

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. HPP 113 OF 2024

BETWEEN : NEMANI MATI
First Plaintiff

AND : PONIPATE RAVULA
Second Plaintiff

AND : ITAUKEI LAND & FISHERIES COMMISSION
First Defendant

AND : DIRECTOR OF LANDS
Second Defendant

AND : THE ATTORNEY-GENERAL OF FIJI
Third Defendant

AND : ITAUKEI LAND TRUST BOARD
Fourth Defendant

Counsel : Mr. I Fa (Junior) for the 1st and 2nd Plaintiffs
Ms. G Naigulevu G for the 1st, 2nd & 3rd Defendants
Mr V Tuicolo for 4th Defendant

Hearing : 28 February 2025

Judgment : 28 February 2025

EXTEMPORE JUDGMENT

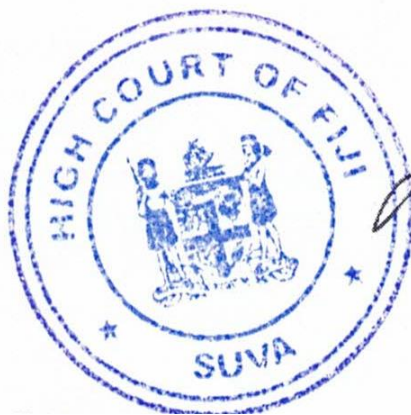
(Summons by Fourth Defendant to Strike Out claim against it)

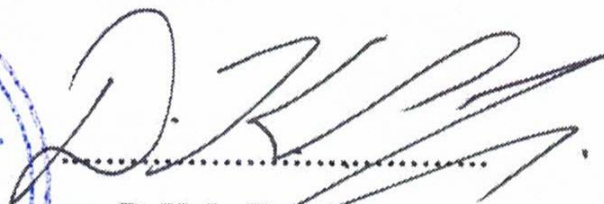
- [1] Ms. Naigulevu has advised that the First, Second and Third Defendants intend to file a strike-out application. They have been waiting to file their defence before filing any strike-out. They will be relying largely on the same grounds as identified in the Fourth Defendant's written submissions.
- [2] I have decided to dismiss the Fourth Defendant's summons. Not on the basis that it has no merit, but on the basis that the application is premature – the application, and its basis, is more suitably brought by the First Defendant. The Fourth Defendant can ride the coattails of the First Defendant's application but the application ought to be made by the First Defendant.
- [3] It is appropriate that I explain how I have arrived at this conclusion. The Fourth Defendant filed a summons on 21 January 2025 to strike-out the claim against it. It is an application made under O.18, r.18(1)(a) of the High Court Rules, 1988. I have heard from counsel as well as considered the pleading in the Plaintiff's Statement of Claim. It is clear that this dispute has a complicated and long history. One that dates back to the 19th century and involves not only armed conflict but early investigations by the then colonial government into the use and ownership of the itaukei land. The claim by the Plaintiffs is that they are being unlawfully transferred from their original and legitimate Yavusa to another Yavusa, the consequence of which means, according to them, losing not only their lands but also their identity. They seek orders of the Court to revert back to their original Yavusa and no doubt to reclaim the lands that they say they are entitled.
- [4] One of the grounds for the Fourth Defendant's strike-out is that this proceeding is not the correct forum to be deciding these issues and at first blush this ground has legs. There is a process prescribed under the iTaukei Lands Act 1905 to have these

customary land and registration disputes resolved by the Itaukei Lands and Fisheries Commission – the First Defendant.

[5] As stated, Ms Naigulevu has indicated that the First, Second and Third Defendants will be filing a strike-out application. She indicates that they will be raising these very issues and, in my view, the First Defendant is the appropriate party to do so in this case. The Court will be better placed to decide the issue in such circumstances. That being so, the Fourth Defendant’s summons is dismissed. Costs to be in the cause.

[6] There is a further matter raised by Mr Fa. The Fourth Defendant has not yet filed its Statement of Defence – I made orders on 27 November 2024 for all the defendants to file their defences within 21 days. I agree with Mr Fa that a strike-out application is not an excuse to defer filing a defence. Nevertheless, I will exercise my discretion to allow the Fourth Defendant an opportunity to file a defence, but it must be filed within 14 days of today's date. No further extensions will be granted by the Court.




D. K. L. Tuiqereqere
JUDGE

Solicitors

Fa & Company for the First and Second Plaintiffs

Office of Attorney-General for the First, Second and Third Defendants