**IN THE HIGH COURT OF FIJI**
**WESTERN DIVISION**
**AT LAUTOKA**

**[CIVIL JURISDICTION]**

**CIVIL ACTION NO. HBC 210 of 2021**

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| **BETWEEN** | : | **RUSIATE DRIKALU AKA RUSIATE DRILAU SAMO** of Navatulevu, Nadi, Farmer as representative of the Mataqali Narogoibau. |
| | | **PLAINTIFF** |
| **AND** | : | **LUKE KULANIKORO** of Navatulevu, Nadi, Unemployed |
| | | **DEFENDANT** |

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| **BEFORE** | : | **Master P. Prasad** |
| Counsels | : | Ms. M. Narisia for Plaintiff<br>Ms. E. Wakowako for Defendant |
| Date of Hearing | : | 12 November 2024 |
| Date of Decision | : | 17 April 2025 |

**RULING**

(Strike out)

1. The Plaintiff brings this action as the representative of *Mataqali Narogoibau, Yavusa Nabati* in the village of *Narewa*. The Plaintiff in his Statement of Claim states that on 1 July 1992, he was issued with an agricultural lease from the iTaukei Land Trust Board ("**TLTB**") for the land described as *Narogibau* that has an area of 1.2271 hectares ("**subject land**"). The Plaintiff further states that he had given consent for the Defendant's brother, one Apete Tanoa, to reside on the subject land for his life only however, once Apete Tanoa passed away the Defendant continued to reside on the subject land and has damaged the fences built by the Plaintiff as well as constructed a church and set up a poultry farm on the subject land.

2. The said agricultural lease over the subject land was surrendered by the Plaintiff on 18 October 2020.

3. Essentially, the Plaintiff's claim is for the Defendant to give vacant possession of the subject land to the Plaintiff.

4. On 20 October 2021, the Defendant filed a Summons pursuant to Order 18 Rule 18 1 (a), (b) and (c) of the High Court Rules 1988 and the inherent jurisdiction of this Honourable Court ("**Summons**") seeking that the Plaintiff's claim be struck out. The Defendant filed an Affidavit in Support of the Summons and an Affidavit in Reply.

5. The Plaintiff opposed the Summons and has filed an Affidavit in Opposition.

6. Both legal counsels made oral submissions at the hearing. When the hearing date was allocated for the Summons, the Court had made orders for both parties to file written submissions before the hearing date. This order was not complied with. However, both legal counsels sought time to file written submissions after the conclusion of the hearing. A timeline was then set for the Defendant to file the submissions by 26 November 2024, and the Plaintiff was to file a reply by 10 December 2024. The Defendant filed its submissions on 24 January 2025. At the time of writing this Ruling, the Plaintiff's counsel had not filed any submissions.

7. The Defendant's submissions in essence were that the Plaintiff's Statement of Claim lacked merit and did not disclose a cause of action against the Defendant, and that the Plaintiff did not have legal standing to sue in his personal capacity. The Defendant based this on the fact that the Plaintiff did not have any authority from the relevant Mataqali to sue as their representative. The Defendant also submitted that the lease over the subject land had been cancelled by iTLTB and currently both the Plaintiff and the Defendant are living on the subject land, which is owned by *Yavusa Navatulevu, Yavusa Sila and Yavusa Yakuilau* ("**Yavusa e Tolu**").

8. The Defendant is a member of *Tokatoka Nacavacola, Mataqali Valemagimagi, Yavusa Navatulevu, Narewa Village*. The Plaintiff is a member of *Mataqali Narogoibau, Yavusa Yakuilau, Narewa Village.*

9. The Plaintiff's counsel submitted that the Plaintiff has the right to sue personally, and has legal standing.

10. Order 18 rule 18 provides:

> *"18 (1)The Court <u>may</u> at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in teh indorsement, on the ground that –*
> *(a) it discloses no reasonable case of action or defence, as the case may be;*

*(b) t is scandalous, frivolous or vexatious;*
*(c) it may prejudice, embarrass or delay the fair trial of the action; or*
*(d) it is otherwise an abuse of the process of the Court,*

*and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be."*

11. Footnote 18/19/3 of the 1997 Supreme Court Practice reads

> *"Striking out or amendment—The rule also empowers the Court to amend any pleading or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before the Court (CBS Songs Ltd v. Amstrad [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.94, C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see "Amendment," para. 18/12/22), unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v. Peruvian Guano Co. (1887) 36 Ch.D. 489)."*

12. Footnote 18/19/7 of the 1997 Supreme Court Practice reads:

> *"Exercise of powers under this rule—It is only in plain and obvious cases that recourse 18/19/7 should be had to the summary process under this rule, per Lindley M.R. in Hubbuck v. Wilkinson [1899] 1 Q.B. 86, p.91 (Mayor, etc., of the City of London v. Horner (1914) 111 L.T. 512, C.A.). See also Kemsley v. Foot [1951] 2 K.B. 34; [1951] 1 All E.R. 331, C.A., affirmed [1952] A.C. 345, H.L. It cannot be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action (Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.)."*

13. Footnote 18/19/11 of the 1997 Supreme Court Practice on no reasonable cause of action or defence reads:

> *"Principles—A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no*

*ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, C.A.);..."*

14. The legal principles regarding striking out pleadings are clear and widely understood. The Court of Appeal in ***National MBF Finance v Buli*** [2000] FJCA 28 determined the principles for strike out. In ***Attorney-General v Shiu Prasad Halka*** 18 FLR 210 at 214 Justice Gould V.P. in his judgment expressly stated the law to be "*that the summary procedure under O.18, r.19 s to be sparingly used and is not appropriate to cases involving difficult and complicated questions of law.*"

15. The clear and unambiguous wording of Order 18 Rule 18 indicates that the power to strike out pleadings is discretionary rather than obligatory.

16. In this matter both parties agreed that once the agricultural lease over the subject land was cancelled/surrendered, the land reverted to *Yavusa e Tolu.*

17. The Plaintiff's counsel argued that the Plaintiff had the legal standing to initiate the action based on three main points being: (i) the Plaintiff had engaged in discussions with TLTB and was optimistic about being granted a new lease for the subject land; (ii) the Plaintiff was the most recent registered owner of the land in question; and (iii) as a member of the *Yavusa e Tolu*, the Plaintiff did not require explicit consent from the *Yavusa* to proceed with the action.

18. Although the Plaintiff's Statement of Claim asserts that he surrendered the lease for the subject land, the Defendant's Affidavit in Support of the Summons includes a letter dated 19 October 2021 from TLTB. The said letter confirms that the lease was cancelled on 23 December 2020 due to non-compliance of a breach notice.

19. The Plaintiff further avers in his Affidavit in Opposition that while the lease over the subject land was surrendered, and both parties are part of the land owning units, the respective *Mataqali, Yavusa* and *Tokatoka* know that each land owning unit are entitled to their own *kanakana* (portion of allocated land) and that the Defendant was occupying land allocated to the Plaintiff.

20. In ***Waqabaca v Lakeba Pine Scheme*** [2016] FJHC 57; HBC165.2014 (5 February 2016), His Lordship Amaratunga J dismissed the plaintiff's originating summons on the grounds of *locus standi* (legal standing). This judgment included a discussion on prior cases that had addressed the matter of 'representative action' as follows:

> 6. *"The four Plaintiffs instituted this action by way of Originating Summons as representative capacity of respective Mataqalis. ...*

7. *In **Mesulame Narawa & Others –v- Native Lands Trust Board & Others**, Civil Action No. 0232, 1995 decided on 16th December,1998 (unreported) Fatiaki J. (as he then was) cited Order 15 rule 14(1) of the High Court Rules of 1988 and also several local and UK decisions and finally concluded*

> *'...on the affidavit evidence before me it is not at all clear or established that the various mataqalis comprised within the Yavusa Burenitu have either a 'common interest or purpose' in the proceedings or that the reliefs sought especially the cancellation of the concession agreements would be 'beneficial to all'.*
>
> *In my view the plaintiffs have no 'locus standi to bring or continue the present action and it is accordingly dismissed with costs ...'*

8. *In **Mesulame Narawa & Others** (supra) the case of **Timoci Bavadra –v- N.L.T.B.** Civil Action No. 421. 1986 was cited where applicant sought leave under Order 15 rule 14 of the High Court Rules to institute a representative action. Rooney J held that support of majority members for the Plaintiff would not necessarily give a plaintiff a representative right to sue. The following paragraph was quoted said at page 7:*

> *"Even if the plaintiff could show that he had the support of the majority of the adult members of the land holding unit this would not necessarily give him or the people he represents the right to sue. That depends on the nature of a Fijian land holding unit."*

9. *This position was accepted by Fatiaki J (as he then was) and dismissed the action on the issue of locus standi in somewhat similar application where a party had come to the court seeking certain orders regarding two timber concession agreements.*

...

13. *In such a situation it is not possible to apply common law principles questioning the authority of the Tui Nayau. When dealing with customary issues the principles of common law may become alien. This was held in **Dikau v Native Land Trust Board** [1986] 32 FLR 179*

> *'The Fijian land system is one which in the modern commercial world requires a legal entity to control and manage the land. The English legal system which we have adopted was not designed to cope with land system which has no physical or corporate legal owner. Creating trustees by law and vesting control and administration of all native land in trustees, which as the board is by law a body corporate with perpetual succession desirable in the best*

*interest of the Fijian people and unborn generations of Fijians' Per Rooney J.*

*If the Fijian land tenure system is to endure, it must be appreciated that the interest of all members of every land owning mataqali from new born infants to the old and infirm and the interests of unborn generations of Fijians must be safeguarded and protected. The land must be controlled and administered as trust land by a trustee or Board of Trustees for the benefit of the Fijians now and in the future entitled to occupy and use such land.*

*Government has set up land agencies to deal with native land. One is the Native Land Commission charged with the duty of (inter alia) ascertaining what lands are the rightful and hereditary property of native owners. The other is Native Land Trust Board charged with the duty of controlling and administering all native land for the benefit of the Fijian owners.*

*Further held,*

*A mataqali cannot be equated with any institution known and recognised by common law or statute of general application. The composition, function and management of a mataqali and the regulation of the rights of members in relation to each other and to persons and things outside it are governed by a customary law separate from and independent of the general law administered in this Court. ...'*

*'It was established by Meli Kaliavu and Others (supra) that individual members of the mataqali have no locus standi to sue and recover damages in their own personal capacity or to obtain an injunction....'(underlining is mine)*

14. *At the conclusion Rooney J held that if individuals are allowed to litigate as in that instance it would bring the orderly control or Fijian land to an end. ... They have failed to establish their status in line with the decisions presented to me at this hearing.*

15. *The Section 4(1) of iTaukei Land Trust (Cap 134) states that all native lands are vested with Native Land Trust Board. It had not been named as a party to this proceeding though the Plaintiffs relied on that provision in the caption of Originating Summons.*

16. *The Section 3 of Native Lands Act (Cap 133) cannot be relied upon in this Originating Summons as, it expressly state 'examination of witnesses' to determine the 'native customs' by a court. This court cannot be done by Originating Summons.*

17. *The Plaintiffs cannot sue for the reliefs that they have sought in their personal capacity as the recognized entity is land holding unit. According to the caption of Originating Summons they are*

*suing on behalf of their Mataqali. So they are suing in representative capacity. In that event there should be common interest and purpose but from the affidavit evidence it is evident there are conflicting views among the members of the Mataqalis and all the members do not consider the Plaintiffs in their representative capacity. So there is no common interest or purpose for the Plaintiffs to sue on behalf of land holdings units.*

18. *In the circumstances the Plaintiffs do not have a locus standi to bring this action seeking declaratory orders and other restraining orders. The Originating Summons is struck off and the cost of this application is summarily assessed at $2,500."*

21. In this case, the Plaintiff neither possesses an active lease from TLTB nor does he have the authorisation of the relevant land-owning unit to initiate this proceeding on their behalf. Applying the principles and justifications of Amaratunga J in ***Waqabaca v Lakeba Pine Scheme*** (Supra) pertaining to 'representative action', I find that the Plaintiff lacks the *locus standi* to initiate this action in his personal capacity to evict the Defendant from the subject land.

22. Therefore, the Plaintiff's action is struck out with costs to be paid to the Defendant.

**Final Orders**

(a) The Plainitff's action against the Defendant is hereby struck out and the action is dismissed; and

(b) The Plaintiff to pay costs summarily assessed at $2,000.00 to the Defendant within 28 days from today.

HIGH COURT OF FIJI
LAUTOKA

**P. Prasad**
**Master of the High Court**

**At Lautoka**
**17 April 2025**