

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 69 of 2015

BETWEEN: TEVITA KOROI for himself and his own behalf as Turaga ni Mataqali Qasibale and as a representative of the members of Mataqali Qaibale of Nabukelevu-ira Village, Turaga ni Yavusa, Nabukelevu-ira Village, Kadavu.

PLAINTIFF

AND: ITAUKEI LAND TRUST BOARD a body corporate duly constituted under the Native Land Trust Act, Cap 134 of 431 Victoria Parade, Suva.

DEFENDANT

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSEL: Mr Nawaikula N. with Mr Singh R. for the Plaintiff
Mr Vokonavanua Q. for the Defendant

Date of Judgment: 18th October, 2023 @ 9.30am

JUDGMENT

[Statutory Consent and Common Law duty, whether Defendant acted in breach, Damages]

Introduction

1. The Plaintiff filed a Writ of Summons coupled with a Statement of Claim and sought for the following:
 - (1) A declaration that the Defendant has a statutory as well as a common law duty to act solely for the benefit of the Plaintiff mataqali owners.
 - (2) A declaration that the Defendant has breached its statutory and common law duty to act for the benefit of the Plaintiff mataqali owners.
 - (3) An order that the Defendant pay damages to be assessed.
 - (4) Cost of this action on indemnity basis.
 - (5) Such further and other relief as the court may deem just and equitable.
2. The Defendant subsequently filed a Statement of Defence and later had it amended and sought for the following orders:
 - (a) That the Plaintiff's Statement of Claim be struck out on the grounds that the Plaintiff has no reasonable cause of action against the Defendant and further the claim being frivolous and vexatious;
 - (b) That the Plaintiff's Statement of Claim and the five prayers listed therein be dismissed;
 - (c) The cost of this action on a solicitor client indemnity basis
 - (d) Any other relief that the Honourable Court may think just and expedient.
3. A Pre-Trial Conference Minutes [PTC] were filed on 18th October 2019.

Agreed Facts

4. The Defendant administers the Plaintiff land in accordance with S4(1) of the iTaukei Land Trust Act and for that purpose it issued two tourism leases over land owned by the Plaintiff namely NL 25324 and NL 26629.
5. On 1st August 2000, in accordance with S4(1) of its Act, the Defendant issued to one Denham Island Limited (DIL) a Tourism lease NL 25324 for 99 years with effect from 1st day of July 7 1998 over part of native land owned by the Plaintiff Mataqali known as Nagigias Island (Lot 1 on SQ 4257), Kadavu.
6. On 29th January, 2003 also in accordance with S4(1) of its Act the Defendant issued to one Nagigia Villas Limited (NVL) another tourism lease NL 26629 for 99 years with effect

from 1st day of October 2002 for the remaining part of Nagigia Island (Lot 2 on SQ 4257) Kadavu.

7. The parties to the proceedings in the Pre-Trial Conference Minutes have put the issue whether or not the Defendant has breached its Statutory duty pursuant to section 4 subsection (c) of iTaukei Land Trust Act 134?
8. The Plaintiff's Contentions is that under Section 3 (b) of the Native Land Trust Act, 134, the Defendant can sue and be sued. Therefore, the Plaintiff who is representing the Mataqali Landowners is suing the Defendant seeking for compensation for Loss of benefits that the Landowners have suffered due to the Defendant's breach in not acting in the rights and interests of landowners.

Oral Evidence

9. At the Trial, the Plaintiff called five (5) witnesses tendered into evidence a total of 59 Exhibits.

PW1 Tevita Koroi

10. He is the Turaga ni Mataqali Qasibale of the land unit occupied by the resort on Nagigia Island, that the members of Mataqali Qasibale had given them consent by letter of authority allowing him to represent the Mataqali in this action. With regards to the closure of the Resort on the Island. That due to the closure of the hotel, the mataqali has suffered loss in terms of income from surfing transportation, source of Employment, fishing and sale of root crops. He told Court that the Mataqali had benefitted a lot when the Resort was initially started by Harley Jones and this was shared amongst the Mataqali members and they were given water tanks as well. In 2006 - 2007, they wanted to expand the Resort in which they had a discussion with the Resort owner, to put it on the market for the sale of share to a third party.

On 12th July, 2010, he wrote the Defendant indicating the grievance and concern of what they are facing with the current owners of the Resort. That Harley Jones informed them that the Mataqali stands to benefit by the sum of \$200,000 to be paid to them in installments over the next 3 years.

He told court that after the closure of the Resort, he made several visits to the Defendant's office, in Suva and write to the defendant showing grievance on behalf of the Mataqali and how the people have suffered and incurred loss. He sought for the Resort to be restored back into operation.

He informed the Defendant about the claim for compensation and the Mataqali should be compensated and let the Resort operate.

PW2 - Ilaitia Caginavanua

He told Court how the Landowners and villagers benefitted from the operations of the Resort.

He said as a result of the development not happening, the benefits incurred came to a halt when the Resort closed. The Tenants of the lease abandoned the resort resulting in its deteriorating condition.

He confirmed he saw how the village and the mataqali have suffered in terms of loss of employment, loss of income because of the closure of the Resort.

PW3 Emosi Toga

He was a Registered Valuer with ITLTB and left in 2007. He did a valuation of Nagigia Island after the closure of Resort and has prepared the Report.

In her Report, he came to a figure of \$8,931,057.55 which he said is the amount that the Mataqali has lost including employment, surfing, sale of root crops, farming, rental income and other benefits that the Mataqali could have benefitted from the Resort was in operation. He visited the Island and met the land owners and prepared the Report.

PW 4 - Harley Jones

He told court that he was initially involved in setting up the Resort and operated. He was one (1) of the Directors of Denham Island Limited. When Resort up and running, the people of Mataqali were benefitting such as access to water, telecommunication services, medical assistance amongst other things. There were plenty of opportunities for Employment for landowners and Mataqali members. He assisted the school and helped villagers. Relying on the promise of the Defendant, they had done the development and the resort was open and operational.

That he entered into a sale and purchase agreement to sell his shares because he wanted someone with substantial funding to make the investment needed to develop the Resort for the benefit of the people of Kadavu.

He told Court that he was not required to obtain consent from the Defendant for the sale of his shares because it did not involve dealing with the land. He had a meeting with General Manager, Mr. Qetaki.

On 31st August 2010 and on his request he paid consent fees which other parties also signed consent forms and then there was no response from the Defendant.

(PW4) and (PW5) Alexander Witten - Hannah went to the Defendant's office and filled the complete Section 12 consent application and paid the fees. This was done because the General Manager promised to grant the consent immediately.

He had written a letter to General Manger Mr. Qetaki on 18th November 2010 and relied on his assurance that consent would be granted immediately on lodgment of the application with consent fees. He did so in the presence of PW4, Mr. Qetaki and others

including Niko Nawaikula and the Australian investors and their lawyers. However, there was no response from the Defendant.

He told Court that he wanted the lease to be reinstated depending on the conditions. PW4 agreed that the Island was in operation with him as Manager from 2000 - 2008. He blamed ITLTB for closing of the Resort. He made attempt to settle and made many try and took him 5 years to try and settle the matter.

PW 5 Alexander Witten - Hannah

He was a signatory to the 2008 Agreement. General Manager Alipate Qetaki promised him that Consent would be given fully meeting of 31st August 2010. That buyers in New Zealand Company shares was another New Zealand company with Australia shareholders. The shareholding of the two Fiji Companies owning the two ITLTB Leases was unchanged for all but the Fiji Company owning the Fiji Leases never changed, remained the same.

He told Court that the Agreement was not dealing with land, therefore, Consent was not needed. Alipate Qetaki, General Manager, ITLTB reassured them that as long as he said the application fees for the two (2) Leases, he will provide consent. However, consent was not granted. He told Court that his rights pursuant to 2008 Agreement, the shareholder of Nagigia Island and Denham Island have guaranteed the purchase price to be paid by him and the action taken by the Defendant to cancel the lease without informing them is not right.

He added, had the Defendant granted Consent promptly as promised, the Resort would be on operation and the developments on the village and Resort would have eventuated. Issue of consent was not real. The Defendant should not have asked for consent in the first place. When Australians withdraw their application for investments, the livelihood of the landowners were affected, left unemployed and no source of income was available during the closure of the Resort.

11. DW1 Roselyn Vunibaka

Estate officer in Tourism Department in the Defendant's office. The Defendant has acted in the best interest and have issued and served a breach notice when there is a breach on Lessee.

PW4 and PW5 came to the Defendants office, and the Defendant did not want to deal with them. The Lessee had not taken any action until to date offer service of the notice because of clause of Resort the Mataqali members have suffered loss of employment, the landowners could not sell their products and there was no surfing activities. The Defendant is not getting any rental after closure of Resort and the landowners have suffered and been deprived of the same.

Analysis and Determination

12. The Plaintiff brings this action in a representative capacity on behalf of himself and the members of the Land owning unit of Mataqali Qasibale Nabukelevu, Kadavu, against the Defendant and sought for certain declaration and orders.
13. The Defendant has opposed the Plaintiff's claim and sought for the striking out and dismissal of the claim.
14. That by this action the Plaintiff is claiming that by its conduct, the Defendant has breached its statutory duty defined under S4(1) of its Act that is to administer the subject land for the benefit of the Plaintiff, iTaukei owners.
15. That by this action the Plaintiff is also claiming that the Defendant has, by its conduct, breached its common law duty to act in the best interests of the Plaintiff.
16. That the Defendant administers the Plaintiff land in accordance with S4(1) of the iTaukei Land Trust Act and for that purpose it has issued two leases over, land owned by the Plaintiff namely NL 25324 and NL 26629.
17. That the Plaintiff say that pursuant to the Deed of Cession and the Native Land Act of 1905 and in accordance with S4(1) iTaukei Land Trust Act the Defendant has a statutory duty to properly administer the Plaintiff land specifically NL 25324 and NL 26629 for the benefit of the Plaintiff mataqali owners.
18. That in addition to its statutory duty the Plaintiff say the Defendant also has a common law duty, to act in the best interest of the native land owners.
19. That on the 1st of August 2000, in accordance with S4(1) of its Act, the Defendant issued to one Denham Island Limited (DIL) a tourism lease NL 25324 for 99 years with effect from 1st day of July 1998 over part of native land owned by the Plaintiff mataqali known as Nagigia Island (Lot 1 on SQ 4257), Kadavu.
20. That on the 29th of January 2003 also in accordance with S4 (1) of its Act the Defendant issued to one Nagigia Villas Limited [NVL] another tourism lease NL 26629 for 99 years with effect from 1st day of October 2002 for the remaining part of Nagigia Island (Lot 2 on SQ 4257), Kadavu.
21. That the S4(1) benefits and interest to the Plaintiff upon the issue of the two leases [NL 22629 and NL 25324] to DIL and NVL (the two lease owning companies) include a one off payment of premium in the sum of \$64,000.00 and initial annual rental income of \$5,700.00 per annum, employment, supply of boat and generator for village, annual initial payment of \$2,700.00 per annum for a surfing agreement, purchase of vegetables from the village, hire of village boat to take passengers to Vunisea and employment.
22. That the Plaintiff and the two lease owning companies since 2000 and up to April 2008 have been working together to attract investment for their mutual benefit.

23. That on 13th February 2007 to facilitate further investment, the Plaintiffs and the two lease owning companies jointly applied by letter to the Defendant to facilitate the sale of shares by providing a letter of approval and a letter approving additional lots of both leased areas.
24. That on 18 January 2006 and specifically on 19th February 2007 the Defendant approved the sale of shares to any outside parties and approved additional lots to facilitate further investment.
25. That according one Mr Alexander Witten-Hannah, solicitor and New Zealand citizen, as the sole shareholder, sold all the shares of Nagigia Properties Limited (NZ company No. 835331) to another New Zealand company Nagigia Development Limited (NZ Company No. 209158) under an agreement dated 22nd April 2008 (hereinafter called the '2008 NZ share agreement'). The legal jurisdiction of the 2008 NZ share agreement is New Zealand.
26. That the New Zealand company Nagigia Properties Limited owned all but one of the share of Fiji company Denham Island Limited (Company No. 12158) and Fiji company Nagigia Villas Limited (Company No. 15357). Denham Island Limited owned TLTB lease NL 25324 and Nagigia Villas Limited owned lease NL 26629.
27. That the Defendant acted negligently, in breach of S4(1) of its Act and contrary to the benefit and interest of the Plaintiff when contrary to its prior promise to both the Plaintiff and the lease owning companies, that resulted in the 2008 NZ share agreement, the Defendant unlawfully, unreasonably, and without due care and regard of the Plaintiff's interest, failed to act impartially, attacked, interfered and frustrated the 2008 NZ share agreement, causing enormous damage to the Plaintiff.

Particulars of Breach

- I. The Defendant knew and/or ought to have known that its role was not to attack, interfere and frustrate any share agreement let alone the 2008 NZ share agreement, but simply to facilitate and leave any dispute to the 2008 NZ share agreement parties, but instead, the Defendant did attack, interfere and frustrated the 2008 NZ share agreement, without due regard to the Plaintiff's interest and benefit. From 2010 to date, instead of facilitating the 2008 NZ share agreement, the Defendant has unlawfully and unreasonably made demands, charges and imposed conditions without attempting to resolve the same and without due regard of the consequences of its actions to the Plaintiffs benefit.
- II. The Defendant insisted its consent under S12 is necessary when it knew and/or ought to have that it is not required and when the S12 applications demanded by the Defendant were made "without prejudice" and application fees fully paid on 31 August 2010, the Defendant failed to process and grant consent as promised and neither granted nor refused the S12 application for over three years, causing huge economic loss to the Plaintiff.
- III. The Defendant knew and/or ought to have known a S12 consent was clearly not necessary from the share transaction of a parent company which has a subsidiary company with an NLTB lease but opted instead to demand the same without any effort to resolve the same, frustrating the 2008 NZ agreement contract and causing loss of

employment and loss of major economic opportunities.

- IV. The Defendant through its General Manager was not impartial and acted unfairly by not applying in 2010 or later the same S12 consent rules to all other 2008 share transaction of a parent company which has a subsidiary company with an NLTB lease. The Defendant only did these damaging actions to the Plaintiffs leases.
- V. The holding Company, of the 2008 NZ share agreement purchaser, also had major share changes by 2010 but the Defendant was not impartial and was also negligent when its General Manager did not instruct the Defendant to treat these share transactions as a S12 even though they were the same.
- VI. The Defendant through its General Manager, in applying S12, knew and/or ought to have known that such an Act was not a statutory requirement, and therefore totally unlawful, it was also bad estate management as it did not make economic sense a strict application of S12 and the two alienation clauses to the 2008 NZ share agreement will amount to zero payment and therefore of no benefit to the Plaintiff.
- VII. The Defendant acted negligently without considering the Plaintiff's benefit when it failed to act or do anything following the Plaintiff's written request of 12th July, 2010 warning of the great dangers to the interest of the Plaintiff, and demanding the Defendant to accept the proposed \$200,000.00 settlement payments and to avoid court proceedings at all costs.
- VIII. The Defendant acted negligently without considering the Plaintiff's benefit when it failed to act or do anything following the Plaintiff's written request of 14th November 2010 to settle the matter and accept the \$200,000.00 offered as the Plaintiff was "extremely concerned with the lack of progress and action by NLTB on issues causing problems that have delayed the development on this island and on much awaited payment of \$200,000. "and" to avoid going to Courts to resolve the matter".
- IX. The Defendant acted negligently without considering the Plaintiff's benefit when it failed to act or do anything following the Plaintiff's request by letter of 15th August 2011, raising concern at the lack of progress in settling the dispute that had resulted in economic loss and loss of employment.
- X. The Defendant acted negligently without considering the Plaintiff's benefit when it failed to act or do anything to the Plaintiff's request and concern by letter dated 27th July, 2012 raising concern on the lack of progress in settling the dispute which had by then resulted in the closure of the resort, and resultant loss of employment and other economic opportunities.
- XI. The Defendant acted negligently without considering the Plaintiff's benefit when it failed to act or do anything to the Plaintiff's request by letter dated 11th March 2013, to return the whole resort to the mortgage owners and if not, the Plaintiff will take their land to the Land Bank.
- XII. The Defendant wrongly refused to accept the legality and validity of the mortgage over the Denham Island Limited Lease and wrongly refused the mortgage holders from exercising their rights. The Defendant ignored the request by letter of 11th March 2013 to do the above which resulted in the delay of the reopening of the resort and recovery of lost jobs.
- XIII. The Defendant acted negligently without considering the Plaintiff's benefit by

unreasonably and unlawfully insisting on S12, which it knew and/or ought to have known that S12 and the lease alienation clauses would derive zero payment to the Plaintiff, and despite the Defendants earlier letters that S12 does not apply, the Defendants S12 related actions had caused the resort to be closed, putting people out to work to the extent that it was clear to any reasonable person that the General Manager of the Defendant had a most suspicious agenda of no benefit to the Plaintiff.

28. That the Plaintiff has suffered very large damages and loss as a result of the Defendants negligence, interference, omissions and illegal actions, contrary to its promises and its duties imposed under its Act.

Particulars of Damages.

- I. The Defendants interference and wrong advice largely caused the investment to collapse with huge financial detriment to the Plaintiff.
 - II. The Defendants unlawful action was used by the 2008 NZ share agreement purchaser as excuse to halt all further investment, even maintenance, resulting in closure and loss of employment.
 - III. The Plaintiff lost out on the opportunity to very significantly increase rental income and receive a substantial payment from the negotiated settlement for the consent of the 2008 NZ agreement.
 - IV. The Plaintiff lost all employment and huge potential employment opportunity from the proposed major development contained in the 2008 NZ share agreement, in large part halted by the Defendants illegal, improper and ill-advised actions.
 - V. The Plaintiff suffered further financial loss travelling to Suva and back to meet with the Defendant and requesting legal advice and willing to seek prompt negotiations and an out of court resolution.
 - VI. The Defendants inept handling of the Plaintiff leases has had huge financial repercussions for the Plaintiff with the closing of the resort and the abandonment of the property in April 2012.
 - VII. The Plaintiff lost employment and employment opportunity and many more benefits from the promised development.
 - VIII. The Plaintiff lost revenue from rentals and future rentals increases from the promised development.
29. However, the Defendant's contention is that it has not breached its statutory duty and had acted within the ambits of the iTaukei Land Trust Act 134.
30. The Defendant's contention further is:
- (a) That the benefit identified were part of the Negotiation between the Plaintiff and the old operators of Denham Island Limited and Nagigia Villas Limited.
 - (b) It has no knowledge of the working relationship between the Lessee and

the Landowners.

- (c) The Companies [Denham Island Limited and Nagigia Villas Limited] that the Plaintiff is referring to have misconstrued the Intention of the Defendants. The Board did not waive the issue of the consent when it elected not to purchase any share. The inclusion of the land was with the subleased lots created from the land within the leasehold and not any lands outside the NL 25324 belonging to Denham Island Limited and NL 25324 belonging to Nagigia Villas Limited.
 - (d) The Agreement entered between Alexander Witten Hannah, Nagigia Properties Limited and Nagigia Development Limited under the Agreement of 22nd April 2008 is illegal.
31. The Defendant submitted that the original management of the said companies were willing vendors who had sought to sell the administration and the management of the leasehold to the purchasers.
 32. The Real issue on the 2008 Agreement is the unpaid consideration sum between the parties to the Agreement as vendors and purchasers. The 2008 Agreement contains promises relating to leased and non-leased iTaukei Land and therefore affects the interest of the Defendant.
 33. The position taken by the Defendant is in relation to the iTaukei Land Trust Act, 134. However, the Plaintiff's and the new operator's of the Denham Island Resort and Nagigia Island Resort have issues concerning the unpaid balance of the Consideration sum of the 2008 Agreement.
 34. Sometimes between 2010 and 2011, the defendant attempted to settle the difference between the Original owners of the Denham Island Limited and Nagigia Villas Limited and the current owner or the purchasers under the 2008 Agreement. Consent to transfer form was submitted to the board but this was subject to the payment of the percentage of the consideration sum of the sale price as per the new valuation report submitted to the Board.
 35. The original Directors and/or Owners of Denham Island Limited and Nagigia Villas Ltd had failed to pay the percentage of consideration sum to the Defendant.
 36. The ITLTB in its statement of Defence confirms that ITLTB was willing to issue its consent as the proposed sale will be for the value of both Leases together with its improvements. It has excluded land not within the leased area mentioned in the 2008 sale and purchase agreement.
 37. Mr. Nawaikula being the solicitor acting for Denham Island Limited and Nagigia Villas Ltd had obtained valuation of the Lease. However, could not pay the 25% percentage to the Denham Island as Lessee, as they did not receive the full payment from the current owners and/ or the new operators of the Denham Island Limited and Nagigia Villas Ltd.

38. The parties [Vendors and Purchasers] to the 2008 Agreement had failed to pay the percentage of the Consideration sum to the Board. Therefore, ITLTB did not grant its consent on the consent to sign application. The position of the Defendant was in the best interest of the Land owners.
39. Section 4 (1) of the iTaukei Land Trust Act, 134 deals with the control of Native Land vested in Board.
40. The Defendant had a statutory duty to properly administer the Plaintiff's land specifically NL 25324 and NL 26629 for the benefit of the Plaintiff Matakali owners. Further, the Defendant also has a common law duty to act in the best interest of the Native Land owners.
41. Section 12 of the iTaukei Land Trust Act, Cap 134 deals with the 'consent of Board to any dealings with Lease.' It provides that "It shall not be lawful for any lease under this Act to alienate or deal with the land comprised in his lease or any part thereof, whether by sale, transfer or sublease or in any other manner whatsoever without the consent of the Board as Lessor or had lessor first had and obtained. The granting or withholding of Consent shall be in the absolute discretion of the Board, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent shall be Null and void."
42. The Defendant had issued two (2) leases over the land owned by the Plaintiff namely NL 25324 and NL 26629.
43. Lease NL 25324 was issued to Denham Island Limited [DIL] for 99 years with effect from 1st day of July 1998 over part of Native Land owned by the Plaintiff Matakali known as Nagigia Island [Lot 1 on SQ 4257], Kadavu.
44. Tourism Lease NL 26629 was issued to Nagigia Villas Limited for 99 years with effect from 01st day of October 2002 for the remaining part of Nagigia Island [Lot 2 on SQ 4257], Kadavu.
45. The Plaintiff and the two (2) lease owning companies worked together to attract investment for their mutual benefit since 2000 and up to April 2008.
46. To facilitate further investment, the Plaintiff and the two (2) lease owning companies jointly applied by letter to the Defendant to facilitate the Sale of shares by providing a letter of approval and a letter approving additional lots for both leased areas.
47. PW 4 Harley Jones in his evidence told court that initially he was involved to set up of the Resort and operated the initial stage. He was one of the Directors of Denham Island Limited.
48. On 18th January 2006, the Defendant wrote to the Resort advising them that they are not purchasing any shares of Denham Island Limited.
49. On 13th February 2007, the Resort and the Plaintiff wrote a letter to the Reserve

Commissioner of the Defendant office and informed them there was a possibility of engaging Australian investors who were willing to invest on Nagigia Island.

50. The Defendant replied again advising them that the Landowners are not purchasing any shares of Denham Island Limited.
51. Harley Jones informed Court how the Defendant interfered with the Resort's operation, specifically the 2008 Agreement with a third party investor, causing the Resort to close by 2012.
52. He told Court that the Resort and the Plaintiff requested the Defendant for approval for sale of shares in 2008 to outside parties. The Resort commenced negotiations with the shareholder investors. They signed a shareholder Agreement with the new investors in April 2008.
53. After signing of the Agreement, the new investors joined the Resort Business and were in control of operations at the Resort until they abandoned it in late 2011.
54. According to PW4, the Defendant first interfered with the Resort operations by questioning the legality of the 2008 share Agreement especially claiming that Section 1 Consent was needed to approve the share Agreement.
55. This Act mad the investors to refuse to left abandoning the Resort in late 2011.
56. PW4 explained that Nagigia Island Properties owned all shares in Denham Island Limited and Nagigia Villas Limited the shareholder was PW4 Alexander Witton-Hannah who sold shares for the company via 2008 Agreement to another NZ company. One share of Denham Island went to Nagigia Development and one share of Nagigia Vilas Limited went to Nagigia Development. Therefore, according to PW4, there was no change of the companies that owned the leases and the leases remained exactly the same.
57. PW4 also confirmed to court that on 18th January 2006 and 19th February 2007 he received letters from the Defendant stating that they can sell shares to any outside party.
58. On 20th May, 2010, Counsel for the Resort owners wrote to the Defendant and clarified that there were no representations on their part and that all processes were followed for the sale of shares and that the investors had clarified that they do not want other lands.
59. The Plaintiff's solicitors were eager to settle and wrote to the Defendant urging parties to meet and settle the matter. Even an offer for settlement was made to restore the Resort and compensate the landowners but according to the Plaintiff there was neither any response and/or take any steps to assist the landowner.
60. However, the companies Denham Island Limited and Nagigia Villas Limited that the Plaintiff are referring to have discontinued the intentions of the Defendant with regards to the Two (2) Letters written on 18th January 2006 and 19th February 2007 respectively.

61. The Board did not waive the issue of Consent when it elected not to purchase any shares. The inclusive of the land was within the subleased Lots created from this land within the leasehold and not any lands outside the TLTB Lease NL 25324 belonging to Denham Island Limited and TLTB Lease NL 26629 belonging to Nagigia Villas Limited.
62. The current position in respect of Section 12 of TLTB is that the transfers of shares of the two (2) companies Denham Island Limited and Nagigia Villas Limited tantamounted to change of ownership of the Leases and therefore, an alienation of the Lease accordingly.
63. The transfer of the share of the Nagigia Villas Limited and Denham Island Limited between the old directors and the New Directors of the said companies amounts to a transfer of the property.
64. Hence, it tantamounted to dealing with the land and resulted in the breach of the Lease Agreement by Denham Island Limited and Nagigia Villas Limited.
65. Further, the Agreement entered between Alexander Witton Hannah, Nagigia Properties Limited and Nagigia Development Limited under the Agreement dated 22nd April 2008 is illegal.
66. The real issue in the 2008 Agreement entered into is the unpaid consideration sum between the parties to the Agreement. The 2008 Agreement contains provisions relating to leased and un-leased iTaukei land and therefore affects the interest of the Defendant as a whole.
67. The position cited by the iTaukei Board was the unlawful inclusion of the iTaukei land included in the 2008 agreement.
68. The shares as per the 2008 Agreement for the sale and purchase of shares of Nagigia Island Properties Limited, the transfer of the said shares directly affects the land in Fiji as two (2) of the companies listed under the said Agreement are Denham Island Limited and Nagigia Villas Limited registered under the companies laws of Fiji.
69. Furthermore, the 2008 Agreement involves iTaukei Land the Sale of the Lands by the Plaintiff were illegal since Nagigia Development Limited and Nagigia Properties Limited were not in compliance to the companies laws of Fiji which require foreign companies to register to documents with the Registrar of Companies. Hence, it will be accorded with the right to hold land in Fiji.
70. In 2010 and 2011, the Defendant attempted to settle the difference between the original owners of Denham Island Limited and Nagigia Villas Limited and the current owner and the new operators of the Denham Island Limited and Nagigia Villas Limited or the purchases. Under the 2008 Agreement.
71. The original Directors and/or owners of Denham Island Limited and Nagigia Villa's Limited had failed to pay the required percentage of the consideration sum of the sale price to the Defendant as per the new valuation.

72. The TLTB Board was willing to issue its consent as the proposed sale will be for the value of both Leases together with its improvements.
73. However, the failure to pay the consideration sum as was required because it remained unpaid, the Board did not grant its consent on the **Consent to Assign Application**.
74. I hold that the transfer of shares of the companies Denham Island Limited and Nagigia Villas Limited amounts to the change ownership of the Lease and therefore an alienation of the Lease. Further, the Transfer of share of the Nagigia Villas Limited and Denham Island Limited between the old Directors and the new Directors of the said companies Tentamounts to a transfer of a property.
75. Therefore, the Board did not at anytime wave the consent to transfer the shares as was done in terms of the 2008 Agreement.
76. The change of ownership therefore tentamounts to the dealing in hand, which could have only been successful if the consent to transfer the shares was sought from the iTaukei Land Trust Board who are the custodians of the itaukei Land.
77. For the aforesaid referral, I proceed to make the following orders

ORDERS

- a. The Plaintiffs Writ of Summons together with the Statement of claim is dismissed in its Entity.
- b. The Plaintiff to pay the Defendant a sum of \$1,000 as summarily assessed costs.

Dated at Suva this 18th day of October, 2023.



VISHWA DATT SHARMA
JUDGE

Cc: Nawaikula Esquire Lawyers, Suva
ITLTB, Suva

