

WAISAKE TURUVA NO. 1

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v.

1. KELEVU TABANIVAU
2. SAKEASI LAUTARI
3. JOELI BOSE
4. FIJI ELECTRICITY AUTHORITY

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[HIGH COURT, 1999 (Scott J) 20 August]

Civil Jurisdiction

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Land- Erection of electricity transmission line across native land- whether compulsory acquisition- whether in accordance with law- whether for public purposes- Constitution (1997) Section 40- Electricity Act (Cap 180) Section 37.

The High Court HELD: that Section 40 of the Constitution 1997 had no application to the Fiji Electricity Authority duly entering upon land and erecting a transmission line in accordance with the provisions of the Electricity Act.

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No case was cited.

Interlocutory applications in the High Court.

I.Fa for the Plaintiff

R. Naidu for the 4th Defendant

No appearance by the 1st, 2nd and 3rd Defendants

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Scott J:

These proceedings concern the right of the 4th Defendant to erect an electricity transmission line across native land.

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The Plaintiff is the Turaga ni Mataqali of the Mataqali Naroko which owns land at Udu, Laselevu, Naitasiri. The 1st, 2nd and 3rd Defendants are members of an adjoining mataqali the Mataqali Navoro.

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In his statement of claim filed with the writ on 7 April 1999 the Plaintiff says, inter alia, that with the help of the first three Defendants the 4th Defendant (the FEA) had trespassed upon land belonging to the Mataqali Naroko, had dug 20 holes there and had in the process caused damage to the land and the vegetation growing upon it. The Plaintiff claims damages together with an injunction restraining continuation of the trespass or dealing with the land in any manner or form.

On 3 August 1999 a Statement of Defence and Counter-Claim were filed by the FEA together with a summons by the FEA seeking an interlocutory injunction to restrain the Plaintiff, his servants or agents from interfering with the exercise by

the FEA of the powers vested in it by virtue of Section 37 of the Electricity Act, (Cap 180-the Act) and from preventing the FEA from extracting water from the Waikuru Creek.

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Three Affidavits were filed:

- (i) Ratu Peni Volavola, for the FEA, 3 August 1999;
- (ii) Waisake Turuva, for the Plaintiff, 13 August 1999;
- (iii) Plaintiff, 17 August 1999.

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The FEA says that Section 37 of the Act gives it the right to enter native land to erect an electricity transmission line; therefore, it denies that it has trespassed on the Plaintiff's or any one else's land.

As to the extractions of water, the FEA relies on permission given to it by the Director of Lands and Surveyor-General on 19 June 1999. Although the permission (Exhibit F to the first affidavit) does not specifically say so it was apparently given under the provisions of Section 7 of the Rivers and Streams Act (Cap 136). This question of water can be dealt with shortly. At the hearing of these applications Mr. Fa told me that, consistent with paragraph 14 of the second affidavit, the Plaintiff had no objection to the FEA drawing water from the creek. If there was any argument then it was over where precisely this creek ran and where the FEA was removing the water. Mr. Fa was fearful that trouble might occur if the FEA removed water from the wrong place. In my view any practical problems of implementing a permission or order are separate from the order or permission itself. I am satisfied that the FEA is entitled to abstract water from the Waikuru Creek. So far as I can tell the creek is perfectly well delineated (see Exhibit C to the first affidavit). While suggesting that the FEA should be careful to ensure that it is indeed removing the water from the creek and not somewhere else I am satisfied that on the balance of justice I should grant paragraph (ii) of the injunction sought.

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Returning to Section 37 of the Act, it is plain to me that section 37 (1) authorises the FEA to enter native land and to dig out soil for the construction of an electricity transmission line providing that at least 3 days notice is given to the owners before the works begin. Section 37 (2) provides that the FEA when installing such a line merely acquires a right in or over the land used although in exercising this right it may render itself liable in nuisance or negligence if the works are not carried out properly.

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Mr. Fa suggested that Section 37 fell foul of Section 40 of the Constitution 1997 which prevents the compulsory acquisition of property or an interest in property by the State. As pointed out, however, by Mr. Naidu the FEA is not the state and therefore Section 40 has no application. Even if it might somehow be argued that the FEA was an agency of the state then I am satisfied that in exercising its powers to enter to set up transmission lines under the Act it is doing so "in accordance with a law" (Constitution, Section 40 (1)) and that the FEA's acquisition

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of an interest over the property of the mataqali Naroko is “for public purposes” (Section 40 (2) (c)).

A At this stage in the proceedings it is not for me to determine whether the Plaintiff or the FEA is liable or entitled to damages. I am however satisfied that the work of the FEA should not be held up and accordingly grant paragraph (i) of the order as prayed.

B In his submission Mr. Fa emphasised the discontentment which the Plaintiff and his mataqali feel about the way the FEA has gone about constructing this line. Although Exhibit B to the first affidavit suggests that the local landowners were consulted about this project which will bring electricity to their villages it may well be that the consultation process was not quite as thorough and comprehensive as it should have been.

C (*Application granted.*)

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