

IN THE HIGH COURT OF FIJI AT LAUTOKA
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC 134 OF 2022

BETWEEN : **NIRMALA DEVI, of Korovoto, Nadi- Domestic Duties**

PLAINTIFF

AND : **ITAUKEI LAND TRUST BOARD, a statutory body corporate established under the ITAUKEI Land Trust Act (CAP 134) (as amended) and having its registered office at 431 Victoria Parade- Suva,**

DEFENDANT

BEFORE : Hon. A.M. Mohamed Mackie- J.

COUNSEL : Ms. Begum S. for the Plaintiff.

: Mr. Ratule, with Ms. Degei for the Defendant.

DATE OF TRIAL : 21st March 2025.

WRITTEN SUBMISSION: Filed by the Plaintiff on 4th June 2025.

: Filed by the Defendant on 11th June 2025.

DATE OF JUDGMENT : 26th June 2025.

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff commenced this action against the Defendant by way of her writ of Summons and the Statement of claim filed on 29th April 2022, which was subsequently amended on 28th June 2022 **seeking the following reliefs;**

- a) *Residential Lease for an area more or less for ¼ acre on which the Tenancy at Will was granted.*
- b) *The Tenancy at will granted to Ratnesh Kumar be revoked and for Ratnesh Kumar to vacate the land.*
- c) *Damages for loss of enjoyment of land for the past 2 years.*
- d) *General damages.*
- e) *Legal costs*
- f) *Interest*
- g) *Costs.*

- h) *Post interest judgment.*
- i) *Such other relief as this Honorable Court deems fit.*

B. STATEMENT OF CLAIM:

2. In her amended Statement of claim, the Plaintiff averred, *inter alia*, THAT:
 1. Plaintiff's husband had purchased a ¼ acre land from Mataqali Noah Naivalu on 10th March 1989 and had constructed a house therein in the same year.
 2. Mataqali Noha passed away in 1998 and one Rakesh Kumar entered the Plaintiff's land in 1992.
 3. Plaintiff's husband and Mataqali Noha Naivalu had informed Rakesh Kumar that the land had been bought by the Plaintiff's husband, and he had no right of occupation.
 4. When the Plaintiff's husband requested a lease from Mataqali of Korovuto, he was advised that Mataqali had no records of old transaction.
 5. On advice from Mataqali Salotoni Nawaqa, the Plaintiff's husband purchased the land again on 25th February, 2020.
 6. Mataqali Salotoni Nawaqa issued notice to vacate on Ratnesh Kumar, Son of Rakesh Kumar on 18th February 2020 stating that the land he occupies has been sold to the Plaintiff and Mataqali Solotoni Nawaqa on 28th February 2020 lodged for the lease with its consent at ITLTB.
 7. The land was surveyed by the Defendant in March 2020 and only an extent of 0.0523 HA was allocated by an offer letter given on 02nd April 2020 and on receipt of it the Plaintiff wrote back seeking for a Resurvey of the land as the area allocated was less than ¼ acre.
 8. Unknown to the Plaintiff or the Mataqali, the Son of Rakesh Kumar, namely, Ratnesh Kumar obtained Tenancy at Will from the ITLTB on 23rd November 2020 for an extent of 0.0665HA out of the land sold to the Plaintiff without the knowledge of her and Mataqali against which the Mataqali showed their disapproval.

C. STATEMENT OF DEFENCE:

3. By its Statement of Defence filed on 12th August 2022, the Defendant, *inter alia*, stated **THAT;**
 - a. If the Plaintiff was a purchaser of land, the alleged sale and purchase agreement relied on by the Plaintiff constitutes a "dealing" for which the consent of the Itaukei Land Trust Board was required under Section 12 of the itaukei Land Trust Act 1940, and without which the said dealing would be illegal.
 - b. No consent was obtained from the Board for the purchase of ¼ acres land in Korovuto.
 - c. Under section 4 of the iTaukei Land Trust Act, all iTaukei Lands are vested in the Board to administer as trustees for the benefit of the iTaukei Land Owners.

- d. That the purported sale between the Plaintiff's husband and the member of the land-owning units constitutes a "dealing" under Section 12 of the Itaukei Land Trust Act and for which the Board's consent was required.
 - e. Plaintiff's husband never applied for any agreement for lease nor was ever issued by the Board to the Plaintiff's husband.
 - f. The Plaintiff's husband's occupation of the subject land and construction of a house therein is unlawful as the Plaintiff's husband did not have a proper lease and did not otherwise have the consent of the Board for the occupation of the subject property or for the construction of the house therein.
 - g. The board is not legally bound by any arrangement that the Plaintiff's husband may have had with Noa Naivalu or any other member(s) of the land-owning unit.
 - h. There are number of families who are in occupation of the land owned by the landowning unit Tokatoka Nalevaku, Mataqali Nalevaka for a period of time without any formal lease – including the Plaintiff and Rakesh Kumar.
 - i. An offer letter for tenancy at will dated 2nd April, 2020 was issued to the Plaintiff for a land area of 0.0523 hectares. That offer was valid only for a period of 6 weeks.
 - j. As there were other houses neighboring the subject land (including the area belonging to Ramesh Kumar) only an area of 533 meters could be offered as this was an area of occupation by the Plaintiff.
 - k. Regardless of whatever agreement the Plaintiff may have entered into with the land-owners, the board is not bound by the alleged Agreement and it would consider the applications in accordance with its policies and procedures.
 - l. The Plaintiff sought to claim the portion of the subject land of Ratnesh Chand's tenancy at will without any color of right.
4. Accordingly, the Defendant moved for the dismissal of the Plaintiff's action with costs.

D. ISSUES:

5. By filing the PTC minutes, parties recorded 9 agreed facts, 3 Facts in dispute and 9 issues to be determined at the trial, which I need not reproduce for the reasons stated bellow.
6. However, in my view, answering of the pivotal issues would conveniently dispose this matter fully and finally. Those issues are as follows;
 - a. *Whether or not Noah Naivalu of Tokatoka Letavatava, Korovuto obtained consent from the Defendant for the sale of Tokatoka Letavatuva Land to the Plaintiff's husband ?*
 - b. *Whether or not the Plaintiff unlawfully and/ or illegally resided on Tokatoka Letavatava of Korovuto and without the consent of the Defendant?*
 - c. *Whether or not the Defendant was correct in issuing one Ratnesh Kumar with the Tenancy at Will.*

E. TRIAL:

7. At the trial held on 21st March 2025 one **Apenisa Ramotu**- current chief of Mataqali, from whom the Plaintiff claims to have purchased the subject land, the Plaintiff **Nirmala Devi**, and one **Narendra Kumar** (Plaintiff's husband) have given evidence for and on behalf of the Plaintiff as "PW-1", "PW-2" and "PW-3" respectively, by marking in evidence the annexures "**Pex-1**" to "**Pex-7**". The Defence led the evidence of one witness. Parties have filed their respective written submissions as well.

F. PLAINTIFF'S EVIDENCE:

PW-1

8. The witness (PW-1) namely, **Apenisa Ramotu** , representing the Tokatoka Mataqali Nalevaka , testified about the purported sale of ¼ acre land unto the Plaintiff's husband Narend Kumar , receipt of \$5,000.00 as consideration , and that the dealings were with his deceased father, but he was present there. However, he stated further that though, ¼ acre was agreed to be sold to the plaintiff Nirmala Devi, only a portion, even less than half, of it is with the Plaintiff now and another portion of it, more than half, is being occupied by another Tenant call Ratnesh Kumar. He also stated that the iTLTB officers did the measuring and pegging for Ratnesh Kumar, he does not know as to how he came into the land, and that he wishes the Plaintiff to be given ¼ acre.
9. Under cross examination, he admitted that there are other families too residing there, they came into the land after paying money to Tokatoka, and they have constructed their houses therein. When suggestions were made to him by the defence counsel to the effect that **Rakesh Kumar** built his house in the year 1992, he was issued with tenancy at Will in 1992, and after his death, the board issued a Tenancy at Will to his Son **Ratnesh Kumar** who occupies the land now, instead of denying those suggestions, he answered to the effect that he does not know anything about it.
10. However, when it was put to him that when his father or he was dealing with **Narend Kumar** and his wife **Nirmala Devi** (the Plaintiff) with regard to the subject land in question, the ITAUKEI Board (the Defendant) was not aware of it or they were not privy to it, his answer was affirmative.
11. For the next suggestion put to him by the Defence Counsel to the effect that he was aware that he cannot sell the land to outsiders, except to the State, his answer to this was also affirmative.

PW-2

12. The next witness was the Plaintiff **Nirmala Devi**, who testified that presently she does not have a lease or tenancy at Will for the land she occupies since 1992, Mataqali gave

her the consent, she was given a document by Mataqali to be lodged and the extent she bought was $\frac{1}{4}$ acre.

13. Under cross examination, she admitted that Rakesh Kumar built his house in 1992 next to her house, the land owners and she did not have any issue when Rakesh Kumar built his house in 1992, and she or her husband did not voice any concern over it. She also specifically admitted that when she made the payment on 25th February 2020 to the land owners, the ITLTB neither knew about this arrangement nor was a part of it.
14. She also admitted that when the officers from iTLTB came for inspection in 2020, they found what they could offer her was only 0.0523 hectares that she was occupying, though she had applied for $\frac{1}{4}$ acre, and there were other houses surrounding her house as neighbours including that of Rakesh Kumar.

PW-3

15. Plaintiff's witness No-3 was her husband, **Narendra Kumar**. This witness, having confirmed the evidence given by "PW-1" and "PW-2", under his cross examination stated that when they went in to the land in 1989, he was shown the boundary by the Mataqali. When questioned whether he erected any fence or pegs on his shown boundaries, his answer was negative. The reason adduced was that he did not have much money to do so.

DEFENCE EVIDENCE: "DW-1"

16. The only witness called by the Defence was, none other than the Senior Estate Officer, namely, Mr. **Mikaele Aisea Sebastian Koroivulaono**, from the ITLTB Western Office, who gave clear and convincing evidence marking documents from "Dex -1" to "Dex-5" with regard to the current state of the subject matter land, the extent what the plaintiff is actually occupying now that can be offered to her, which is 523 square meters, however, subject to the payment of the fees and costs. He also confirmed that the Tenancy at Will granted to Ratnesh Kumar by the Board cannot be retrieved.

G. DISCUSSION:

17. Sections 5 (1) and (2) of the Act state as follows.

Native land alienable only to Crown

5.-(1) *i-Taukei land shall not be alienated by i-Taukei owners whether by sale, grant, transfer or exchange except to the State, and shall not be charged or encumbered by i-Taukei owners, and any i-Taukei to whom any land has been transferred hereto by virtue of an i-Taukei owners, and any i-Taukei to whom any land has been transferred heretofore by virtue of an i-Taukei grant shall not transfer such land or any estate or interest therein or charge or encumber the same without the consent of the Board.*

(2) All instruments purporting to transfer, charge or encumber any native land or any estate or interest therein to which the consent of the Board has not been first given shall be null and void.

18. A mere glance at the contents of the averments in the Statement of Defence, reproduced in paragraphs 3 (a) to (l) above, clearly demonstrate as to where the Plaintiff stands as far as her purported claim is concerned. Had there been a timely Application for strike out by the Defence pursuant to Order 18 Rule 18, this action would not have survived till this stage, particularly, in the light of what is enshrined in the Section referred to in the foregoing paragraph, and other provisions of the Act.
19. By the very evidence adduced by the Plaintiff and her witnesses, they have admitted that the dealing between the Plaintiff and the relevant Mataqali land owning unit was without the consent and/ or knowledge of the Defendant Board, which directly violates the above provision. When the Plaintiff has violated the very provision of the relevant law, the Court cannot extend its helping hand to the Plaintiff.
20. However, the Plaintiff, who claims to have purchased $\frac{1}{4}$ acre land from the Mataqali and constructed her house in the year 1989, thereafter till February 2020 had not diligently acted to formalize her purchase and her stay in the land in question. Had she acted at early stage with due diligence, probably, she would have been considered for the grant of a formal lease to the extent she claimed to have purchased from the Mataqali.
21. Though, the Board by its letter dated 2nd April 2020 ("Pex-6") offered the Plaintiff the available extent of land (0.0523 HA), she has not acted on it before the expiry of 6 weeks stated in the said letter. It appears that, in order to circumvent her failure to response within 6 weeks, she has sent the undated letter marked as "Pex-7" stating that she received the offer letter dated 2nd April 2020 only on 09th November 2020, when the Plaintiff's immediate neighbor **Ratnesh Kumar** was to receive his Tenancy at Will dated 23rd November 2020.
22. The Plaintiff, who acted in the absence of consent from the Defendant Board with regard to her dealing with the Mataqali, slept over her right for several years. She cannot now find fault with the Defendant Board. The Board can offer only what it has now available on the ground and not what the Mataqali had, allegedly, and illegally agreed with the plaintiff to provide her without the knowledge of the Defendant Board.
23. The current Mataqali chief "PW-1" has admitted that he and his father violated the relevant Section. The Plaintiff in her evidence has admitted that they did not raise their concern when Rakesh Kumar came into occupation and built his house therein. The

Plaintiff's husband in his evidence has admitted that he did not erect any fence or pegs to demarcate the purported extent of $\frac{1}{4}$ acre that they claimed to have purchased from the Mataqali.

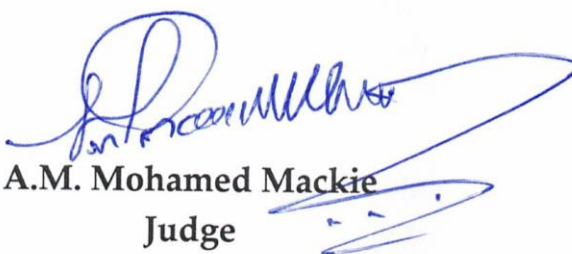
24. Further, the Plaintiff in her prayer to her purported Statement of Claim has moved for the revocation of the **Tenancy at Will** subsequently granted to Ratnesh Kumar. It is to be borne in mind, that in the absence of the said Ratnesh Kumar before this Court as a party to these proceedings, neither issues in relation to him can be considered nor any relief can be granted against him as prayed for by the Plaintiff. The Plaintiff's current predicament is solely due to her own unlawful actions and/or omissions. This Court cannot salvage her out of it in view of the defence advanced.
25. For the reasons stated above, the Plaintiff's claims should necessarily fail and her writ of Summons and the amended Statement of claim should be dismissed, with an order for summarily assessed costs in a sum of \$500.00.

H. FINAL ORDERS:

- a. Plaintiff's Writ of Summons, and the Amended Statement of Claim filed on 28th June 2022 fail.
- b. The reliefs sought in the Amended Statement of Claim declined and the Plaintiff's action dismissed.
- c. The Plaintiff shall pay the Defendant a sum of \$500.00 being the summarily assessed costs within 28 days.

On this 26th Day of June 2025 at the Civil High Court of Lautoka.




A.M. Mohamed Mackie
Judge
High Court (Civil Division)
Lautoka

SOLICITORS:

Messrs. ACE LEGAL – Barristers & Solicitors- For the Plaintiff.

In-house Solicitors- Itaukei Land Trust Board- For the Defendant.