LABASA TOWN COUNCIL

A

v

1. **MIRIAMA**
2. **NATIVE LAND TRUST BOARD**

[HIGH COURT, 1995 (Scott J), 21 September]

B

Civil Jurisdiction

Native Land-Local Government-whether native land within municipal boundaries rateable-native Land Trust Board's duty of payment-Native Land Trust Act (Cap 134) Section 11-Local Government Act (Cap 125) Sections 2 and 60.

C

The Town council sought to recover unpaid rates owed over native land from the NLTB. HELD: The NLTB held moneys which it owed to the Mataqali which had not paid its rates and accordingly it was properly the subject of garnishee proceedings.

D Cases cited:

John v. Rees [1970] Ch 345; [1969] 2 All ER 274
Native Land Trust Board v. Nadi Town Council FCA 45/79
- FCA Reps 79/295
Nausori Town Council v. Native Land Trust Board Suva SC 27/83
E *Webb v. Stenton* [1883] 11 QBD 518

Application for garnishee order absolute

V.P. Ram for the Judgment Creditor
M. Sadiq for the Judgment Debtor
No Appearance by the Garnishee

F

Scott J:

In this matter the Judgment Creditor (the Council) prays a Garnishee Order Nisi pronounced on 31 May 1994 against the Native Land Trust Board (the Board) be made absolute.

G The Council is a body corporate constituted by virtue of sections 5 and 8 of the Local Government Act (Cap. 125 and see Subsidiary Legislation –S55).

The Judgment Debtor (the Debtor) one Miriama, is the Turaga ni Mataqali Banito or head of the customary landowning unit known as Banito (see Native Land Trust (Leases and Licences) Regulations 11 (1) (b) -Cap.134 - Subs S12).

The Board is that body charged with the control of Native Land established by the Native LandTrust Act (Cap.134).

By sections 2 and 60 of the Local Government Act (Cap.125) all land (with certain exceptions which are not relevant to these proceedings) within a town is rateable. By section 2 of the Local Government Act the owner of unalienated Native Land within a town boundary is the proprietary unit, in other words the Mataqali or other equivalent traditional land owning unit.

On 3 November 1992 the Council issued proceedings against the Debtor who was named in the Writ as:

> "Miriama of Labasa - Turaga ni Mataqali Banito".

The Statement of Claim which was endorsed on the Writ was quite brief and may be set out in full:

"The Plaintiff says:-

1. The Defendant is the Turaga ni Mataqali of the Mataqali Banito and is sued on his own behalf and on behalf of the members of the Mataqali Banito.

2. The Mataqali Banito is the proprietary unit of unalienated Native Land which is situated within the boundaries of the Labasa Town.

3. The said Mataqali was indebted to the Plaintiff the sum of $59,517.92 being $53,619.75 rate in respect of land owned by it and situate within the boundary of Labasa Town as at the 31st day of December 1991 under the assessment No. 439 and interest thereon amounting to $5,898.17 to date.

4. Demands for the payment of the said moneys have been made but the Defendant has failed to pay the same.

Wherefore the Plaintiff claims

(a) Judgment for the sum of $59,517.92.
(b) The costs of this action."

On 7 December 1992, no Defence having been filed, Judgment in Default of Defence was sealed by the Council in the amount of $59,517.92 plus $65.00 costs. No application has ever been made to set the Judgment aside and neither has the debt been paid.

On 31 May 1994 the Council commenced garnishee proceedings against the Board. A supporting affidavit was filed in which the central fact averred was that the Board had in its possession funds which represented rents collected by

it from tenants of other lands also owned by Mataqali Banito and let out by the Board on the Mataqali's behalf. The Council's case put simply is that the Mataqali is by virtue of section 14 of the Native Land Trust Act owed these funds by the Board and therefore, under the powers conferred on it by RHC 0.49 this Court should order the -Board to pay the sum claimed by the Council in the Writ.

On 1 December 1994 the Debtor filed an affidavit in answer. She admits the existence of a Mataqali named Banito and says that the Mataqali owns about 510 acres of native land which is under the control of the Board and some of which is within the boundary of Labasa Town. The Debtor however denies that the Board is indebted to the Mataqali and states that the distribution date for funds held by the Board in June having passed "there is no money due to me now". (See paragraph (e) and exhibit B of the supporting affidavit).

On 9 December 1994 the Board's acting Divisional Estate Manager Northern Mr. Peni Vaniqi also filed an affidavit in opposition. Mr. Vaniqi agrees that the Board receives rental and royalty income from the Mataqali's leased lands but denies that the Board is thereby indebted to the Mataqali. He states that the Board only collects, holds and then pays out the income in its capacity as controller and administrator of the Mataqali's lands, these being duties conferred upon it by Part II of the Native Land Trust Act.

Mr. Ram and Mr. Sadiq both filed detailed and comprehensive written submissions for which I am grateful. Given the importance of the case (I was told that very large sums of money are owed to municipalities throughout Fiji in respect of rates arising over on unalienated native land) it is a matter of regret that the Board chose not to appear and did not file a written submission.

In his written submissions Mr. Sadiq states that as a matter of fact the Mataqali does *not* own unalienated land within Labasa's town boundaries. He points out that the supporting affidavit refers in paragraph 6 to Mataqali Vuniwai and not to Mataqali Banito. Echoing some remarks said to have been made by the Chief Justice he asks for the matter to be adjourned *sine die*. Finally, adopting the position apparently taken by the Board he states that the Board in collecting rents owed to the Mataqali merely acts as a trustee and therefore is not indebted to the Mataqali. For these reasons the order sought should be refused.

In my view there is no merit in any of these objections. Judgment in default of Defence having been entered, the Defendant cannot, in my view, dispute the Plaintiff's case as set out in the Statement of Claim. This means that the Defendant cannot now be heard to say that the land in question is outside the town boundaries. The reference to the Mataqali Vuniwai in the supporting affidavit is quite simply, obviously and plainly a typing error. In the absence of consent by the Judgment Creditor there is no basis in law for these proceedings to be adjourned *sine die*. Finally, it is quite clear that whether or not the

Board receives income from Mataqali land leased by it *qua* trustee, the income, once received is owed to the Mataqali. In the words of Lindley L J in Webb v. Stenton [1883] 11 QBD 518, 526:-

> "Is a trustee a debtor to his cestui que trust? You cannot say he is unless he has got in his hands money which it is his duty to hand over to the cestui que trust: then of course he is a debtor and there is no difficulty in attaching such a debt under this Order."

The only local authority on the subject of liability for payment of rates over unalienated Native Land within a municipal boundary is, so far as I am aware, Nausori Town Council v. Native Land Trust Board Suva SC 27/83. The Decision of the Fiji Court of Appeal in Native Land Trust Board v. Nadi Town Council FCA 45/79 - FCA Reps 79/295 deals with *alienated* Native Land and therefore is not directly relevant. In the Supreme Court Judgment Kermode J held that it was the land owners, the Mataqali, who were liable for the payment of the rates and not the Board but in the course of his Judgment he had this to say:

> "Where the Board has failed in its duty in administering the land was not to pay the rates on the unalienated portion of the land as when they fell due from the income derived from the leased portions of the land."

and

> "In the interests of the owners and in performance of their duty in administering the land the Board should take early steps to ensure the arrears of rates are paid from income or other moneys received from the alienated portion of the land."

With respect, I entirely agree but the problem is that for some reason best known to itself the Board continues to refuse to discharge the plain duty of payment referred to. It is because that duty is not being discharged that the present proceedings have been taken.

In my view there only remain two questions of substance which need to be considered before an order absolute can be made. They are (a) the status of the Judgment Debtor and (b) the existence of a debt "due or accruing due to the Judgment Debtor from the Garnishee". (See RHC 0.49 r.1 (1)).

Both Mr. Sadiq in his written submission and Mr. Vaniqi in his affidavit dated 9 December 1994 take the point that the land in question belongs to the Mataqali Banito as a whole and not to the Judgment Debtor alone. They also suggest that the Board receives rents and royalties on behalf of the whole Mataqali and

Banito as a whole and not to the Judgment Debtor alone. They also suggest that the Board receives rents and royalties on behalf of the whole Mataqali and not on behalf of the Judgment Debtor alone. In my view there is no substance in these objections. As is clear from the Writ, the summons and the affidavits, the original proceedings as well as the present proceedings are representative proceedings brought under the provisions of RHC 0.15 r.14, a rule which "should be treated as being not a rigid matter of principle but a flexible tool of convenience in the administration of justice and should be applied, not in any strict or vigorous sense but according to its wide and permissive scope." (Per Megarry J in John v. Rees [1970] Ch 345; [1969] 2 All ER 274).

In the present proceedings I am entirely satisfied that the Judgment Debtor is properly a Party in a representative capacity, her interest being the same as the other members of the Mataqali both in the matter of liability for the payment of rates and in the matter of receiving payment owed to the Mataqali by the Board.

The remaining matter is whether moneys received by the Board and then paid to the Mataqali under section 11 of the Native Trust Act are moneys "due or accruing due". Once again I believe the answer is to be found in Webb v. Stenton (supra). In that case Brett M.R. at pages 525 and 526 found:

> "It is obvious it is not. There is a sum of money which is to be payable out of the proceeds of the property when it comes to the hands of the trustees. Nobody can say that until then there is in any legal or equitable sense a debt which is *debitum in presenti*. The money may never come to these trustees without any fault of their own, for they may die or cease to be trustees before anything can become due. Therefore there are contingencies upon which no debt may ever arise and all that can be said of it is that it is probable that at the end of half a year money will come into the hands of the trustees, but until it does come into their hands there is no debt existing between them and their cestui que trust."

The situation the present case is quite different. Here the Trustees are the Board, a statutory and continuing body which administers the land pursuant to Act of Parliament. As is clear from the affidavit evidence the lands are leased out to a number of authorities including the Board itself. Money is continually being paid to the Board by the lessees and is regularly paid out to the Mataqali every six months. When the garnishee proceedings were commenced the Board held sums of money which it was shortly to pay to the Mataqali, which, in other words it owed to the Mataqali and which, pursuant to section 11 of the Native Land Trust Act it was bound to pay to the Mataqali. The moneys payable in future by the Board to the Mataqali are not, in my opinion, "moneys which may or may not become payable" by the Board (ibid page 528); rather they are money which *must* be paid by the Board to the Mataqali.

In all the circumstances I am satisfied that I should grant the relief sought and accordingly I make a Garnishee Order Absolute against the Board.

I would conclude by remarking that if the Board performed the duty to pay identified by Kermode J in 1978 both litigation and costs would be avoided.

(Garnishee order absolute.)