this appeal will not result in prejudice to any of the parties. The granting of damages is properly within a magistrate's jurisdiction, where it does not exceed \$50,000. It follows, therefore, that the magistrate erred by holding that he had no jurisdiction to hear the action against the first and second respondents.

⁴ Section 2 of the Agricultural Landlord and Tenant Act 1967

15. The magistrate appears not to have dealt with the appellants' plea for an injunction restraining the third respondent "from issuing any license to any person to enter the plaintiff's subject land". The granting of a license in respect of an agricultural holding is a power granted to the third respondent – a statutory body, established in terms of the section 8 of the Native Land Trust Act 1940 to control and administer itaukei lands on behalf of its indigenous owners – to be exercised in accordance with the conditions imposed by the statute. The question is whether the magistrate has the jurisdiction to prohibit the third respondent from exercising the public oriented statutory function of issuing a license in respect of agricultural land. That question need not be decided at this stage. In the first instance, the magistrate must form an opinion whether he could exercise jurisdiction concerning the relief claimed against the third respondent.
16. The appeal is allowed, and the case remitted for consideration by another magistrate sitting in Labasa.

ORDER

- A. The appellants' appeal is allowed.
- B. The case is remitted to the Magistrate Court of Labasa to be heard by another resident magistrate.
- C. The first and second respondents are directed to pay the appellants costs summarily assessed in a sum of \$1,000.00 within 28 days of this order.

Delivered at Suva this 23rd day of December, 2020



M. Javed Mansoor
M. Javed Mansoor
Judge